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**OFFICE OF THE
CITY TREASURER**

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October 25, 2001

Law and Legislation Committee
Sacramento, California

Honorable Members in Session:

SUBJECT: FOLLOWUP STAFF REPORT ON PREDATORY LENDING.

LOCATION AND COUNCIL DISTRICT: Citywide

RECOMMENDATION:

This is a report back with additional information as directed by the Law and Legislation Committee on August 9, 2001. Staff seeks further direction from the Committee on the proposed non-regulatory City ordinance and the consumer education program previously brought forward for the Committee's consideration.

CONTACT: Tom Friery, City Treasurer, 264-5168
Ken Nishimoto, Deputy City Manager, 264-5270

FOR THE COMMITTEE MEETING OF: October 30, 2001

BACKGROUND:

On September 26, 2000, Council Member Lauren Hammond of District 5 requested staff conduct a research study and the City Attorney to prepare a draft City ordinance dealing with predatory lending in Sacramento. Accordingly, the City Treasurer's office presented a staff report to the Law and Legislation Committee, which contained the findings and recommendations regarding predatory lending on August 9, 2001. A copy of this staff report is attached as "**Attachment II**".

Since August 9, 2001, the City Treasurer and his staff has met with representatives from both the Association of Community Organizations for Reform Now (ACORN) and

mortgage and lending institutions, including Bank of America on two occasions: September 6 and September 24 as directed by the Committee.

DISCUSSION:

At the August 9, 2001 meeting, the Law and Legislation Committee directed the City Attorney's office to provide a legal analysis of the City of Oakland and state legislative bills currently being discussed. The City Attorney's office has already provided a report back regarding the legal analysis to the Committee under a separate cover.

In addition, the Committee directed staff to:

- analyze and report back on three state legislative bills dealing with the issue of Predatory Lending,
- contact the City of Oakland regarding cost estimates of their proposed regulatory program, and finally,
- meet with representatives from ACORN and financial institutions to identify areas of agreements.

STATE BILLS:

There were three bills working their way through the State Legislature that dealt with predatory lending in September. These three bills were Senate Bill 608 (Dunn), and Assembly Bills 407 (Correa) and 489 (Migden). Assembly Bill 344 was subsequently made a trailer bill to AB 489. A summary of these bills is attached to this report as "Attachment I".

SB 608 (Dunn) and AB 407 (Correa) failed to make it out of their legislative committees. AB 489 (Migden) and its trailer bill AB 344 (Migden) were approved by the Governor on October 10, 2001.

Senate Bill 608 (Dunn), as amended April 18, 2001, would enact the Home Loan Protection Act and would impose various requirements on lenders and home loans, including requiring a lender to use a specific formula to assess a potential borrower's ability to repay a home loan or a *covered* loan.

Assembly Bill (AB) 407, the California Residential Mortgage Lending Act provides for the regulation and licensure of residential mortgage lenders and residential mortgage loan services by the Commissioner of Corporations. The act requires a residential mortgage lender to file an application for licensure with the commissioner in order to make or service residential mortgage loans in this state.

Neither SB 608 nor AB 407 made it onto the legislative floor for consideration.

Assembly Bill 489 adds several new sections to the California Financial Code, and imposes various requirements on issuers of "covered loans" secured by real property. A

covered loan is defined as a consumer loan (i.e., a consumer credit transaction secured by real property in this state, and used or intended to be used or occupied as the principal dwelling of the consumer that is improved by a one-to-four residential unit) in which the original principal balance of the loan does not exceed \$250,000. Additionally, one of the following conditions must be met, in order for a loan to qualify as a covered loan:

1. The annual percentage rate will exceed by more than 8% the yield on Treasury securities having comparable periods of maturity; or
2. The total points and fees payable by the consumer at or before closing will exceed 6% of the total loan amount.

The bill prohibits various acts and loan terms in making covered loans, including:

1. Requiring a prepayment fee or penalty for paying off the loan after the first 36 months after the loan closing date;
2. Providing for a payment schedule on a loan with a term of 5 years or less, that when aggregated, does not fully amortize the principal balance as of the maturity date of the loan;
3. Providing for a payment schedule that causes the principal balance to increase, unless the loan is a first mortgage and the lender has disclosed to the consumer that the loan contains a negative amortization provision;
4. Providing for periodic payments that are consolidated and paid in advance from the loan proceeds;
5. Providing for an increase in the interest rate as a result of a default;
6. Issuing a loan without a reasonable belief that the consumer has the ability to repay the loan, based on the consumer's financial resources other than the consumer's equity in the dwelling that secures repayment of the loan;
7. Paying a contractor under a home improvement contract from the proceeds of a covered loan, other than by an instrument payable to the consumer or jointly to the consumer and contractor, or to a third party escrow agent for the benefit of the consumer;
8. Recommending or encouraging a consumer to default on an existing consumer loan or other debt in connection with the solicitation or making of a covered loan that refinances the existing consumer loan or debt;
9. Providing for a call provision that permits the lender, in its sole discretion, to accelerate the indebtedness;

10. Failing to include in the loan agreement a Consumer Caution and Home Ownership Counseling Notice;
11. Steering, counseling or directing any prospective consumer to accept a loan product with a risk grade less favorable than the risk grade that the consumer would qualify for based on then current underwriting guidelines;
12. Structuring a loan transaction as an open-end credit plan, or dividing any loan transaction into separate parts, for the purpose of evading the provisions of the bill;
13. Committing fraud in the origination of a covered loan;
14. Financing points and fees in excess of \$1,000 or 6% of the original principal balance, exclusive of points and fees, whichever is greater;
15. Financing into a consumer loan transaction or financing to the same borrower within 30 days of a consumer loan transaction, any credit life, credit disability, credit property, or credit unemployment insurance premiums, or any debt cancellation or suspension agreement or contract fees;

The bill goes on to provide for civil and administrative penalties and permanent and temporary revocation of licensing privileges against lenders and brokers who violate its provisions. The bill's provisions are to apply only to a consumer loan applied for on or after July 1, 2002.

AB 344 is a trailer bill to AB 489. Some of the more significant amendments in AB 344 are: prohibition of payment penalties for loan accelerations as a result of default; prohibition of refinancing of a prepayment penalty in a refinanced loan; no 5 year balloon payments; and no flipping for purposes other than for an "identifiable benefit" to consumer.

OAKLAND ORDINANCE:

On October 2, 2001, the Oakland City Council approved an ordinance prohibiting certain lending practices defined as predatory, and a second ordinance requiring lenders to certify that neither they nor their affiliates engage in predatory lending practices. A copy of the Oakland ordinances are attached as "**Attachment III**".

The American Financial Services Association representing a number of lending institutions filed a request for preliminary injunction with the Superior Court on October 15, 2001 to prevent the regulatory portions of the ordinance from going into effect on November 1, 2001. A court hearing has been scheduled for mid-November.

Per the Committee's direction, staff has also contacted the City of Oakland regarding cost estimates to implement the regulatory aspects of their ordinance. . City of Oakland staff

has indicated that they estimate “little or no cost” to implement the program since an aggrieved borrower or an organization action on behalf of an aggrieved borrower may bring civil action directly against the lender. Oakland staff generally will not be involved with the civil action.

MEETINGS WITH STAKEHOLDERS:

Finally, staff has met with ACORN and financial institutional representatives on three occasions since August 9, 2001. The objective of these three meetings was to identify areas of agreements that all entities could support. The Committee directed that each group were to provide no more than 3 representatives to this “working group”.

The members of this “working group” included a single representative from each of the following groups:

Older Women’s League
Congress of California Seniors
ACORN

Bank of America
Mortgage Lending Representatives

ACORN, Older Women’s League, and the Congress of California Seniors (proponents for regulating predatory lending), have indicated that they would like the City to adopt an ordinance similar to the City of Oakland that would regulate predatory lending practices at the local level in addition to prohibiting the City from doing business with lenders that engage in predatory lending.

Representatives from the lending institutions have questioned the need to have a local ordinance in light of state bills being signed into law. They also indicated that if the City were to propose a local ordinance, they would oppose any language that is inconsistent with the language contained in the AB 489 and AB 344.

Both groups have indicated that they support some form of consumer education for borrowers. Staff feels that consumer education is the strongest element to assist consumers in identifying predatory lending practices and preventing reduced home values and blight.

FINANCIAL CONSIDERATIONS:

Depending on the Committee’s direction, staff will report back on the cost to implement the recommendations.

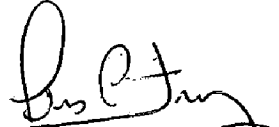
POLICY CONSIDERATIONS:

Predatory lending practices are discriminatory to the elderly, low income, and people of color. The recommendations and proposed ordinance are consistent with the anti-discrimination policies adopted by the City Council.

ESBD CONSIDERATIONS:

There are no ESBD considerations. No goods or services are being purchased at this time.

Respectfully submitted:



THOMAS P. FRIER
City Treasurer

RECOMMENDATION APPROVED:



BETTY MASUOKA
Assistant City Manager

v.1 October 22, 2001

Summaries of Predatory Lending Bills Attachment I

Senate Bill 608 (Dunn), as amended April 18, 2001, would enact the Home Loan Protection Act and would impose various requirements on lenders and home loans, including requiring a lender to use a specific formula to assess a potential borrower's ability to repay a home loan or a covered loan. The bill would require a person who violates the provisions of the act to pay civil damages, as specified. The bill would require the Attorney General to compile data on complaints against lenders, as specified. **This bill was heard and remained in the Senate Committee on Banking, Commerce and International Trade.**

Assembly Bill (AB) 407, the California Residential Mortgage Lending Act provides for the regulation and licensure of residential mortgage lenders and residential mortgage loan services by the Commissioner of Corporations. The act requires a residential mortgage lender to file an application for licensure with the commissioner in order to make or service residential mortgage loans in this state. The act requires the commissioner to issue a license or a specified statement of issues within 60 days of the filing of a full and complete application for a license. Assembly Bill 407 (Correa) would instead require the commissioner to issue that license or specified statement within 45 days of the filing of a full and complete application for a license. This bill would enact the Consumer Equity Protection Act that would impose various requirements on lenders and covered loans, as defined. The bill would place limits on the imposition of prepayment fees or penalties on covered loans by a lender. The bill would prohibit a lender from making a covered loan unless a specific notice is provided to the persons that would be required to pay the loan. The bill would impose a similar notice requirement on a lender before the lender could sell an individual or group credit life, accident and health, or disability or unemployment insurance product. The bill would also require a lender or its servicer to report information on a consumers favorable and unfavorable payment history to a nationally recognized consumer credit reporting agency. Assembly Bill 408 was re-referred to the Assembly Committee on Banking and Finance on April 16, 2001. **The bill was stuck in committee.**

The third bill is **Assembly Bill 489 (Migden)**. AB 489 regulates lending practices defined as predatory and affects loans secured by real property which are the result of such practices and provides remedies for the aggrieved borrowers and sanctions for the offending lenders.

This bill prohibits various acts and loan terms in making covered loans, including:

- Requiring a prepayment fee or penalty for paying off the loan after the first 36 months after the loan closing date;

- Providing for a payment schedule on a loan with a term of 5 years or less, that when aggregated, does not fully amortize the principal balance as of the maturity date of the loan;
- Providing for periodic payments that causes the principal balance to increase, unless the loan is a first mortgage and the lender has disclosed to the consumer that the loan contains a negative amortization provision;
- Financing points and fees in excess of \$1,000 or 6% of the original principal balance, exclusive of points and fees, whichever is greater;
- Providing for an increase in the interest rate as a result of a default; and
- Paying a contractor under a home improvement contract from the proceeds of a covered loan, other than by an instrument payable to the consumer or jointly to the consumer and contractor, or to a third party escrow agent for the benefit of the consumer.

AB 489 was approved and signed by the Governor on October 10, 2001.

A fourth bill pertaining to Predatory Lending was also approved and signed by the Governor on October 10, 2001. This bill, **AB 344 (Migden)**, regulates lending practices defined as predatory and affects loans secured by real property which are the result of such practices and provides remedies for the aggrieved borrowers and sanctions for the offending lenders. This bill was described by the author as a trailer bill to AB 489 (Migden).



ATTACHMENT II

OFFICE OF THE
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August 1, 2001

Law and Legislation Committee
Sacramento, California

Honorable Members in Session:

SUBJECT: STAFF REPORT ON PREDATORY LENDING.

LOCATION AND COUNCIL DISTRICT: Citywide

RECOMMENDATION:

This report provides recommendations by staff for the Committee's consideration that, if adopted, would create and implement a non-regulatory City ordinance and an effective consumer education program as two components to curb predatory lending in the City of Sacramento.

CONTACT: Thomas P. Friery, City Treasurer, 264-5168
Ken Nishimoto, Administrative Services Director, 264-5270

FOR THE COMMITTEE MEETING OF: August 9, 2001

BACKGROUND:

On September 26, 2000, Council Member Lauren Hammond of District 5 requested staff to conduct a research study and the City Attorney to prepare a draft City ordinance dealing with predatory lending in Sacramento. Accordingly, the City Treasurer presents the attached report to the Law and Legislation Committee, which contains the findings and recommendations on predatory lending. The City Attorney's office has prepared and attached a draft ordinance for the Committee's consideration.

Staff has researched, gathered, reviewed and analyzed relevant information from various articles and publications on this topic that included existing and proposed legislation, other City ordinances on predatory lending; consumer and loan trends in the mortgage

market; reports of several Senate Committees' and Federal Trade Commission on predatory lending and other sources.

The City Treasurer and staff also met with staff from ACORN (Association of Community Organizations for Reform Now) on several occasions, several individuals impacted by predatory lending and representatives from leading banking institutions.

State law provides for the regulation and licensing of residential mortgage lenders and residential loan services through the California Residential Mortgage Lending Act (Financial Code Section 50000). Under the Act, a licensee is prohibited from committing fraud or from making a misstatement or omission of a material fact pertaining to a loan, and is subject to civil, administrative and financial sanctions for the violation of the Act. (Financial Code Sections 50500-50505.) State law also prohibits unfair competition, fraudulent business acts or practices, and untrue or misleading advertising. (Business and Professions Code Section 17200.)

Federal law also provides certain protections to consumers who are refinancing a home mortgage loan. Under the Home Ownership and Equity Protection Act (HOEPA, 15 U.S.C. Section 1639), certain disclosures must be made by the lender to the borrower, a 3-day waiting period is required before the loan may be consummated, and certain loan terms are prohibited on high cost loans such as prepayment penalties, balloon payments, negative amortization, and accelerated interest rates after default. Additionally, the lender may not issue a loan without regard to the payment ability of the consumer.

Notwithstanding the existence of state and federal regulatory law, none of the statutes and regulations governing home mortgage transactions provides a definition of predatory lending. Predatory lending is generally understood to involve engaging in lending practices that, alone or in combination, are abusive. Predatory lending usually occurs in the sub-prime mortgage market where borrowers may have limited access to the mainstream financial sector, and involves loan practices such as loan "flipping" (the repeated refinancing of the borrowers' loans in a short period of time, resulting in the stripping of the borrowers' equity in their homes); excessive fees and "packing" (fees that are "packed" into the loan amount without the borrowers' understanding and that exceed what would be expected or justified based on economic grounds); lending without regard to the borrowers' ability to repay; and using deceptive or high-pressure sales tactics on certain groups such as the elderly, minorities, and individuals with lower incomes and less education.

GENERAL DISCUSSION:

The Predatory Lending report prepared by the City Treasurer's office provides a background and introduction to the issue, distinction between prime and sub-prime home lending market, who is most at risk from predatory lenders, lenders' locations, regulatory laws that address the issue, definition of predatory lending, conclusions and staff recommendations. (Attachment I)

Predatory lending practices include the following components if a loan is a high cost loan:

- Costly and unnecessary insurance policies;
- Balloon payments within five years;
- Negative Amortization;
- Loan Flipping;
- Pre-payment penalties; and
- Practice of requiring two or more advance payments paid in advance from proceeds;

Predatory lenders target and market high cost loans to the elderly, the minority and low-income citizens of the community. Predatory lending is particularly damaging because borrowers typically seek home loans during times of financial need, and when they are in the weakest bargaining position and most susceptible to practices that can strip them of substantial sums of money and their homes.

LEGAL ANALYSIS:

It is the opinion of the City Attorney's Office that local municipalities are preempted from directly regulating the home mortgage lending industry. Under the federal doctrine of preemption, federal law may preempt a local law in one of two general ways: (1) Congress demonstrates its intent to occupy the field of regulation and supplant local authority; or (2) the local law may conflict with federal law by making it impossible to comply with federal law or by creating an obstacle to the goal of the federal law. (California Coastal Commission v. Granite Rock Company, 480 U.S. 572, 581, 107 S. Ct. 1419, 94 L. Ed 2d 577 (1987). Similarly, under state law, a local law conflicts with state law if it either (1) duplicates; (2) contradicts; or (3) enters a field, which has been fully occupied by state law, whether expressly or by legislative implication. (People ex rel. Deukermejian v. County of Mendocino, 36 Cal. 3d 476, 484 (1984); Candid Enterprises, Inc. v. Grossmont Union High School District, 39 Cal. 3d 878, 885 (1985); California Fed. Savings and Loan Association v. City of Los Angeles, 54 Cal. 3d 1 569 (1991).)

After reviewing federal and state law and its legislative history, it is the conclusion of the City Attorney's Office that the field of home mortgage lending has been fully occupied by these laws. Therefore, the proposed ordinance does not directly or indirectly attempt to regulate home mortgage lenders. However, it is well within the "home rule" authority of the City to enact legislation delineating the lenders with whom the City will do business.

PROPOSED ORDINANCE

The proposed ordinance (**Attachment II**) would add Chapter 3.148 to Title 3 of the Sacramento City Code. Under the ordinance, a predatory loan is generally defined as a loan for a home purchase, home refinance, and home equity loan that was made under circumstances that are abusive. (Section 3.148.030.) This section goes on to identify a number of lending practices and loan terms that may indicate that a loan was made under abusive circumstances. This same section defines a predatory lender as a lender that, through itself or an affiliate, has made within any 12-month period, a predatory loan that comprises 5% or more of the total annual number of loans made.

Sections 3.148.040 and 3.148.050 prohibit certain transactions between the City and a lender meeting the definition of a predatory lender, including a prohibition on the deposit or investment of City funds and entering into a City contract with a predatory lender. The City Treasurer is give a 2-year divestiture period to withdraw all city deposits and investments from any lending institution meeting the definition of a predatory lender.

Section 3.148.060 of the proposed ordinance requires all lenders with whom the City does business with to submit a certification that neither the lender nor any of its affiliates, engage in predatory lending practices. The City Treasurer may reject the certification if, in the Treasurer's sound discretion, it is inaccurate or misleading.

Section 3.148.080 of the proposed ordinance establishes a Predatory Lending Consumer Education Program. Within 90 days from the date of the adoption of the ordinance, the City Treasurer must develop a program designed to disseminate information on predatory lending practices to City residents. The information must be in a format that is easily understandable to a layperson and that is reasonably calculated to reach the largest possible audience, including the inclusion of this information in monthly or semi-annual City utility bills or other mailings, and the posting of brochures and other informational material on City owned property open to the public.

Finally, Section 3.148.090 of the proposed ordinance requires the City Treasurer to present a written informational report to the City Council on the progress of compliance with the ordinance, including a list of all deposits or investments of City funds subject to Chapter 3.148 and the progress of any divestitures; a list of all lenders who have filed a certification, including those lenders whose certifications have been rejected; and the status of the Predatory Lending Consumer Education Program. The first report is due at the first City Council meeting 180 days and one year from the date of the adoption of the ordinance; and thereafter reports are due annually for a 5-year period, or until such time as there is adequate federal and state legislation in place protecting borrowers from predatory lending practices, whichever occurs first.

FINANCIAL CONSIDERATIONS:

Depending on the Committee's direction, staff will report back on the cost to implement the recommendations.

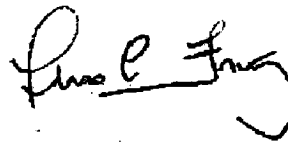
POLICY CONSIDERATIONS:

Predatory lending practices are discriminatory to the elderly, low income, people of color and virtually all predatory loan victims. The recommendations and proposed ordinance are consistent with the anti-discrimination policies adopted by the City Council.

ESBD CONSIDERATIONS:

There are no ESBD considerations. No goods or services are being purchased at this time.

Respectfully submitted:



THOMAS P. FRIERY
City Treasurer

RECOMMENDATION APPROVED:

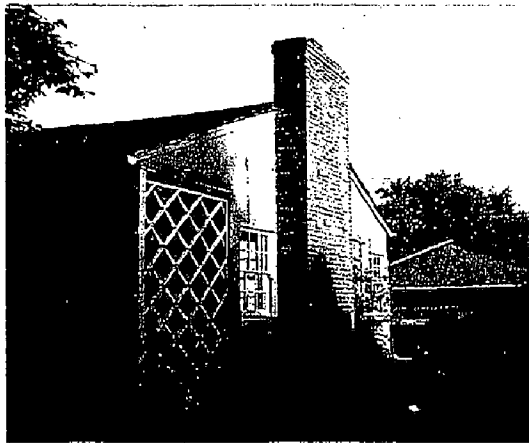


BETTY MASUOKA
Assistant City Manager



**Office of the City Treasurer
City of Sacramento**

**Staff Report
on
Predatory Lending**



Sacramento, CA 95820

July 25, 2001

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I. BACKGROUND

Council Member Lauren Hammond of District 5 requested the City Treasurer to conduct a research study on predatory lending in Sacramento. Accordingly, the City Treasurer presents this report, dated July 25, 2001, to the City Council, which contains his findings and recommendations on predatory lending.

The City Treasurer and staff spent approximately 150 hours to complete their research work on predatory lending. Gina Amayun from the Treasurer's Staff assisted the Treasurer in this undertaking. The staff gathered, reviewed and analyzed relevant information from various articles and publications on this topic that included existing and proposed legislation; other city ordinances on predatory lending; consumer and loan trends in the mortgage market; reports of several Senate committees and the Federal Trade Commission on predatory lending, etc. The City Treasurer and staff also met with ACORN staff (Association of Community Organizations for Reform Now), several individuals impacted by predatory lending, representatives from leading banking institutions and other City Staff (i.e. Ken Nishimoto, City Attorney's staff) on various occasions. At this time, we have not released this report to any members of the public, or any organizations/institutions.

II. INTRODUCTION

Historically, home ownership has been one of the fundamental means for families to build wealth and financial security. In the United States, 50%, or half of all homeowners, hold at least 50% of their net worth in home equity.¹ In the absence of data specific to the City of Sacramento, we can assume that this national data also reflects Sacramento homeownership.

¹ "State of the Nation's Housing," Joint Center for Housing Studies of Harvard University, 1997, p.18

This home equity is often used to send children to college, start a business, consolidate debt, withstand monetary crisis such as loss of employment, pay medical bills in case of major illness, and cover other financial emergencies and situations.

Unfortunately, home equity is a highly illiquid asset and can only be accessed by selling the home or by obtaining a home loan, i.e., refinancing (with or without cash out), home equity loan/second mortgage, equity line of credit.

III. PRIME AND SUB-PRIME MARKET

In the home loan market, there are two types of borrowers, a prime borrower and a sub-prime borrower. In today's terminology, a "prime" borrower has an "A" credit rating, which means an excellent credit history. On the other hand, a sub-prime borrower has less-than-perfect credit due to a variety of factors, e.g., history of late payments on credit cards and other similar personal loans, spotty employment history, high personal debt ratios, previous bankruptcy, non-traditional income. Sub-prime borrowers are categorized under "B," "C" or "D" credit ratings.

Although predatory lending thrives in the sub-prime market, it is not fair to equate the legitimate efforts of sub-prime lenders with predatory lending. Legitimate sub-prime lenders provide a service to the community. Without these legal lenders extending sub-prime loans to borrowers with less than perfect credit, borrowers are deprived of their ability to obtain loans using their homes as collateral. Without these home loans, borrowers may not be able to realize their dreams (i.e. buying a home, sending their children to college) or cover financial emergencies (i.e. medical bills, accidents, layoffs).

Unfortunately various articles and studies have shown that predatory lenders thrive in the sub-prime market. The likely consequence of predatory lending is primarily the risk

that homeowners may lose their own homes to foreclosure and their home equity as a result of abusive lending practices. Without their homes and hard-earned equity, they are stripped of their primary source of financial security. Further, a community is faced with reduced home values and blight.

IV. WHO IS MOST AT RISK FROM PREDATORY LENDING

In the United States, there are approximately 663,000 elderly homeowners who are likely targets of predatory lending because they have lived in their homes for over 20 years, have income of less than \$30,000, own these homes debt-free, and have equity of over \$100,000.² This is the basic reason why elderly homeowners are likely targets of predatory lending. According to a study conducted by ACORN, in addition to the elderly homeowners, sub-prime loans are made in a disproportionate number to minority (African-American) and in low-income neighborhoods.³ "In 1999 in the Sacramento metropolitan area, sub-prime lenders accounted for 33.3% of all the refinance loans made to African-American homeowners and 18.9% of all refinance loans made to Hispanic homeowners, but just 9.8% of the refinance loans made to Caucasian homeowners. Also, in 1999 in the Sacramento metropolitan area, sub-prime lenders accounted for 21.1% of all the conventional purchase loans made to African-American homebuyers and 14.6% of all conventional purchase loans made to Hispanic homebuyers, but just 6.2% of the conventional purchase loans made to white homeowners."⁴

According to some studies, there is also evidence that some sub-prime lenders target families in low-income neighborhoods. For example, "sub-prime loans are three times

² Comments by Senator Charles Grassley. Senate Special Committee on Aging hearing, held on March 16, 1998. Available at: <http://www.senate.gov/~aging/hr14.htm>.

³ Association of Community Organization for Reform Now (ACORN) is a political action committee (PAC) that has studied sub-prime lending in Sacramento. We are unable to confirm the accuracy of the data gathered by ACORN and therefore the data presented herein is for your information only.

⁴ "Stripping the Wealth: An Analysis of Predatory Lending in Sacramento" by the Association of Community Organization for Reform Now (ACORN).

more likely in low-income neighborhoods than in high income neighborhoods."⁵ Low-income neighborhoods are defined as census tracts wherein the median income is below 50% of the median income as shown in the Sacramento Metropolitan Statistical Area (MSA). Therefore, these loans are based solely on the collateral value of the property without regard to the individuals' repayment ability. In effect, borrowers with limited financial resources may pay the highest cost for credit, making it more likely that the borrower will default, followed by the lenders foreclosure on the property. While foreclosure is an emotionally and financially catastrophic experience for the homeowner, a predatory lender often can recover its money and more by reselling the property for market value, since typically the loan is made for only 80% (or less) of the property's fair market value.

It is extremely difficult to ascertain the exact number of families and individuals who have been victimized by predatory lending in the City of Sacramento, due to the lack of tracking mechanisms and inadequate reporting, but we recognize that this is a problem. Some individuals have come forward to share their own personal tragedies and experiences as they lost their homes as a result of predatory lending practices. Often, we read these accounts in newspaper articles. We also had the opportunity to hear a first hand account of predatory lending from a woman in the Sacramento region who lost her home.

V. LENDERS' LOCATIONS

According to research on sub-prime lending in Sacramento, there are five (5) primary sub-prime lenders in the Sacramento region, namely, The Money Store (recently filed bankruptcy), WMC Mortgage Corporation, Ameriquest Mortgage Company, New

⁵ Prepared Statement of the Federal Trade Commission before the California State Assembly Committee on Banking and Finance on Predatory Lending Practices in the Home-Equity Lending Market, February 21, 2001.

Century Mortgage Corporation; and Option One Mortgage Corporation.⁶ However, only two (2) of these entities actually have City of Sacramento addresses for their businesses. These lenders are known to have targeted and extended sub-prime loans primarily to African-Americans and low-to-moderate income communities.

This data was collected from reporting requirements of the Home Mortgage Disclosure Act (HMDA), enacted by Congress in 1975 and enforced by the Federal Reserve Board's Regulation C (12 CFR Part 203). However, since there are individuals (loan brokers) and entities (mortgage lenders) who are not regulated by the HMDA, and who do not report their mortgage activities, it is not possible to establish a complete list of sub-prime lenders in the City of Sacramento market. In addition, it would be even more difficult to ascertain sub-prime lenders who operate in the City of Sacramento, and who are engaged in predatory lending. We would have no authority to review their records even if we could identify who they are.

It is also very likely that the City of Sacramento homeowners use other mortgage companies and loan brokers that operate outside the City limits. Therefore attempting to curb predatory lending in the City of Sacramento by monitoring sub-prime mortgage lenders located in Sacramento, would not be as successful as reaching out to Sacramento residents who may anticipate getting a home loan.

Finally, we need to reiterate that sub-prime lenders provide a service that otherwise sub-prime borrowers would not have. Finally, sub-prime loans are in and of themselves not predatory lending loans. It is critical that in identifying these abuses we do not degrade prudent business practices of lenders who serve our community.

⁶ This data is collected from those lenders that have assets above a certain level and have home or branch office in a Metropolitan Statistical Area (MSA), as required by the Home Mortgage Disclosure Act (HMDA). MSA is defined as an area that contains a city with a population of at least 50,000, or contains an urbanized area with a population of 50,000 or more and has a total metropolitan population of at least 100,000.

VI. REGULATORY LAWS TO ADDRESS PREDATORY LENDING

Predatory lenders are typically mortgage lenders, mortgage brokers and financial institutions, i.e., banks, savings and loans. Federal laws, specifically the Home Ownership and Equity Protection Act (HOEPA) of 1994, which amended the Truth in Lending Act (TILA) contained in Section 32, Regulation Z, regulate them to some extent. The Board of Governors of the Federal Reserve System (12 CFR part 226) implements these regulations. Very briefly, however, HOEPA regulations only impact refinancing and home equity installment loans and do not cover loans to purchase or initially construct your home, reverse mortgages and home equity lines of credit.

The Truth in Lending Act (TILA) (Source: 15 U.S.C. 1601 et seq.)

The purpose of TILA is to promote the informed use of consumer credit by obliging lenders to disclose the terms and costs related to the loan on or before the date the loan closes. TILA and Regulation Z require lenders to provide certain disclosures on loans subject to the Real Estate Settlement Procedures Act (RESPA) within three business days after the lender receives a written application from a potential borrower. This early disclosure is based on the partial, initial information furnished by the borrower. The lender is required to provide a final disclosure statement on or before the loan closes. In addition, TILA permits the consumer to rescind any loan agreement before a loan closes.

TILA's disclosure must be in a specific format and must contain, at a minimum, the following information:

Name and address of creditor

Amount financed

Itemization of amount financed (optional, if Good Faith Estimate is provided)

Finance charge

Annual percentage rate (APR)

Variable rate information

Payment schedule

Total of payments

Demand feature

Total sales price

Prepayment policy

Late payment policy

Security interest

Insurance requirements

Certain security interest charges

Contract reference

Assumption policy

Required deposit information

Furthermore, adjustable-rate mortgage (ARM) loans have special disclosure requirements. If the annual percentage rate on a loan secured by the consumer's principal dwelling may increase after consummation and the term of the loan exceeds one year, TILA requires additional adjustable rate mortgage disclosures to be provided, including:

- The booklet entitled Consumer Handbook on Adjustable Rate Mortgages, published by the Board and the Federal Home Loan Bank Board or a suitable substitute.
- A loan program disclosure for each variable-rate program in which the consumer expresses an interest. The loan program disclosure shall contain the necessary information as prescribed by Regulation Z.

The Home Ownership Equity Protection Act OF 1994 (HOEPA) (Source: 15 U.S.C. 1639)

HOEPA is a federal disclosure law intended to curb certain unfair lending practices. The act is implemented through Section 32 of Regulation Z of the Federal Reserve Board. HOEPA seeks to protect homeowners who take out high cost loans, from exorbitant fees, and other unfair lending terms. The Act does not cover loans to purchase or initially construct your home, reverse mortgages and home equity lines of credit. The loans that are covered through HOEPA have

- (1) An annual percentage rate (APR) exceeding the rate on a comparable –maturity Treasury note by more than 10%, and/or
- (2) Total non-discount points and fees exceeding the larger of \$465 effective 1/1/2001, or 8% of the total loan amount.

As part of HOEPA requirements, lenders are mandated to include a notice in the loan documents, warning potential borrowers, in plain language, that they can lose their homes and any money put into it, if the payments are not made. In addition, the lender must give the borrower a written notice at least three days before closing the loan, (even though the agreement has been signed), that the borrower has the right to cancel the loan at any time during this period.

Under HOEPA, the following practices are generally banned:

- Balloon payments within 5 years;
- Negative amortization;
- Advance payments (when two or more payments are paid in advance from the proceeds);
- Increased interest rate (when interest is higher upon default);
- Rebates (when a refund is calculated by a method less favorable than the actuarial method for rebates of interest arising from a loan acceleration due to default);
- Prepayment penalties, except within the first 5 years of the loan, if the source of the prepayment funds is not a refinancing by the

same creditor and the borrower's total monthly debt-to-income ratio is under 50%;

- Extending credit without regard to the payment ability of the borrower; and
- Disbursing funds for home improvement loans directly to the contractor rather than directly to the borrower, jointly to the borrower and the contractor, or to the escrow agent.
- Selling or otherwise assigning a mortgage without furnishing the following statement to the purchaser or assignee: "Notice: This is a mortgage subject to special rules under the federal Truth in Lending Act. Purchasers or assignees of this mortgage could be liable for all claims and defenses with respect to the mortgage that the borrower could assert against the creditor."

Under HOEPA, the Board of Governors has rule-writing authority to lower the triggers for interest rates and associated fees by two percentage points, and modify the limitations and prohibited practices.

In summary, HOEPA only applies to refinancing and home equity installment loans, "which covers just 1% of all loans"⁷. The law does not regulate loans to purchase or initially construct a home; neither does it regulate reverse mortgages, or home equity lines of credit or revolving credit accounts. Likewise, HOEPA only covers loans, which meet the definition of a "high cost loan," and the loan terms contain any of the above practices prohibited by HOEPA. Clearly, existing federal law (HOEPA) provides insufficient consumer protection and does not cover a majority of home loans.

⁷ "Mortgage: Home Loan Protection" Hearing excerpts on Bill No. SB 608, Senate Banking, Commerce and International Trade, May 2, 2001.

VII. PREDATORY LENDING DEFINED

According to a staff report to the Chairman of the Senate Committee on Banking, Housing and Urban Affairs, "Predatory lending , not defined by regulators, seems to encompass an ever-changing and broad assortment of terms and conditions associated with a variety of financial transactions."⁸ In the absence of an existing legal definition, we believe that "predatory loan" means a loan, including but not limited to home purchase, home refinance, and/or home equity loan, that was made under circumstances that are abusive, based on the factors set forth below. Such circumstances include unfair or abusive loan terms, unscrupulous and misleading marketing, high pressure lending tactics that limit information or choices available to a borrower, or any combination thereof. The definition of predatory lending practices contained in this report includes other predatory lending practices that may be included in future regulatory action passed by federal and/or state agencies.

We believe that the following 35 practices or loan terms indicate that a loan may have been made under abusive circumstances.

Abusive Practices or Loan Terms

1. Fraudulent, high-pressure and misleading marketing and sales efforts to sell loans, including, but not limited to, false, deceptive or misleading statements or representations regarding the borrower's ability to qualify for a loan.
2. Misrepresenting or withholding information or hiding loan terms from borrowers, including, but not limited to, charging more in interest rates, points or fees on a loan than what was represented;
3. Failure to offer borrowers the full range of available loan programs for which they qualify;
4. The "steering" of borrowers to high-cost loan products, even though they can qualify for lower-cost products;

⁸ "Predatory Lending Practices: Staff Analysis of Regulators' Responses" Report of the Staff to Chairman Gramm, Committee on Banking, Housing and Urban Affairs, August 23, 2000.

5. Quoting different loan terms and conditions to minority, poor or elderly borrowers than to other types of borrowers and failing to offer them the full range of available loan programs for which they qualify;
6. The leaving of blanks in loan contracts, to be filled in after the contract is signed by the borrower;
7. Compensating, coercing or intimidating a real estate appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of the real estate that is being offered as security for the loan;
8. Making loans for more than the value of the real estate that is being offered as security for the loan;
9. Making loans for more than the borrower can repay given the borrower's current and expected income, current obligations, employment status, and non-housing assets;
10. Aiding, assisting, or counseling borrowers to misstate income for the purpose of obtaining a loan;
11. Charging borrowers excessive points and fees or other charges, or exorbitant interest rates that are beyond levels appropriate or necessary to cover risk and ensure a profitable return, including, but not limited to, duplicate fees, inflated broker's fees, fees without a clear description, costs that do not relate to services performed, and inflated recording fees;
12. Charging borrowers a fee for a product or service for which the product or service is not actually provided;
13. Misrepresenting the amount charged by, or paid to, a third party for a product or service;
14. Financing credit life or other insurance into the loan without adequate disclosure to, or permission of, the borrower. This does not apply to credit life insurance policies that require separately identified premium payments on a monthly or annual basis or to prepaid hazard, flood, or mortgage insurance policies;
15. The payment of all or part of the loan proceeds by a lender to a contractor under a home repair or home improvement contract, unless the payment: (i) is in the form of an instrument that is payable to the borrower or jointly to the borrower and the contractor; or (ii) at the election of the borrower, is by a third party escrow agent in accordance with terms established in a written

agreement signed by the borrower, the lender, and the contractor before the date of payment;

16. The payment of all or part of the loan proceeds by a lender to a contractor under a home repair or home improvement contract, when the contractor has been found by any court or federal or state agency of competent jurisdiction on two or more occasions within the previous 24 month period, to be in violation of any law or ordinance prohibiting deceptive practices or similar conduct;
17. "Flipping," i.e., the making of a loan to a borrower to refinance an existing loan when the new loan does not have a tangible benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances;
18. Offering bill consolidation home equity loans that trade short term debt for long term debt, and that do not result in any tangible benefit to the borrower;
19. Recommending or encouraging the borrower's default on an existing loan or other debt prior to and in connection with the closing or planned closing of a loan that refinances all or any portion of that existing loan or debt with the intent of increasing the loan amount;
20. Loan servicing abuses such as charging unwarranted late fees, attorneys' fees, and other costs;
21. Offering to help the borrower find new financing on the condition that the borrower deed over his or her property prior to the new loan application being processed;
22. Preventing or deterring borrowers from refinancing to a lower cost loan, such as providing untimely, inaccurate or incomplete payoff statements;
23. Failure to refer the borrower of a **high-cost loan**⁹ to a counselor approved by

⁹ We are recommending a more reasonable definition of a high cost loan by lowering HOEPA's thresholds of interest rates and fees. In this report, we defined a high cost loan as a high-rate and/or high-fee loan if it meets the following tests:

A. High-Fee Loan

The total non-discount points and fees exceed four (4) percentage points of the total loan amount if the loan amount is \$16,000 or greater, or \$800 of the total loan amount if the loan amount is less than \$16,000.

B. High-Rate Loan

A loan with an interest rate more than three (3) percentage points in the case of a first lien mortgage, or more than five (5) percentage points in the case of a junior mortgage, above the rate set by the required net yield for a 90-day standard mandatory delivery commitment for a first mortgage or a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

continued at page 13

the United States Department of Housing and Urban Development, for counseling on the advisability of the loan transaction and the appropriate loan for the borrower;

24. Charging borrowers points and fees or other charges in connection with a high-cost loan if the proceeds of the loan are required to refinance an existing high-cost loan held by the same lender and it has no tangible benefit to the borrower;
25. Charging borrowers fees or other charges to modify, renew, extend, or amend a high-cost loan, or to defer any payment due under the terms of a high-cost loan and it has no tangible benefit to the borrower;
26. High-cost loans that result in negative amortization;
27. High-cost loans having a term of less than five years that feature one or more balloon payments. This sub-paragraph does not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower;
28. High-cost loans that include terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower;
29. High-cost loans that permit the lender, in its sole discretion, to accelerate the indebtedness. This subparagraph does not apply when the repayment of the loan has been accelerated by default, pursuant to a due-on-sale provision, or pursuant to some other provision of the loan documents unrelated to the payment schedule;
30. High-cost loans that finance, directly or indirectly, points and fees or any other

continued from page 12

Our definition of a "high-cost loan" will be amended accordingly to include any regulatory action taken and passed by Federal and/or State agency in the future.

We would like to point out that **HOEPA's guidelines are as follows**: A high cost loan is described as a high-rate and/or high-Fee loan if it meets the following tests:

A. High-Fee Loan

The total fees and points exceed the greater of \$465 (effective 1/1/2001) or 8 percent of the total loan amount. The \$465 amount will be adjusted annually by the Federal Reserve Board, based on changes in the Consumer Price Index.

B. High-Rate Loan

The annual percentage rate (APR) or interest rate exceeds the Treasury note's rate of comparable maturity by more than **ten (10) percentage points** (for example as of May, 2001, interest rate exceeding 13.66%, based on one-year Treasury bill rate of 3.66%) and/or;

charges payable directly to third parties;

31. Refinancing a loan into a high-cost loan where the existing loan is a special mortgage originated, subsidized, or guaranteed by a state, tribal, or local government or nonprofit organization that bears either a below market interest rate or has nonstandard payment terms beneficial to the borrower, such as payments that vary with income or that are limited to a percentage of income, and where as a result of the refinancing the borrower will lose one or more of the benefits of the special mortgage;
32. High-cost loans that impose prepayment fees or penalties on borrowers, beyond five years from loan closing date, for paying all or part of the principal loan amount before the date on which the principal is due. For the purposes of this sub-paragraph, any method of computing a refund of unearned scheduled interest is a prepayment penalty if it is less favorable to the borrower than the actuarial method as that term is defined in 15 United States Code Section 1615(d);
33. High-cost loans that increase the interest rate after default. Interest rate increases do not constitute a predatory loan practice in a variable rate loan in which the increase is otherwise consistent with the provisions of the loan documents, provided that the event of default or the acceleration of the indebtedness does not trigger the change in the interest rate;
34. High-cost loans that contain a mandatory arbitration clause that limits in any way the right of the borrower to seek relief through a court of law or equity;
35. Any other act, practice or loan term or feature, which is abusive.

The predatory lending practices listed above will be amended to include other predatory lending practices not defined herein, which may be included in future regulatory action passed on the federal and/or state level.

From the above list of 35 abusive practices, they tend to fall into the following 10 categories. The descriptions and definitions of the 10 most common predatory lending practices are as follows:

Predatory Lending Practices

1. Costly and Unnecessary Insurance Policies

Predatory lenders often require the borrower to buy unnecessary and expensive insurance coverage such as credit life insurance, credit disability insurance or unemployment insurance. This practice is called "packing." If the insurance costs are financed as part of the loan, the borrower loses more home equity.

2. Balloon Payments Within Five Years

Predatory lenders often structure the loan to have lower monthly payments, which can be a short-term relief to the borrower, but require a large "balloon" payment at the end of the loan term, i.e., balloon payments within five years to pay off the loan. In many cases, this is not explained clearly to the borrower, and the borrower's ability to pay the remaining loan balance at the end of the term has not been adequately considered by the lender. To compound this abuse, predatory lenders would entice the borrower to refinance again a few months after closing the original loan, to eliminate the balloon payment.

3. Negative Amortization

Negative amortization involves smaller monthly payments that do not fully pay off the loan and that cause an increase in the consumer's total principal debt.

4. Loan Flipping

Loan "flipping" or frequent refinancing that steadily increases the borrower's debt. The term "flipping," means the making of a loan to a borrower to refinance an existing loan when the new loan does not have a tangible benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances.

5. Pre-payment Penalties

Pre-payment penalties, except within the first 5 years of the loan, if the source of the prepayment funds is not a refinancing by the same creditor and the borrower's total monthly debt-to-income ratio is under 50%. Lenders use pre-payment penalties to discourage borrowers from refinancing their mortgages, because when a borrower refinances more quickly than the lender anticipates, the lender's profit from the loan is less than expected. As a result borrowers are locked into high-interest bearing loans 5 years or more, thereby preventing the borrower from refinancing for lower rates and better loan terms.

6. Disbursing Funds Directly to the Contractor

Funds for home improvement loans must be disbursed directly to the (1) borrower, or (2) jointly to the borrower and the contractor, or (3) the escrow agent.

7. Two or More Advance Payments

The practice of requiring two or more payments paid in advance from the proceeds.

8. Increased Interest Rate

Where interest rate is higher upon default.

9. Extending Credit Without Regard to the Payment Ability of the Borrower

Creditors of high cost loans are prohibited from providing home loans to homeowners based solely on the collateral value of the property without regard to the homeowner's ability to repay the loan, i.e., sufficient income, debt-to-income ratio. It is pointed out, however, that in these circumstances some borrowers will not be able to make a loan and may be required to sell their home.

10. Predatory lending practice may include other fraudulent lending activities, other unfair or abusive loan terms, unscrupulous and misleading marketing, high pressure lending tactics that limit information or choices available to a borrower, or any combination thereof. We have identified 35 such practices and loan terms on pages 10 –14.

VIII. CONCLUSIONS

- Predatory lenders target and market these high cost loans to the elderly, the minority and low-income citizens of the community. Predatory lending is particularly damaging because borrowers typically seek home loans during times of great financial need, when they are in the weakest bargaining position and most susceptible to practices that can strip them of substantial sums of money and, ultimately, their homes.
- When victims lose their homes and equity, they are often forced into poverty; the community becomes blighted, which leads to reduced home values, the erosion of the tax base and increased demands for City services. The citizens of Sacramento and the City of Sacramento are harmed by predatory lending practices.

- It is equally important to point out that homeowners may be uninformed or overwhelmed by all the documents in loan transactions and may be simply unaware of their rights.
- Although predatory lending thrives in the sub-prime market, not all sub-prime loans are considered abusive. Legitimate sub-prime lenders provide a service to the community. Without lenders extending sub-prime loans to borrowers with less than perfect credit, borrowers may not be able to realize their dreams (i.e. buy a home, start a business, send their children to school, consolidate loans) and/or cover financial emergencies (i.e. pay medical bills and any other financial emergencies or situations).
- It is unlikely that predatory lenders actually have offices in every city. It is also likely that City residents may be making predatory loans at loan offices not within the City boundaries. Further, it is likely the loan office or their parent company involved is not located within, or doing business within, City limits.
- Regarding predatory lending, existing federal laws such as HOEPA offer inadequate protection to Sacramento residents.
 - First, since HOEPA only applies to refinancing and home equity installment loans, the law does not regulate purchase loans, loans to construct a home, reverse mortgages, and home equity lines of credit (or otherwise known as revolving credit accounts), and
 - Second, HOEPA only applies to HOEPA's definition of a "high cost loan" and the loan terms contain any of the abusive practices prohibited by HOEPA, and
 - Third, HOEPA guidelines do not address the majority of the abusive practices or loan terms listed on pages 10– 14 of this report.

IX. RECOMMENDATIONS: THE SACRAMENTO CITY COUNCIL CREATE A CITY ORDINANCE AND A CONSUMER EDUCATION PROGRAM

- *It is recommended that the Sacramento City Council:*

1. Create a ***City Ordinance*** that:

- Discourages predatory lenders from doing business within the City;
- Directs City resources not be used to support, directly or indirectly, lenders that engage in predatory lending practices;
- Establishes a more sensible definition of a high cost loan by lowering the interest rate and fees/points thresholds set by HOEPA;
- Applies to all homes loan including refinancing, home equity installment loans, purchase loans, loans to construct your homes, reverse mortgages and home equity lines of credit; and
- Automatically is amended to include future laws on predatory lending rules, regulations, and guidelines, passed on the State and/or Federal level.

2. Create a ***Consumer Education Program*** that:

- Clearly identifies the interest rate and fees/points "triggers" or "thresholds" of a high cost loan;
- Enumerates the predatory lending practices in easy-to-understand language contained in selected material; and
- Disseminates public information to Sacramento residents using the following work plans:
 - a. Mail informative brochures at least twice a year as part of utility bills and/or property tax bills (with the cooperation of the County);
 - b. Distribute predatory lending materials, i.e. refrigerator magnets, rolodex-size index cards and pens containing

- telephone number referrals to local government and agencies, that can be contacted regarding predatory lending;
- c. Seek local radio stations to help in public service announcements regarding predatory lending;
- d. Work with local non-profit organizations (African-American, Asian and Hispanic Organizations) and local interest groups to disseminate information on predatory lending; and
- e. Display informative materials on predatory lending such as posters and brochures in frequented public places (i.e., public library, City Hall)

3. Direct the Sacramento City Treasurer to submit to the City Council an:
 - **Annual Budget** to initiate, manage, monitor and maintain a Consumer Education Program; and
 - **Annual Report** of activities, status, etc. of the Consumer Education Program; and
4. Direct the City Treasurer to present to the City Council any pending and future state/federal legislation for consideration.

ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

AN ORDINANCE ADDING CHAPTER 3.148 TO TITLE 3 OF THE SACRAMENTO CITY CODE, RELATING TO PREDATORY LENDING.

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Chapter 3.148, pertaining to predatory lending, is added to Title 3 of the City Code to read as follows:

CHAPTER 3.148 Predatory Lending

3.148.010 Findings and Declarations

The Sacramento City Council hereby finds and declares that:

- A. The subprime lending industry has grown rapidly in the last few years in order to fill a void created by the practice of mainstream banking institutions avoiding doing business in poor or minority communities and neighborhoods ("redlining");
- B. While the subprime market has extended credit to worthy and previously underserved borrowers, the subprime lending industry has also been the venue for an increasing number of abuses;
- C. Subprime loans are typically higher interest loans intended for borrowers with limited or blemished credit histories, and by its very nature subprime lending exacerbates the potential for abuses within the scope of this market;
- D. Some of these subprime lenders aggressively market high-cost loans to low-income and minority borrowers, resulting in these communities experiencing the impacts of abusive loan practices in disproportionately high numbers;

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ORDINANCE NO. _____

DATE ADOPTED: _____

- E. Some of these subprime lenders also target elderly and vulnerable borrowers who are least able to afford these loans, and engage in other unfair credit practices that may be stripping families and communities of the equity they have in their homes;
- F. The activities specified in Paragraphs D and E are considered "predatory lending", as defined in Section 3.148.030 herein;
- G. Predatory loans are characterized by abusive loan terms and exorbitant fees, financed into loans that may already carry higher interest rates;
- H. The HUD/Treasury Task Force on Predatory Lending, in its recent report entitled Curbing Predatory Home Mortgage Lending, has documented the problem of predatory lending and has recommended measures to combat predatory lending practices;
- I. The HUD/Treasury Task Force on Predatory Lending has concluded that "[f]oreclosed homes are often a primary source of neighborhood instability in terms of depressed property values and increased crime";
- J. The problem of predatory lending exists in Sacramento, and predatory lending practices are heavily concentrated in low-income and minority areas of the City;
- K. Predatory lenders have contributed to further deterioration of low-income and minority communities in the City by stripping homeowners of their equity and charging exorbitant interest rates leading to foreclosures and vacant houses;
- L. Citizens from many low-income and minority neighborhoods in Sacramento have been unable to access legitimate financing for home purchases and refinances, allowing predatory lenders to thrive;
- M. Predatory lending practices can lead to a significant economic drain on Sacramento low-income and minority families and communities;
- N. Predatory lenders are charging exorbitant fees and interest rates and are persuading Sacramento residents to incur loan debt in excess of their needs or ability to pay, often through fraudulent means;
- O. Predatory lending practices contribute to an increase in the number of foreclosures in Sacramento, that can result in abandoned houses and blighted neighborhoods and contribute to the physical and economic deterioration of low-income and minority communities;
- P. Predatory lending practices lead to the loss of affordable housing in Sacramento, increase displacement and economic dislocation, reduce property values, erode the tax base, and increase the strain on City services;

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- Q. It is counterproductive for the City to do business with predatory lenders, whose harmful business practices adversely affect the economic health and well-being of the City;
- R. Federal and state laws offer insufficient protection against predatory lending practices, and regulatory legislation aimed at curbing these practices is needed at both the federal and state levels;
- S. Until such time as there is adequate federal and state legislation in place protecting borrowers from predatory lending practices, the City of Sacramento must discourage lenders from participating in lending practices that strip hard earned equity from City residents and contribute to the problem of vacant and abandoned houses by making loans that individuals and families cannot afford to repay.

3.148.020 Intent and Purpose

It is the intent and purpose of this chapter:

- A. To discourage predatory lenders from doing business within the City;
- B. That City resources not be used to support, directly or indirectly, lenders that engage in predatory lending practices, as defined in Section 3.148.030;
- C. To make available to City residents information concerning predatory lending practices so that City residents may protect themselves against these practices; and
- D. To encourage legislators at both the federal and state level to adopt regulatory legislation to combat predatory lending practices.

3.148.030 Definitions.

As used in this chapter, the following words and phrases shall have the meaning given them in this section, unless the context clearly requires otherwise:

"Affiliate" means any company that controls, is controlled by, or is under common control with another company, including any successors in interest or alter egos, as set forth in the Bank Holding Company Act of 1956 (12 United States Code Section 1841 et seq.), as that Act may be amended from time to time.

"Annual interest rate" means the annual percentage rate for the loan calculated according to the provisions of the federal Truth-In-Lending Act (15 United States Code Section 1601 et seq.), and the regulations promulgated thereunder by the Federal Reserve Board, as that Act and the implementing regulations may be amended from time to time.

"Balloon payment" means a loan that contains a scheduled loan payment that is

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DATE ADOPTED: _____

more than twice as large as the average of earlier scheduled payments or that contains a provision that gives the lender, in its sole discretion, the right to accelerate the indebtedness in the absence of the default of the borrower.

"Borrower" or "Borrowers" mean any natural person obligated to repay a loan, including a co-borrower, co-signer, or guarantor.

"City", or "City of Sacramento" mean the City of Sacramento, or any entity or official agent acting under the direction of the City Council of the City of Sacramento.

"City Attorney" means the City Attorney of the City of Sacramento, or any authorized representative of the City Attorney.

"City funds" mean all otherwise unrestricted monies, grants, or other funds received and managed by or otherwise under the control of the City Treasurer, in the City General Fund. "City funds" shall not include any funds of the Sacramento City Employees Retirement System or funds that the City holds pursuant to assessments and special taxes.

"City Manager" means the City Manager of the City of Sacramento, or any authorized representative of the City Manager.

"City Treasurer" means the City Treasurer of the City of Sacramento, or any authorized representative of the City Treasurer.

"High-cost loan" means:

- A. A loan with an interest rate more than three percentage points in the case of a first lien mortgage, or more than five percentage points in the case of a junior mortgage, above the rate set by the required net yield for a 90-day standard mandatory delivery commitment for a first mortgage or a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater, and as recorded and made available to the public on a regular basis by the Commissioner of Financial Institutions; or
- B. The total points and fees exceed four percentage points of the total loan amount if the loan amount is \$16,000.00 or greater, or \$800 of the total loan amount if the loan amount is less than \$16,000.00.

"Lender" means any individual, domestic corporation, foreign corporation, association, syndicate, joint stock company, partnership, limited liability company, joint venture, trust, or unincorporated association, including parent company, subsidiary, exclusive distributor or company affiliated therewith, engaged in the business of making loans subject to this chapter.

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DATE ADOPTED: _____

"Loan" or "Loans" mean a loan, including an open end credit plan, other than a reverse mortgage transaction, in which: (i) the principal amount of the loan does not exceed the conforming loan size limit for a single-family dwelling as established from time to time by the Federal National Mortgage Association; (ii) the borrower is a natural person; (iii) the debt is incurred by the borrower primarily for personal, family, or household purposes; and (iv) the loan is secured by a mortgage or deed of trust on real estate that is located within the City of Sacramento, and upon which there is located or there will be located a structure or structures designed principally for occupancy of from one to four families, and to be occupied by the borrower as the borrower's principal dwelling.

"Negative amortization" means a loan that contains terms under which the outstanding principal balance will increase at any time over the course of the loan because the regular periodic payments do not cover the full amount of interest due.

"Otherwise unrestricted" means City funds that are not subject to any external restrictions as to the manner or type of investment, deposit, or use of the funds. "External restrictions" shall include, but not be limited to, trust or other fiduciary instruments; bond or other financing indentures or covenants; or other document specifying any form of investment or use restriction. "External restrictions" shall not include restrictions set forth in the California Government Code as to the deposit or investment of City funds.

"Points and fees" mean all of the following:

- (i) All items required to be disclosed under Sections 226.4(a) and (b) of Title 12 of the Code of Federal Regulations, as amended from time to time, except interest or the time-price differential;
- (ii) All charges for items listed under Section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, as amended from time to time, but only if the lender receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate of the lender; otherwise, the charges are not included within the meaning of the phrase "points and fees";
- (iii) All compensation paid directly or indirectly to a mortgage broker.

"Points and fees" shall not include any of the following:

- (iv) Taxes, filing fees, recording and other charges, and fees paid or to be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest;
- (v) Fees paid to a person other than a lender or an affiliate of the lender or to the mortgage broker or an affiliate of the mortgage broker for any of the following: fees for flood certification; fees for pest infestation and flood determination; appraisal fees; fees for inspections performed prior to

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closing; credit reports; surveys; attorneys' fees if the borrower has the right to select the attorney from an approved list or otherwise; notary fees; escrow charges so long as not included under subparagraph (i); title insurance premiums; and fire insurance and flood insurance premiums, provided that the conditions in Section 226.4(d)(2) of Title 12 of the Code of Federal Regulations are met.

"Predatory lender" means a lender that, through itself and/or an affiliate, has made, issued or arranged, or assisted others in so doing, within any 12 month period, a predatory loan as defined herein that comprises 5% or more of the total annual number of loans made. The term predatory lender shall not include a lender that has submitted to the City Treasurer a plan to discontinue the practice of making predatory loans, if the plan ensures: (i) the prompt disengagement from the practice of making predatory loans by the lender; and (ii) the complete cessation of the making of predatory loans by the lender within 90 days after the plan is submitted.

"Predatory loan" means a loan, including but not limited to a loan for a home purchase, home refinance, and home equity loan, that was made under circumstances that are abusive, based on the factors set forth in this paragraph. These circumstances shall include unfair or abusive loan terms, high pressure lending tactics that limit information or choices available to a borrower, or any combination thereof. Practices or loan terms that indicate that a loan was made under abusive circumstances include, but are not limited to, the following:

- A. Fraudulent, high-pressure or misleading marketing and sales efforts to sell loans, including, but not limited to, false, deceptive or misleading statements or representations regarding the borrower's ability to qualify for a loan.
- B. Misrepresenting or withholding information or hiding loan terms from borrowers, including, but not limited to, charging more in interest rates, points or fees on a loan than what was represented;
- C. Failure to offer borrowers the full range of available loan programs for which they qualify;
- D. The "steering" of borrowers to high-cost loan products, even though they can qualify for lower-cost products;
- E. Quoting different loan terms and conditions to minority, low-income or elderly borrowers than to other types of borrowers;
- F. The leaving of blanks in loan contracts, to be filled in after the contract is signed by the borrower;
- G. Compensating, coercing or intimidating a real estate appraiser for the

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purpose of influencing the independent judgment of the appraiser with respect to the value of the real estate that is being offered as security for the loan;

- H. Making loans for more than the value of the real estate that is being offered as security for the loan;
- I. Making loans for more than the borrower can repay given the borrower's current and expected income, current obligations, employment status, and non-housing assets. A borrower shall be presumed to be able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, the borrower's total monthly debts, including amounts owed under the loan, do not exceed fifty percent of the borrower's monthly gross income as verified by the credit application, the borrower's financial statement, a credit report, financial information provided to the lender by or on behalf of the borrower, or any other reasonable means. If, at the time the loan is consummated the borrower's total monthly debts exceed fifty percent of the borrower's monthly gross income, there shall be no presumption of the borrower's inability to pay, provided that the lender has fully justified the decision to approve the loan by taking into account factors such as whether the borrower has: (i) an excellent long-term credit rating; (ii) a history of conservative use of consumer credit; (iii) minimal consumer debt; (iv) significant liquid assets to repay the debt; (v) a satisfactory history of home ownership experience; and (vi) any other factors that may reasonably justify the approval of the loan;
- J. Aiding, assisting, or counseling borrowers to misstate income for the purpose of obtaining a loan;
- K. Charging borrowers excessive points and fees or other charges or exorbitant interest rates that are beyond levels appropriate or necessary to cover risk and ensure a profitable return, including, but not limited to, duplicate fees, inflated broker's fees, fees without a clear description, costs that do not relate to services performed, and inflated recording fees;
- L. Charging borrowers a fee for a product or service where the product or service is not actually provided;
- M. Misrepresenting the amount charged by or paid to a third party for a product or service;
- N. Financing credit life or other insurance into the loan without adequate disclosure to or permission of the borrower. This does not apply to credit life insurance policies that require separately identified premium payments on a monthly or annual basis or to prepaid hazard, flood, or mortgage

insurance policies;

- O. The payment of all or part of the loan proceeds by a lender to a contractor under a home repair or home improvement contract, unless: (i) the lender is presented with a signed and dated certificate of completion showing that the home improvements have been completed; (ii) the payment is in the form of an instrument that is payable to the borrower or jointly to the borrower and the contractor; or (iii) at the election of the borrower, the payment is by a third party escrow agent in accordance with terms established in a written agreement signed by the borrower, the lender, and the contractor before the date of payment;
- P. The payment of all or part of the loan proceeds by a lender to a contractor under a home repair or home improvement contract, where the contractor has been found by any court or federal or state agency of competent jurisdiction on two or more occasions within the previous 24 month period, to be in violation of any law or ordinance prohibiting deceptive practices or similar conduct;
- Q. "Flipping", which is defined to mean the making of a loan to a borrower to refinance an existing loan when the new loan does not have a tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances;
- R. Offering bill consolidation home equity loans that trade short term debt for long term debt, and that do not result in any tangible net benefit to the borrower;
- S. Recommending or encouraging the borrower's default on an existing loan or other debt prior to and in connection with the closing or planned closing of a loan that refinances all or any portion of that existing loan or debt;
- T. Loan servicing abuses such as charging unwarranted late fees, attorneys' fees, and other costs;
- U. Offering to help the borrower find new financing on the condition that the borrower deed over his or her property prior to the new loan application being processed;
- V. Preventing or deterring borrowers from refinancing to a lower cost loan, such as providing untimely, inaccurate or incomplete payoff statements;
- W. Failure to refer the borrower of a high-cost loan to a counselor approved by the United States Department of Housing and Urban Development, for

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counseling on the advisability of the loan transaction and the appropriate loan for the borrower;

- X. Charging borrowers points and fees or other charges in connection with a high-cost loan if the proceeds of the loan are used to refinance an existing high-cost loan held by the same lender;
- Y. Charging borrowers fees or other charges to modify, renew, extend, or amend a high-cost loan, or to defer any payment due under the terms of a high-cost loan;
- Z. High-cost loans that result in negative amortization;
- AA. High-cost loans having a term of less than five years that feature one or more balloon payments. This subparagraph does not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower;
- BB. High-cost loans that include terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower;
- CC. High-cost loans that permit the lender, in its sole discretion, to accelerate the indebtedness. This subparagraph does not apply when the repayment of the loan has been accelerated by default, pursuant to a due-on-sale provision, or pursuant to some other provision of the loan documents unrelated to the payment schedule;
- DD. High-cost loans that finance, directly or indirectly, points and fees or any other charges payable to third parties;
- EE. Refinancing a loan into a high-cost loan where the existing loan is a special mortgage originated, subsidized, or guaranteed by a state, tribal, or local government or nonprofit organization that bears either a below market interest rate or has nonstandard payment terms beneficial to the borrower, such as payments that vary with income or that are limited to a percentage of income, and where as a result of the refinancing the borrower will lose one or more of the benefits of the special mortgage;
- FF. High-cost loans that impose prepayment fees or penalties on borrowers for paying all or part of the principal loan amount before the date on which the principal is due. For the purposes of this subparagraph, any method of computing a refund of unearned scheduled interest is a prepayment penalty if it is less favorable to the borrower than the actuarial method as that term is defined in 15 United States Code Section 1615(d);

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- GG. High-cost loans that increase the interest rate after default. Interest rate increases do not constitute a predatory loan practice in a variable rate loan where the increase is otherwise consistent with the provisions of the loan documents, provided that the event of default or the acceleration of the indebtedness does not trigger the change in the interest rate;
- HH. High-cost loans that contain a mandatory arbitration clause that limits in any way the right of the borrower to seek relief through a court of law or equity;
- II. Any other act, practice or loan term or feature that is abusive.

In the event that federal or state legislation is enacted protecting borrowers from predatory lending practices, the words and phrases herein shall be given the same meaning that is ascribed to the same or similar words and phrases in the federal or state legislation, including implementing regulations and decisional law.

3.148.040 Prohibited Transactions - Deposits and Investments of City Funds

- A. Prohibition on Deposit of City Funds. Subject to the provisions of Government Code Sections 53600 et seq., no City funds shall be deposited or remain deposited with any predatory lender or its affiliates.
- B. Prohibition on Investment of City Funds. Subject to the provisions of Government Code Sections 53600 et seq., no City funds shall be invested or remain invested in the stocks, bonds, securities or other obligations of any predatory lender or its affiliates.
- C. Preexisting Obligations. The prohibitions of this section shall not apply to City funds held or invested under a trust indenture or investment agreement in effect on or before the effective date of this chapter, or that have otherwise been or are required to be held or invested by the City under a preexisting contractual obligation, provided that such indenture, agreement or contractual obligation shall not be extended beyond its current maturity date.
- D. Waiver of Prohibition by City Treasurer. The prohibitions of this section shall not apply if the City Treasurer, in his or her sound discretion, finds that it would be in the best interests of the City to continue to do business with a lender who may otherwise fit the definition of a predatory lender. In such a case, the lender is not a predatory lender for the purposes of this section.
- E. Divestiture. Within one year from the date of the adoption of this chapter, the City Treasurer shall reduce by one-half the value of all deposits and investments of City funds in lenders or their affiliates subject to this chapter. Divestiture and withdrawal of the balance of investments and deposits of City funds shall be completed within two years from the date of the adoption of this chapter.

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- F. Extension of Divestiture Period. If, prior to the expiration of the two year time limit, the City Treasurer determines that completion of divestiture will necessitate a significant financial loss to the City, then the Treasurer shall request from the City Council not later than sixty days prior to the expiration of the time limit, a reasonable extension of time within which to complete divestiture.
- G. Notice of Divestiture. The City Treasurer shall advise an affected lender as soon as practicable and in any event no later than sixty days prior to the withdrawal or divestiture, that the withdrawal or divestiture of City funds is required by this chapter due to the lender's non-compliance with Section 3.148.060.

3.148.050 Prohibited Transactions - City Contracts

- A. Prohibition on Contracting. No lender shall be awarded a contract with the City unless a certification is filed with and accepted by the City Treasurer pursuant to Section 3.148.060.
- B. Preexisting Obligations. This section shall not apply to any valid contracts entered into on or before the effective date of this Chapter.
- C. Waiver of Prohibition by City Treasurer. The City Treasurer may suspend the ineligibility of a predatory lender in order to allow execution of a contract with the lender, if the City Treasurer, in his or her sound discretion, finds that it would be in the best interests of the City to allow execution of the contract. In such a case, the lender is not a predatory lender for the purposes of this section.

3.148.060 Certification

- A. Mandatory Certification. Except as provided in Sections 3.148.040(D) and 3.148.050(C), no City funds shall be invested or deposited or remain invested or deposited with any lender, and no lender shall be awarded a contract with the City, unless the lender files with the City Treasurer an affidavit certifying that neither it, nor any of its affiliates, engage in or will engage in predatory lending practices as defined in Section 3.148.030. The affidavit shall be in a form prescribed by the City Treasurer and shall be sworn by one or more of the officers of the lender.
- B. Notice to Lender. No later than sixty days from the date of the adoption of this chapter, the City Treasurer shall notify all lenders in writing from whom a certification is required, of the requirements of this section. Each lender so notified shall file within thirty days of the date of the Treasurer's notice, a certification that meets all of the requirements of subparagraph A herein,.
- C. Voluntary Certification. Any other lender may voluntarily file an affidavit with the City Treasurer that meets all of the requirements of subparagraph A herein.

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- D. Maintenance of Certifications. The City Clerk shall make all lender certifications available for public inspection in conformity with the California Public Records Act (Government Code Section 6250 et seq.).
- E. Rejection of Certification by City Treasurer. The City Treasurer may refuse to accept or may strike any certification that, in the City Treasurer's sound discretion, is inaccurate or misleading as to whether the lender or its affiliates engage in predatory lending practices.

3.148.070 Decision of City Treasurer is Final

The decision of the City Treasurer whether to waive the prohibitions of Sections 3.148.040 and 3.148.050, or whether to accept or strike the certification required under Section 3.148.060, shall be final.

3.148.080 Predatory Lending Consumer Education Program

- A. Implementation of Program by City Treasurer. No later than ninety days from the date of the adoption of this chapter, the City Treasurer shall implement a Predatory Lending Consumer Education Program, for the purpose of providing information to City residents on predatory lending practices.
- B. Dissemination of Information. Information disseminated to City residents pursuant to this section shall be in a format that is easily understandable to a layperson, and that is reasonably calculated to reach the largest possible audience, including, but not limited to, the inclusion of this information in monthly or semi-annual City utility bills and other mailings, and the posting of brochures and other informational material on City owned property that is open to the public.
- C. Disclaimer of Liability. The City shall not be liable for any information disseminated pursuant to this section, and all information disseminated to City residents shall include language, in a format acceptable to the City Attorney, disclaiming the City from any and all civil liability arising out of or related to the use of this information.

3.148.090 City Treasurer Reports

- A. Contents of Report. The City Treasurer shall present a written informational report to the City Council on the following items:
 - i. A list of all deposits or investments of City funds subject to this chapter, the progress of the divestiture of those funds, and if applicable, a statement of the reasons why any City funds so held or invested should not be divested within the required time period;
 - ii. A list of all lenders who have filed a certification within the current reporting

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period pursuant to Section 3.148.060(A) and (C);

- iii. A list of all lenders whose certification has been stricken or rejected within the current reporting period pursuant to Section 3.148.060(E), and a statement of the reason(s) why each lender's certification was stricken or rejected; and
- iv. The status of the Predatory Lending Consumer Education Program pursuant to Section 3.148.080.

B. Reporting Periods. The City Treasurer's report shall be due as follows:

- i. The first report shall be due at the first City Council meeting one hundred and eighty days from the date of the adoption of this chapter;
- ii. The second report shall be due at the first City Council meeting one year from the date of the adoption of this chapter;
- iii. Thereafter, reports shall be due annually, not to exceed a five year period or until such time as there is adequate federal and state legislation in place protecting borrowers from predatory lending practices, whichever occurs first.

SECTION 2.

3.148.100 Severability

If any section, subsection, clause, phrase or portion of this chapter is for any reason held invalid by any court or federal or state agency of competent jurisdiction, that portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions thereof.

3.148.110 Conflict with City Charter or City Code Provisions

Any section or part of any section in this chapter, insofar as it should conflict with any section of the City Charter, shall be superseded by the contents of said sections. Any section or part of any section of the City Code, insofar as it should conflict with any section or part of any section in this chapter, shall be superseded by this chapter.

DATE PASSED FOR PUBLICATION:

DATE ENACTED:

DATE EFFECTIVE:

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DATE ADOPTED:

MAYOR

ATTEST:

CITY CLERK

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ORDINANCE NO. _____

DATE ADOPTED: _____

REVISED

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY**OAKLAND CITY COUNCIL****ORDINANCE NO. _____ C.M.S.**

**AN ORDINANCE AMENDING THE OAKLAND
MUNICIPAL CODE TO PROHIBIT PREDATORY
LENDING PRACTICES FOR HOME LOANS IN THE
CITY OF OAKLAND**

WHEREAS, the subprime lending industry has grown rapidly in the last few years, increasing almost ten-fold since 1993, and has increased its share of conventional home loan applications; and

WHEREAS, some subprime lenders seek to fill a void created by redlining, i.e., the practice of mainstream banking institutions avoiding doing business in poor or minority communities; and

WHEREAS, some subprime lenders and other home lenders aggressively market high-cost home loans that borrowers are unable to repay, and engage in other unfair or fraudulent credit practices that may be stripping families and communities of the equity they have in their homes; and

WHEREAS, some of these lenders target those communities with residents least able to afford these loans, particularly the elderly and those on fixed incomes; and

WHEREAS, these practices are commonly referred to as "predatory lending"; and

WHEREAS, the HUD/Treasury Task Force on Predatory Lending, in its recent report Curbing Predatory Home Mortgage Lending (the "HUD/Treasury report"), has documented and analyzed the problem of predatory lending in home mortgage lending; and

WHEREAS, the HUD/Treasury report has concluded that predatory lenders tend to target their efforts at the neighborhood level; and

WHEREAS, predatory lending practices, as documented by the HUD/Treasury Task report and other commentators, include, among other things: repeated refinancing of a loan without any tangible benefit to the borrower; charging excessive prepayment penalties; financing single premium credit insurance; encouraging a borrower to default on his or her other debts; failing to comply with federal requirements with respect to disclosure of loan terms and loan settlement; making a loan for more than the borrower can repay; financing excessive points and fees; requiring advance payments; charging fees to modify a loan or defer payments; permitting acceleration of a loan at lender's discretion; and increasing the interest rate upon default; and

WHEREAS, the practice of repeatedly refinancing a home loan when there is no tangible benefit to the borrower from the refinancing, commonly known as loan "flipping," costs borrowers unnecessary up-front fees, prepayment fees, and points, and may lead to the progressive loss of equity in the home; and

WHEREAS, high prepayment penalties can lock a borrower into a higher interest rate even when the borrower qualifies for a better loan, and are generally unjustified because they bear little relationship to any legitimate costs incurred by the lender due to the prepayment, and because they punish the borrower simply because the borrower chooses to pay off debt; and

WHEREAS, the practice of financing single-premium credit insurance into a home loan usually provides little or no benefit to the borrower, greatly increases loan costs, inhibits or prevents borrowers from shopping for competing insurance products, inhibits or prevents borrowers from canceling coverage when no longer needed, and increases the potential for fraud and abuse; and

WHEREAS, the practice of a lender recommending or encouraging a borrower to default on his or her other debts in order to facilitate refinancing those debts is a widespread practice that can set up borrowers for abusive loan terms that are imposed on borrowers at the last minute, due to the pressure of being in default on other debts; and

WHEREAS, the practice of making a loan for more than the borrower can repay given the borrower's income, non-housing assets, and debt burden, commonly known as "asset-based lending," leads to foreclosure, loss of equity, and displacement, particularly for low-income elderly persons on fixed incomes; and

WHEREAS, financing excessive up-front points and fees into high-cost home loans often disguises the true cost of the loan to the borrower, greatly increases the cost of the loan to the borrower, and inhibits or prevents the borrower from shopping for better loan terms; and

WHEREAS, the practice of requiring advance payments on high-cost home loans is sometimes used to mask unaffordable loans, and unfairly gives the lender free use of the borrower's funds on which the borrower is paying interest; and

WHEREAS, the practice of charging fees to modify a loan or defer payments adds unjustified costs to high-cost loans and creates the potential for abuse; and

WHEREAS, high-cost loan terms that permit acceleration of the loan at the lender's discretion often unfairly force the borrower to refinance at a higher interest rate and incur additional points and fees; and

WHEREAS, high-cost loan terms that allow an increase in the interest rate upon default unfairly prevent the borrower from curing loan defaults, leading to foreclosure and loss of equity; and

WHEREAS, independent counseling of prospective borrowers who are considering high-cost home loans can raise borrower awareness of predatory lending practices and help prevent predatory lending abuses; and

WHEREAS, because of the high number of minority and lower-income homeowners in Oakland, and the pressures of gentrification in certain neighborhoods that increase property values and home equity, Oakland residents in low-income areas have been perceived to be "house rich and cash poor" and thus are prime targets for predatory lending practices; and

WHEREAS, the Association of Community Organizations for Reform Now ("ACORN") has documented the problem of predatory lending in Oakland in its recent report Stripping the Wealth: An Analysis of Predatory Lending in Oakland (the "ACORN study"); and

WHEREAS, the ACORN study demonstrates that subprime lending is heavily concentrated in lower-income and minority areas of Oakland; and

WHEREAS, testimony before this Council from community organizations and victims of predatory lending practices, as well as reports from City housing counseling and community development staff, demonstrates that predatory lending is a widespread, significant and growing problem in low-income Oakland neighborhoods; and

WHEREAS, there is strong anecdotal evidence that predatory lenders have been deliberately targeting low-income neighborhoods in Oakland through intensive mail campaigns and door-to-door solicitation; and

WHEREAS, predatory lending practices can lead to a significant economic drain on lower-income families and communities in Oakland; and

WHEREAS, predatory lending practices contribute to an increase in the number of foreclosures that can result in abandoned houses and blighted neighborhoods and contribute to the physical and economic deterioration of lower-income, minority and inner-city communities in Oakland; and

WHEREAS, the HUD/Treasury report has concluded that "[f]oreclosed homes are often a primary source of neighborhood instability in terms of depressed property values and increased crime," and the ACORN study has concluded that in Oakland "predatory lenders have contributed to further deterioration of lower-income and minority communities by stripping homeowners of their equity and charging exorbitant interest rates leading to foreclosures and vacant houses"; and

WHEREAS, predatory lending practices lead to conditions of blight and the loss of affordable housing in Oakland, increase displacement and economic dislocation, reduce property values, erode the tax base, and increase the strain on City services; and

WHEREAS, state and federal lending laws and regulations do not adequately address the problem of predatory lending in Oakland because either the laws do not regulate many common predatory lending practices, regulatory oversight of predatory lenders is lacking, and/or remedies and enforcement provisions are weak or nonexistent; and

WHEREAS, the Council has received and considered a number of staff reports on the problem of predatory lending, including reports from the City Manager dated March 21, 2000, June 13, 2000, October 10, 2000, October 24, 2000, as well as the staff report accompanying this Ordinance, and a legal opinion from the City Attorney dated October 10, 2000; now therefore

The Council of the City of Oakland does ordain as follows:

SECTION 1. This Ordinance shall be known as the "Anti-Predatory Lending Ordinance."

SECTION 2. Chapter 5.33 is hereby added to the Oakland Municipal Code to read as follows:

Chapter 5.33

HOME MORTGAGE LENDING

5.33.010 Purpose.

The purpose of this chapter is to prohibit certain predatory lending practices for home loans made in the City of Oakland.

5.33.020 Findings.

The City Council finds and determines the following:

A. The City of Oakland as a home rule charter city has the right and power to make and enforce all laws and regulations that are its municipal affair, including the power to regulate business practices to promote the health, morals, safety, property, good order, well-being, general prosperity or general welfare of Oakland residents.

B. Predatory lending on home loans is a widespread, significant and growing problem in the City of Oakland, and threatens the well-being and general prosperity of Oakland residents and the City as a whole. Predatory lending practices are a significant economic drain on lower-income families and communities in Oakland. Predatory lending practices also lead to conditions of blight and the loss of affordable housing in Oakland, increase displacement and economic dislocation, reduce property values, erode the tax base, and increase the strain on City services.

C. Because of socioeconomic and market conditions in Oakland which give rise to predatory lending practices, predatory lending is a municipal affair and a matter of unique local interest and concern for the City of Oakland.

D. Neither state law nor federal law adequately address the predatory lending problem in Oakland.

E. The regulation of home mortgage lending practices by the City to prevent predatory lending, by prohibiting certain lending practices and requiring independent counseling on high-cost home loans, serves the public interest, is necessary to protect the health, morals, safety, property, general welfare, well being and prosperity of the residents of Oakland, and is within the home rule powers and police powers of the City.

5.33.030 Definitions.

As used in this chapter, the following terms have the following meanings:

An "affiliate" means any business entity that controls, is controlled by, or is under common control with, another entity, as set forth in the federal Bank Holding Company Act of 1956 (12 U.S.C. §1841, et seq.), as such statute may be amended from time to time, and includes any successors in interest or alter egos to the business entity.

"Annual percentage rate" means the annual percentage rate for a home loan calculated according to the provisions of the federal Truth in Lending Act (15 U.S.C. §1601, et seq.) and its implementing regulations, as such statute or regulations may be amended from time to time.

A "borrower" means singularly or collectively any natural person or persons with an obligation to repay a home loan, including without limitation a coborrower, cosigner, or guarantor.

A "business entity" means any individual, domestic corporation, foreign corporation, association, syndicate, joint stock company, partnership, joint venture, limited liability company, sole proprietorship, or unincorporated association engaged in a business or commercial enterprise.

The "City" means the City of Oakland.

A "first mortgage" means a home loan secured by a deed of trust or mortgage on real property if the deed of trust or mortgage is senior in priority to any other deed of trust or mortgage on the real property.

A "high-cost home loan" means a home loan that meets either of the following thresholds:

- (1) the annual percentage rate of the loan equals or exceeds
 - (a) by more than 3 percentage points, if the home loan is a first mortgage, or
 - (b) by more than 5 percentage points, if the home loan is a junior mortgage,

the rate set by the required net yield for a 90-day standard mandatory delivery commitment for a first mortgage loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Association, whichever is greater, as such yield is reported on the fifteenth day of the month immediately preceding the month in which the application for the home loan is received by the lender; or

- (2) the total points and fees on the loan equal or exceed either 5% of the total loan amount or \$800, whichever amount is greater.

If the terms of the home loan provide for an initial or introductory period during which the annual percentage rate is lower than that which will apply after the end of such initial or introductory period, then the annual percentage rate to be considered for purposes of this definition is the rate which applies after the initial

or introductory period. If the terms of the home loan provide for an annual percentage rate that varies in accordance with an index plus a margin, then the annual percentage rate to be considered for purposes of this definition is the rate that is in effect on the date of loan consummation. In the case of a home loan with a regular interest rate that varies in accordance with an index plus a margin, but with an initial or introductory interest rate established in some other manner, the annual percentage rate to be considered is the rate that would have been in effect on the date of loan consummation were the regular rate determined by the index plus the margin to apply, that is, the fully-indexed rate on the date of loan consummation.

A "home loan" means a loan of money, including without limitation a line of credit or an open-end credit plan, if all of the following apply:

- (1) the principal amount of the loan does not exceed the current conforming first mortgage loan size limit for a single-family dwelling as established by the Federal National Mortgage Association,
- (2) the borrower incurred the loan primarily for his or her personal, family, or household uses,
- (3) the loan is secured in whole or in part by a deed of trust, a mortgage (as defined under California Civil Code §2920 or §2924), or a similar security device or instrument, on real property located within the City of Oakland,
- (4) this real property contains or will contain either (a) one to four residential units, or (b) individual residential units of condominiums or cooperatives, and
- (5) one of these residential units is or will be occupied by the borrower as the borrower's principal dwelling.

In the case of multiple borrowers, the criteria in subsections (2) and (5) above will be considered satisfied if at least one of the borrowers has met the stated criteria. A "home loan" does not include a reverse mortgage as defined in California Civil Code §1923.

A "junior mortgage" means a home loan secured by a deed of trust or mortgage on real property if the deed of trust or mortgage is junior in priority to another deed of trust or mortgage on the real property.

A "lender" means any person or business entity that extends a home loan or arranges for the extension of a home loan. Notwithstanding the above, a "lender" does not include a bank chartered under the federal National Bank Act (12 U.S.C. §21, et seq.), a credit union chartered under the Federal Credit Union Act (12 U.S.C. §1751, et seq.), or a savings and loan association regulated under the federal Home Owners' Loan Act of 1933 (12 U.S.C. §1461, et seq.); however, an affiliate of any such federally chartered or regulated bank, credit union, or savings and loan association that extends home loans is considered a "lender" if the affiliate itself is not a bank, credit union, or savings and loan association chartered or regulated under the above-referenced federal statutes.

A "mortgage broker" means any person who functions as intermediary for a fee between the borrower and the lender in the making of a home loan.

A "person" means a natural person or a business entity.

"Points and fees" means the following:

- (1) all items required to be disclosed under §226.4(a) and §226.4(b) of Title 12 of the Code of Federal Regulations, as amended from time to time, except interest or the time-price differential;
- (2) all charges for items listed under §226.4(c)(7) of Title 12 of the Code of Federal Regulations, as amended from time to time, but only if the lender receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate of the lender;
- (3) all compensation not otherwise specified in this definition paid directly or indirectly to a mortgage broker, including a broker that originates a home loan in its own name through an advance of funds and subsequently assigns the home loan to the person advancing the funds;
- (4) the premium of any single premium credit life, credit disability, credit unemployment or other life or health insurance; and
- (5) all prepayment fees or penalties.

The term "points and fees" does not include any of the following:

- (1) taxes, filing fees, recording and other charges and fees paid or to be paid to public officials for determining the existence of, or for perfecting, releasing, or satisfying a security interest; or
- (2) charges paid to a person other than the lender, an affiliate of the lender, a mortgage broker, or an affiliate of a mortgage broker, as follows: fees for flood certification; fees for pest infestation and flood determinations; appraisal fees, fees for inspections performed prior to loan closing; credit report fees; survey fees; attorneys' fees (if the borrower has the right to select the attorney from an approved list or otherwise); notary fees; escrow charges that are not required to be disclosed under §226.4(a) and §226.4(b) of Title 12 of the Code of Federal Regulations; title insurance premiums; or fire insurance or flood insurance premiums (provided that the conditions in §226.4(d)(2) of Title 12 of the Code of Federal Regulations are met).

"Total loan amount" means the total credit received by the borrower as part of the loan, excluding points and fees.

5.33.040 Prohibited terms and practices for home loans in general.

No lender may make a home loan in violation of any of the following prohibited terms or practices:

A. No excessive prepayment penalties. No lender may charge a prepayment penalty on a home loan, unless the home loan is not a high-cost home loan, and the prepayment penalty is only imposed on prepayments within the first three years of the date of the promissory note for the home loan, and then solely as set forth herein and otherwise allowed by state and federal law. Any such prepayment penalty is limited to 3% of the total loan amount during the first year after the date of the note, 2% of the total loan amount during the second year, and 1% of the total loan amount during the third year. Notwithstanding the above, when a borrower refinances a home loan, at no time may a lender charge a prepayment penalty on the home loan being refinanced if the same lender or an affiliate of that lender will be the holder of the note for the new home loan. For purposes of this paragraph, a "prepayment penalty" means any penalty, fee, or charge imposed on a borrower by the lender or an affiliate of the lender for paying all or part of the principal of the home loan before the date when the principal payment is due.

B. No financing of credit insurance. No lender may finance any credit life, credit disability, credit property, or credit unemployment insurance, or any other life or health insurance premiums when making a home loan. Insurance premiums not included in the home loan principal and calculated and payable on a monthly basis will not be considered financed by the lender for purposes of this paragraph.

C. No recommending default. No lender may recommend or encourage a borrower to default or not to make payment on a home loan or any other debt, when such lender action is in connection with the closing or planned closing of a home loan that refinances all or part of the borrower's debt.

D. No loans violating federal lending laws. No lender may make a home loan that violates any applicable provision of the federal Truth in Lending Act, as amended by the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. §1601, et seq.), or any applicable provision of the federal Real Estate Settlement Procedures Act of 1974 (12 U.S.C. §2601, et seq.), or any regulations implementing these statutes, as these statutes and regulations may be amended from time to time. The City intends that any violation of provisions in these laws pertaining to home loans shall give rise to a cause of action under this chapter independent of federal law, and shall entitle the aggrieved party or the City Attorney to pursue any of the rights and remedies set forth in this chapter.

5.33.050 Prohibited terms and practices for high-cost home loans.

No lender may make a high-cost home loan in violation of any of the following prohibited terms or practices:

A. No lending without home loan counseling. No lender may make a high-cost home loan without first receiving written certification from an independent housing or credit counselor approved by the United States Department of Housing and Urban Development, the State of California, or the City of Oakland, that the borrower either has received counseling on the advisability of the loan transaction and the appropriateness of the loan for the borrower, or has waived the counseling option as provided for in this subsection. A borrower may waive the counseling option by contacting an approved independent housing or credit counselor by personal meeting or live telephone conversation at least three days prior to the closing of the home loan and certifying in writing to the counselor that he or she has elected to waive the counseling option. The counselor shall keep any such certification of waiver on file for at least three years following the certification. A lender is not liable for the content of any advice or counseling an independent counselor gives to the borrower, nor is an independent counselor liable to a lender for the content of any advice or counseling the counselor gives to the borrower.

B. No lending without regard for repayment ability. No lender may make a high-cost home loan unless the lender reasonably believes at the time it makes the loan that one or more of the borrowers under the loan will be able to make the scheduled payments on the loan. Such a determination of the lender must be based upon a consideration of the borrower's current and expected income, current obligations, employment status, and other financial resources (other than the borrower's equity in the dwelling which secures repayment of the loan). A borrower is presumed to be able to make the scheduled payments to repay the loan if, at the time the loan is made, the borrower's debt-to-income ratio does not exceed 50%. If the borrower's debt-to-income ratio exceeds 50%, the lender must fully justify the decision to approve the high-cost home loan in a written statement provided to the borrower at loan closing that sets forth specific compensating factors, such as the excellent long-term credit history of the borrower, a demonstrated ability in the past by the borrower to make payments under comparable or greater debt-to-income ratios, conservative use of credit standards, significant liquid assets of the borrower, or other factors that reasonably justify the approval of the loan. For purposes of this paragraph, "debt" means the scheduled monthly principal and interest payments on all of the borrower's debts, including amounts owed under the home loan as well as other secured or unsecured debts of the borrower, plus payments associated with the dwelling prorated monthly for property taxes and assessments, homeowners insurance premiums, mortgage insurance premiums, and condominium or homeowners association dues or fees, and "income" means the borrower's monthly gross income as verified by the credit application, the borrower's financial statement, a credit report, financial information provided to the lender by or on behalf of the borrower, or any other reasonable means. In the case of a high-cost home loan offering a lower introductory or initial interest rate, the lender's determination of borrower debt must be based on the borrower's monthly payments on said loan at the interest rate following the

introductory or initial rate rather than the monthly payments under the introductory rate. The provisions of this paragraph apply only to a high-cost home loan in which all of the borrowers have an income, as reported on the loan application that the lender relied on in making the credit decision, no greater than 120% of the median family income for the Oakland Metropolitan Statistical Area (as determined by the United States Department of Housing and Urban Development), adjusted for family size.

C. No excessive financing of points and fees. No lender may finance points and fees in excess of either 5% of the total loan amount or \$800, whichever amount is greater, when making a high-cost home loan.

D. No advance payments. No lender may make a high-cost home loan that includes terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.

E. No modification or deferral fees. No lender may charge a borrower any fees or charges to modify, renew, extend, or amend a high-cost home loan or to defer any payment due under the terms of a high-cost home loan, unless after the modification, renewal, extension or amendment, the home loan is no longer a high-cost home loan and the annual percentage rate on the home loan has decreased by at least two percentage points as a result of the modification, renewal, extension or amendment. The prohibition on such fees or charges shall not apply if the high-cost home loan is in default and the modification, renewal, extension, amendment, or deferral is part of a work-out arrangement.

F. No prepayment penalties. No lender may charge a prepayment penalty on a high-cost home loan. For purposes of this paragraph, a "prepayment penalty" means any penalty, fee, or charge imposed on a borrower by the lender or an affiliate of the lender for paying all or part of the principal of the high-cost home loan before the date when the principal payment is due.

G. No call provisions. No lender may make a high-cost home loan that includes terms which permit the lender in its discretion to accelerate the indebtedness. This restriction does not apply to terms that provide for the acceleration of repayment of the high-cost home loan upon default or pursuant to a due-on-sale clause.

H. No increased interest rate upon default. No lender may make a high-cost home loan that includes any provision increasing the interest rate after default or delinquency. This restriction does not apply to interest rate changes for a variable rate home loan otherwise consistent with the provisions of the loan documents, if the change in the interest rate is not triggered by an event of default, delinquency, or acceleration of the indebtedness.

I. No refinancing without borrower benefit. No lender may make a high-cost home loan if the high-cost home loan pays off all or part of an existing home loan or other debt of the borrower, and the borrower does not receive a reasonable and tangible net benefit from the new high-cost home loan considering all the circumstances, including the terms of both the new home loan and the refinanced debt, the cost of the new home loan, and the borrower's circumstances. A borrower is presumed to receive a reasonable and tangible net benefit from a refinance if any of the following are true: (1) as a result of the refinance there is a net reduction in the borrower's total monthly payments on all debts consolidated into the new home loan combined with the borrower's payments, prorated monthly, for homeowners insurance, mortgage insurance, and property taxes and assessments, whether such insurance and taxes are paid through the lender or not, and this reduction will continue for at least 36 months after the refinance, (2) as a result of the refinance there is a reduction in the borrower's blended interest rate on all debts consolidated into the new home loan, and it will not take more than 5 years for the borrower to recoup the points and fees charged for the refinance, (3) the borrower receives cash proceeds from the refinance, provided that either the amount of the points and fees charged for the refinance is no greater than 5% of the amount of the cash proceeds received by the borrower, or the cash proceeds received by the borrower equals or exceeds the greater of 15% of the total loan amount of the new loan or \$12,000, or (4) the new home loan is necessary to prevent default under an existing home loan or other secured debt of the borrower, provided that the lender for the new home loan is not the same as or an affiliate of the creditor for the existing home loan or other secured debt.

J. No refinancing special mortgages. No lender may make a high-cost home loan if the high-cost home loan pays off all or part of an existing home loan, and such existing loan (1) is originated, subsidized, or guaranteed by the State of California, the City or other unit of local government, or a nonprofit organization, and (2) either has an interest rate at least two percentage points below prevailing market mortgage interest rates, or has one or more nonstandard payment terms beneficial to the borrower, such as deferred payments, loan forgiveness features, or payments that vary with income, that would be lost as a result of the refinance. This restriction shall not apply if an independent housing or credit counselor has reviewed the terms of the refinance of the special mortgage and has determined that the refinance is in the best interests of the borrower.

5.33.060 Corrections.

A lender who, when acting in good faith, fails to comply with this chapter, will not be considered to have violated this chapter if the lender establishes that, within 30 calendar days of the closing of the home loan and prior to the institution of any action under this chapter, the lender has notified the borrower of the compliance failure, the lender has made appropriate restitution, and the

lender has adjusted the terms of the home loan in a manner beneficial to the borrower to make the loan comply with this chapter.

5.33.070 Investments and loan assignments.

A lender may not make investments that are backed by any home loan that violates this chapter. Any person who purchases or is otherwise assigned a home loan is subject to all claims, actions and defenses related to that home loan that the borrower, the City Attorney, or others could assert against the original lender.

5.33.080 Civil enforcement and remedies.

A. An aggrieved borrower or an organization acting on behalf of an aggrieved borrower or borrowers may bring a civil action for injunctive relief or damages in a court of competent jurisdiction for any violation of this chapter. If the court finds that a violation of this chapter has occurred, the court shall award: (1) actual damages sustained by the borrower as a result of the violation; (2) exemplary damages to the borrower in the amount of the points and fees charged for the home loan plus 10% of the total loan amount; and (3) reasonable costs and attorneys' fees. In addition the court may, as the court deems appropriate: (1) issue an order or injunction rescinding a home loan contract which violates this chapter, or barring the lender from collecting under any home loan which violates this chapter; (2) issue an order or injunction barring any judicial or nonjudicial foreclosure or other lender action under the mortgage or deed of trust securing any home loan which violates this chapter; (3) issue an order or injunction reforming the terms of the home loan to conform to this chapter; (4) issue an order or injunction enjoining a lender from engaging in any prohibited conduct; (5) award punitive damages as the court may deem appropriate if the court determines by clear and convincing evidence that the lender has shown reckless disregard for the rights of the borrower; or (6) impose such other relief, including injunctive relief, as the court may deem just and equitable.

B. A borrower may also assert a violation of this chapter as a defense, bar, or counterclaim to any default action, collection action or judicial or nonjudicial foreclosure action in connection with a home loan.

C. Any relief granted to a borrower under this chapter under law or equity may not reflect negatively in the credit history of the borrower. A lender may not report any action or relief granted to a borrower under this chapter to any credit agency, and may not consider any such action or relief when considering the making of any future home loans to the borrower.

D. The City Attorney may bring a civil action for any violation of this chapter. If the court finds in any such action that a lender or other party has

violated this chapter, the court shall impose civil penalties of not less than \$500 and not more than \$50,000 per violation, and shall award reasonable costs and attorneys' fees to the City Attorney. For purposes of this paragraph, each home loan made in violation of this chapter is considered a separate violation.

E. The remedies provide under this chapter are cumulative. The protections and remedies provided under this chapter are in addition to other protections and remedies that may be otherwise available under law. Nothing in this chapter is intended to limit the rights of any injured person to recover damages or pursue any other legal or equitable action under any other applicable law or legal theory.

5.33.090 Limitations on actions.

A borrower must file any civil action brought under this chapter within three years after the discovery of the violation by the borrower. This limitation does not apply in the case of a borrower asserting a violation of this chapter as a defense, bar, or counterclaim to any default action, collection action or judicial or nonjudicial foreclosure action. The City Attorney must file any action brought under this chapter within six years after the violation.

5.33.100 Criminal liability.

Any person who wilfully violates this chapter is guilty of an infraction.

5.33.110 Nonwaiverability.

Any written or oral agreement in which a borrower purports to waive any rights or remedies that he or she may have under this chapter is against public policy and is void and unenforceable.

5.33.120 Applicability.

The provisions of this chapter apply to home loans made on or after November 1, 2001. For purposes of this paragraph, a home loan is considered "made" on the date the promissory note for the loan is signed by the borrower.

SECTION 3. The record before this Council relating to this Ordinance and supporting the findings made herein includes, without limitation, the following:

- A. All staff reports and legal opinions produced by or on behalf of the City with respect to predatory lending practices and this Ordinance, and other documentation and information attached to or cited in those reports or cited in this Ordinance;

- B. The ACORN study and the HUD/Treasury report;
- C. All oral and written information received by City staff and the City Council including its committees before and during the consideration of this Ordinance, including public comments and testimony; and
- D. All matters of common knowledge and all official enactments and acts of the City, such as the Oakland City Charter and all applicable state and federal laws, rules and regulations.

SECTION 4. The recitals contained in this Ordinance are true and correct and are an integral part of the Council's decision.

SECTION 5. The custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) the Community and Economic Development Agency, Housing and Community Development Division, 250 Frank H. Ogawa Plaza, 5th floor, Oakland, California; and (b) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, California.

SECTION 6. The City Manager and his or her designee is hereby authorized to adopt rules and regulations consistent with this Ordinance as needed to implement this Ordinance, and to make such interpretations of this Ordinance as he or she may consider necessary to achieve the purposes of this Ordinance.

SECTION 7. The provisions of this Ordinance are severable, and if any clause, sentence, paragraph, provision, or part of this Ordinance, or the application of this Ordinance to any person, is held to be invalid or preempted by state or federal law, such holding shall not impair or invalidate the remainder of this Ordinance. If any provision of this Ordinance is held to be inapplicable to any specific category, type, or kind of loan or points and fees, or category of lender, the provisions of this Ordinance shall nonetheless continue to apply with respect to all other covered loans, points and fees, and lenders. It is hereby declared to be the

legislative intent of the City Council that this Ordinance would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from its coverage.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2001

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, CHANG, MAYNE, NADEL, REID, SPEES, WAN, AND
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

**AN ORDINANCE AMENDING THE OAKLAND MUNICIPAL
CODE TO PROHIBIT PREDATORY LENDING
PRACTICES FOR HOME LOANS IN THE CITY OF
OAKLAND**

NOTICE AND DIGEST

This Ordinance adds Chapter 5.33 to the Oakland Municipal Code to prohibit certain predatory lending terms and practices for home loans secured by residential property located in the City of Oakland, and makes certain findings in support of its enactment.

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY**OAKLAND CITY COUNCIL****ORDINANCE NO. _____ C. M. S.**

**AN ORDINANCE AMENDING ORDINANCE NO. 12066 C.M.S., THE
LINKED BANKING SERVICES ORDINANCE, TO REQUIRE LENDERS TO
CERTIFY THAT NEITHER THEY NOR THEIR AFFILIATES ENGAGE IN
PREDATORY LENDING PRACTICES**

WHEREAS, the subprime lending industry has grown rapidly in the last few years and has increased its share of conventional home loan applications; and

WHEREAS, some subprime lenders seek to fill a void created by redlining, i.e., the practice of mainstream banking institutions avoiding doing business in poor or minority communities; and

WHEREAS, some of these lenders aggressively market high-cost home loans that borrowers are unable to repay and engage in other unfair credit practices that may be stripping families and communities of the equity they have in their homes; and

WHEREAS, some of these lenders target those communities least able to afford these loans; and

WHEREAS, these practices are commonly referred to as "predatory lending";
and

WHEREAS, the HUD/Treasury Task Force on Predatory Lending, in its recent report Curbing Predatory Home Mortgage Lending (the "HUD/Treasury report"), has documented and analyzed the problem of predatory lending in home mortgage lending; and

WHEREAS, the HUD/Treasury report has concluded that predatory lenders tend to target their efforts at the neighborhood level; and

WHEREAS, predatory lending practices, as documented by the

HUD/Treasury Task report and other commentators, can include, among other things: repeated refinancing of a loan without any tangible benefit to the borrower; charging excessive prepayment penalties; financing single premium credit insurance; encouraging a borrower to default on his or her other debts; failing to comply with federal requirements with respect to disclosure of loan terms and loan settlement; making a loan for more than the borrower can repay; financing excessive points and fees; requiring advance payments; charging fees to modify a loan or defer payments; permitting acceleration of a loan at lender's discretion; and increasing the interest rate upon default; and

WHEREAS, the Association of Community Organizations for Reform Now ("ACORN") has documented the problem of predatory lending in Oakland in its recent report Stripping the Wealth: An Analysis of Predatory Lending in Oakland (the "ACORN study"); and

WHEREAS, because of the high number of minority and lower-income homeowners in Oakland, and the pressures of gentrification in certain neighborhoods that increase property values and home equity, Oakland residents in low-income areas have been perceived to be "house rich and cash poor" and thus are prime targets for predatory lending practices; and

WHEREAS, the ACORN study demonstrates that subprime lending is heavily concentrated in lower-income and minority areas of Oakland; and

WHEREAS, testimony before this Council from community organizations and victims of predatory lending practices, as well as reports from City housing counseling and community development staff, demonstrates that predatory lending is a widespread, significant and growing problem in low-income Oakland neighborhoods; and

WHEREAS, there is strong anecdotal evidence that predatory lenders have been deliberately targeting low-income neighborhoods in Oakland through intensive mail campaigns and door-to-door solicitation; and

WHEREAS, predatory lending practices can lead to a significant economic drain on lower-income families and communities in Oakland; and

WHEREAS, predatory lending practices contribute to an increase in the number of foreclosures that can result in abandoned houses and blighted neighborhoods and contribute to the physical and economic deterioration of lower-income, minority and inner-city communities in Oakland; and

WHEREAS, the HUD/Treasury report has concluded that "[f]oreclosed homes are often a primary source of neighborhood instability in terms of depressed property values and increased crime," and the ACORN study has concluded that in Oakland "predatory lenders have contributed to further deterioration of lower-income and minority communities by stripping homeowners of their equity and charging exorbitant interest rates leading to foreclosures and vacant houses"; and

WHEREAS, predatory lending practices lead to conditions of blight and the loss of affordable housing in Oakland, increase displacement and economic dislocation, reduce property values, erode the tax base, and increase the strain on City services; and

WHEREAS, the City adopted the Linked Banking Services Ordinance, Ordinance No. 11607 C.M.S., in 1993 to prohibit the City from doing business with depositories and other financial institutions that fail to meet community lending goals; and

WHEREAS, the Linked Banking Services Ordinance was amended and restated by Ordinance No. 12066 C.M.S. in 1998; and

WHEREAS, it is counterproductive for the City to participate in development projects that generate profits and income to predatory lenders, profits and income that such lenders can use to continue harmful business practices that adversely affect the economic health and well-being of the City; and

WHEREAS, it is also counterproductive for the City to support first-time homebuyer programs, housing rehabilitation programs, and other mortgage assistance programs to homebuyers when first liens on these properties are imposed through predatory lending practices, since such liens unfairly threaten the equity position of the homeowner and the security position of the City; and

WHEREAS, it is the intent of the City that City resources not be used to support, directly or indirectly, institutions that engage in such predatory lending practices; and

WHEREAS, the Council has received and considered a number of staff reports on the problem of predatory lending, including reports from the City Manager dated March 21, 2000, June 13, 2000, October 10, 2000, October 24, 2000, as well as the staff report accompanying this Ordinance, and a legal opinion from the City Attorney dated October 10, 2000; now therefore

The Council of the City of Oakland does ordain as follows:

Section 1. Section 3 of Ordinance No. 12066 C.M.S. is hereby amended to read as follows (additional text is underlined):

SECTION 3. Depositories providing the City with Banking Services must provide annually to the City such information as established from time to time by the City Manager or his or her designee in order to establish whether the depository has met the requirements of an Eligible Depository as defined in Section 2.D. In particular, depositories must provide annually information to establish whether they have provided sufficient levels of Community Credit Lending, as defined in Section 2. A., to meet their Fair Share Goals. A depository meeting the definition of a small bank contained

in the federal Community Reinvestment Act may elect to submit information annually on one or more reporting areas to demonstrate that it has met its Fair Share Goal of providing community credit. All other depositories must provide information on all Community Credit Need reporting areas as established by the City Manager.

Additionally, depositories and other private financial institutions seeking City business under the Linked Banking Service Program, seeking to participate as a lender in any development project financed by City loans or monetary grants, or seeking to participate in mortgage programs sponsored by the City, must certify that neither they nor any of their affiliates engage in predatory lending practices. Depositories will not receive credit towards their Fair Share Goals for predatory loans. An entity that is not a "lender" as defined under Chapter 5.33 of the Oakland Municipal Code will be subject to the certification requirement only if and to the extent any of its affiliates is a "lender" under that Chapter.

For purposes of this certification, a lender is engaged in predatory lending practices if, within the 12 months prior to the certification date, it has made predatory loans that comprise either 5% of the total home loans made by that entity during that period or 10 individual home loans, whichever is fewer. A "predatory loan" means any home loan that violates Chapter 5.33 of the Oakland Municipal Code. An "affiliate" means any business entity that controls, is controlled by, or is under common control with, another entity, as set forth in the federal Bank Holding Company Act of 1956 (12 U.S.C. §1841, et seq.), as may be amended from time to time, and includes any successors in interest or alter egos to the entity. However, "affiliate" specifically does not include any entity whose predominant business is the providing of tax deferred, defined contribution, pension plans to public employees in accordance with Sections 403(b) and 457 of the Internal Revenue Code. A "home loan" has the meaning set forth in Chapter 5.33 of the Oakland Municipal Code.

SECTION 2. Except as specifically amended herein, all other provisions in Ordinance No. 12066 C.M.S. shall remain in full force and effect.

SECTION 3. The record before this Council relating to this Ordinance and supporting the findings made herein includes, without limitation, the following:

- A. All staff reports and legal opinions produced by or on behalf of the City with respect to predatory lending practices and this Ordinance, and other documentation and information attached to or cited in those reports or cited in this Ordinance;
- B. The ACORN study and the HUD/Treasury report;

- C. All oral and written information received by City staff and the City Council including its committees before and during the consideration of this Ordinance, including public comments and testimony; and
- D. All matters of common knowledge and all official enactments and acts of the City, such as the Oakland City Charter and all applicable state and federal laws, rules and regulations.

SECTION 4. The recitals contained in this Ordinance are true and correct and are an integral part of the Council's decision.

SECTION 5. The custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are: (a) the Community and Economic Development Agency, Housing and Community Development Division, 250 Frank H. Ogawa Plaza, 5th floor, Oakland, California; and (b) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, California.

SECTION 6. The City Manager and his or her designee is authorized to adopt rules and regulations consistent with this Ordinance as needed to implement this Ordinance, and to make such interpretations as he or she considers necessary to implement the policies adopted under this Ordinance, and is authorized to take whatever other action is necessary or appropriate with respect to these policies consistent with this Ordinance and its basic purpose.

SECTION 7. The provisions of this Ordinance are severable, and if any clause, sentence, paragraph, provision, or part of this Ordinance, or the application of this Ordinance to any person, is held to be invalid or preempted by state or federal law, such holding will not impair or invalidate the remainder of this Ordinance.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2001

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, CHANG, MAYNE, NADEL, REID, SPEES, WAN, AND PRESIDENT DE LA FUENTE

NOES-

ABSENT-

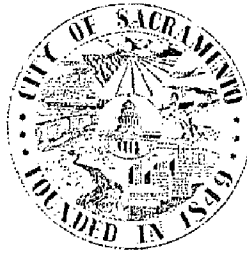
ABSTENTION-

ATTEST: _____
CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

**AN ORDINANCE AMENDING ORDINANCE NO. 12066 C.M.S., THE
LINKED BANKING SERVICES ORDINANCE, TO REQUIRE LENDERS TO
CERTIFY THAT NEITHER THEY NOR THEIR AFFILIATES ENGAGE IN
PREDATORY LENDING PRACTICES**

NOTICE AND DIGEST

This Ordinance amends Ordinance No. 12066 C.M.S., the "Linked Banking Ordinance," to add the requirement that lenders who seek to do certain business with the City or participate in projects or programs that involve the City in certain ways must certify that neither they nor their lender affiliates have engaged in certain predatory lending practices for home loans in the City of Oakland. This Ordinance also makes certain findings in support of its enactment.



OFFICE OF THE
CITY TREASURER

THOMAS P. FRIERY
TREASURER

CITY OF SACRAMENTO
CALIFORNIA

926 J STREET
SUITE 300
SACRAMENTO, CA
95814-2709

PH 916-264-5168
FAX 916-448-3139

October 25, 2001

Law and Legislation Committee
Sacramento, California

Honorable Members in Session:

SUBJECT: FOLLOWUP STAFF REPORT ON PREDATORY LENDING.

LOCATION AND COUNCIL DISTRICT: Citywide

RECOMMENDATION:

This is a report back with additional information as directed by the Law and Legislation Committee on August 9, 2001. Staff seeks further direction from the Committee on the proposed non-regulatory City ordinance and the consumer education program previously brought forward for the Committee's consideration.

CONTACT: Tom Friery, City Treasurer, 264-5168
Ken Nishimoto, Deputy City Manager, 264-5270

FOR THE COMMITTEE MEETING OF: October 30, 2001

BACKGROUND:

On September 26, 2000, Council Member Lauren Hammond of District 5 requested staff conduct a research study and the City Attorney to prepare a draft City ordinance dealing with predatory lending in Sacramento. Accordingly, the City Treasurer's office presented a staff report to the Law and Legislation Committee, which contained the findings and recommendations regarding predatory lending on August 9, 2001. A copy of this staff report is attached as "**Attachment II**".

Since August 9, 2001, the City Treasurer and his staff has met with representatives from both the Association of Community Organizations for Reform Now (ACORN) and

mortgage and lending institutions, including Bank of America on two occasions: September 6 and September 24 as directed by the Committee.

DISCUSSION:

At the August 9, 2001 meeting, the Law and Legislation Committee directed the City Attorney's office to provide a legal analysis of the City of Oakland and state legislative bills currently being discussed. The City Attorney's office has already provided a report back regarding the legal analysis to the Committee under a separate cover.

In addition, the Committee directed staff to:

- analyze and report back on three state legislative bills dealing with the issue of Predatory Lending,
- contact the City of Oakland regarding cost estimates of their proposed regulatory program, and finally,
- meet with representatives from ACORN and financial institutions to identify areas of agreements.

STATE BILLS:

There were three bills working their way through the State Legislature that dealt with predatory lending in September. These three bills were Senate Bill 608 (Dunn), and Assembly Bills 407 (Correa) and 489 (Migden). Assembly Bill 344 was subsequently made a trailer bill to AB 489. A summary of these bills is attached to this report as **"Attachment I"**.

SB 608 (Dunn) and AB 407 (Correa) failed to make it out of their legislative committees. AB 489 (Migden) and its trailer bill AB 344 (Migden) were approved by the Governor on October 10, 2001.

Senate Bill 608 (Dunn), as amended April 18, 2001, would enact the Home Loan Protection Act and would impose various requirements on lenders and home loans, including requiring a lender to use a specific formula to assess a potential borrower's ability to repay a home loan or a *covered* loan.

Assembly Bill (AB) 407, the California Residential Mortgage Lending Act provides for the regulation and licensure of residential mortgage lenders and residential mortgage loan services by the Commissioner of Corporations. The act requires a residential mortgage lender to file an application for licensure with the commissioner in order to make or service residential mortgage loans in this state.

Neither SB 608 nor AB 407 made it onto the legislative floor for consideration.

Assembly Bill 489 adds several new sections to the California Financial Code, and imposes various requirements on issuers of "covered loans" secured by real property. A

covered loan is defined as a consumer loan (i.e., a consumer credit transaction secured by real property in this state, and used or intended to be used or occupied as the principal dwelling of the consumer that is improved by a one-to-four residential unit) in which the original principal balance of the loan does not exceed \$250,000. Additionally, one of the following conditions must be met, in order for a loan to qualify as a covered loan:

1. The annual percentage rate will exceed by more than 8% the yield on Treasury securities having comparable periods of maturity; or
2. The total points and fees payable by the consumer at or before closing will exceed 6% of the total loan amount.

The bill prohibits various acts and loan terms in making covered loans, including:

1. Requiring a prepayment fee or penalty for paying off the loan after the first 36 months after the loan closing date;
2. Providing for a payment schedule on a loan with a term of 5 years or less, that when aggregated, does not fully amortize the principal balance as of the maturity date of the loan;
3. Providing for a payment schedule that causes the principal balance to increase, unless the loan is a first mortgage and the lender has disclosed to the consumer that the loan contains a negative amortization provision;
4. Providing for periodic payments that are consolidated and paid in advance from the loan proceeds;
5. Providing for an increase in the interest rate as a result of a default;
6. Issuing a loan without a reasonable belief that the consumer has the ability to repay the loan, based on the consumer's financial resources other than the consumer's equity in the dwelling that secures repayment of the loan;
7. Paying a contractor under a home improvement contract from the proceeds of a covered loan, other than by an instrument payable to the consumer or jointly to the consumer and contractor, or to a third party escrow agent for the benefit of the consumer;
8. Recommending or encouraging a consumer to default on an existing consumer loan or other debt in connection with the solicitation or making of a covered loan that refinances the existing consumer loan or debt;
9. Providing for a call provision that permits the lender, in its sole discretion, to accelerate the indebtedness;

10. Failing to include in the loan agreement a Consumer Caution and Home Ownership Counseling Notice;
11. Steering, counseling or directing any prospective consumer to accept a loan product with a risk grade less favorable than the risk grade that the consumer would qualify for based on then current underwriting guidelines;
12. Structuring a loan transaction as an open-end credit plan, or dividing any loan transaction into separate parts, for the purpose of evading the provisions of the bill;
13. Committing fraud in the origination of a covered loan;
14. Financing points and fees in excess of \$1,000 or 6% of the original principal balance, exclusive of points and fees, whichever is greater;
15. Financing into a consumer loan transaction or financing to the same borrower within 30 days of a consumer loan transaction, any credit life, credit disability, credit property, or credit unemployment insurance premiums, or any debt cancellation or suspension agreement or contract fees;

The bill goes on to provide for civil and administrative penalties and permanent and temporary revocation of licensing privileges against lenders and brokers who violate its provisions. The bill's provisions are to apply only to a consumer loan applied for on or after July 1, 2002.

AB 344 is a trailer bill to AB 489. Some of the more significant amendments in AB 344 are: prohibition of payment penalties for loan accelerations as a result of default; prohibition of refinancing of a prepayment penalty in a refinanced loan; no 5 year balloon payments; and no flipping for purposes other than for an "identifiable benefit" to consumer.

OAKLAND ORDINANCE:

On October 2, 2001, the Oakland City Council approved an ordinance prohibiting certain lending practices defined as predatory, and a second ordinance requiring lenders to certify that neither they nor their affiliates engage in predatory lending practices. A copy of the Oakland ordinances are attached as "**Attachment III**".

The American Financial Services Association representing a number of lending institutions filed a request for preliminary injunction with the Superior Court on October 15, 2001 to prevent the regulatory portions of the ordinance from going into effect on November 1, 2001. A court hearing has been scheduled for mid-November.

Per the Committee's direction, staff has also contacted the City of Oakland regarding cost estimates to implement the regulatory aspects of their ordinance. . City of Oakland staff

has indicated that they estimate “little or no cost” to implement the program since an aggrieved borrower or an organization action on behalf of an aggrieved borrower may bring civil action directly against the lender. Oakland staff generally will not be involved with the civil action.

MEETINGS WITH STAKEHOLDERS:

Finally, staff has met with ACORN and financial institutional representatives on three occasions since August 9, 2001. The objective of these three meetings was to identify areas of agreements that all entities could support. The Committee directed that each group were to provide no more than 3 representatives to this “working group”.

The members of this “working group” included a single representative from each of the following groups:

Older Women’s League
Congress of California Seniors
ACORN

Bank of America
Mortgage Lending Representatives

ACORN, Older Women’s League, and the Congress of California Seniors (proponents for regulating predatory lending), have indicated that they would like the City to adopt an ordinance similar to the City of Oakland that would regulate predatory lending practices at the local level in addition to prohibiting the City from doing business with lenders that engage in predatory lending.

Representatives from the lending institutions have questioned the need to have a local ordinance in light of state bills being signed into law. They also indicated that if the City were to propose a local ordinance, they would oppose any language that is inconsistent with the language contained in the AB 489 and AB 344.

Both groups have indicated that they support some form of consumer education for borrowers. Staff feels that consumer education is the strongest element to assist consumers in identifying predatory lending practices and preventing reduced home values and blight.

FINANCIAL CONSIDERATIONS:

Depending on the Committee’s direction, staff will report back on the cost to implement the recommendations.

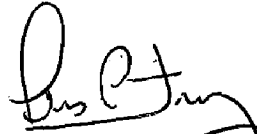
POLICY CONSIDERATIONS:

Predatory lending practices are discriminatory to the elderly, low income, and people of color. The recommendations and proposed ordinance are consistent with the anti-discrimination policies adopted by the City Council.

ESBD CONSIDERATIONS:

There are no ESBD considerations. No goods or services are being purchased at this time.

Respectfully submitted:

A handwritten signature in black ink, appearing to read "Tom Friery", written over the printed name.

THOMAS P. FRIERY
City Treasurer

RECOMMENDATION APPROVED:

A handwritten signature in black ink, appearing to read "Betty Masuoka", written over the printed name.

BETTY MASUOKA
Assistant City Manager

v.1 October 22, 2001

Summaries of Predatory Lending Bills Attachment I

Senate Bill 608 (Dunn), as amended April 18, 2001, would enact the Home Loan Protection Act and would impose various requirements on lenders and home loans, including requiring a lender to use a specific formula to assess a potential borrower's ability to repay a home loan or a covered loan. The bill would require a person who violates the provisions of the act to pay civil damages, as specified. The bill would require the Attorney General to compile data on complaints against lenders, as specified. **This bill was heard and remained in the Senate Committee on Banking, Commerce and International Trade.**

Assembly Bill (AB) 407, the California Residential Mortgage Lending Act provides for the regulation and licensure of residential mortgage lenders and residential mortgage loan services by the Commissioner of Corporations. The act requires a residential mortgage lender to file an application for licensure with the commissioner in order to make or service residential mortgage loans in this state. The act requires the commissioner to issue a license or a specified statement of issues within 60 days of the filing of a full and complete application for a license. Assembly Bill 407 (Correa) would instead require the commissioner to issue that license or specified statement within 45 days of the filing of a full and complete application for a license. This bill would enact the Consumer Equity Protection Act that would impose various requirements on lenders and covered loans, as defined. The bill would place limits on the imposition of prepayment fees or penalties on covered loans by a lender. The bill would prohibit a lender from making a covered loan unless a specific notice is provided to the persons that would be required to pay the loan. The bill would impose a similar notice requirement on a lender before the lender could sell an individual or group credit life, accident and health, or disability or unemployment insurance product. The bill would also require a lender or its servicer to report information on a consumers favorable and unfavorable payment history to a nationally recognized consumer credit reporting agency. Assembly Bill 408 was re-referred to the Assembly Committee on Banking and Finance on April 16, 2001. **The bill was stuck in committee.**

The third bill is **Assembly Bill 489 (Migden)**. AB 489 regulates lending practices defined as predatory and affects loans secured by real property which are the result of such practices and provides remedies for the aggrieved borrowers and sanctions for the offending lenders.

This bill prohibits various acts and loan terms in making covered loans, including:

- Requiring a prepayment fee or penalty for paying off the loan after the first 36 months after the loan closing date;

- Providing for a payment schedule on a loan with a term of 5 years or less, that when aggregated, does not fully amortize the principal balance as of the maturity date of the loan;
- Providing for periodic payments that causes the principal balance to increase, unless the loan is a first mortgage and the lender has disclosed to the consumer that the loan contains a negative amortization provision;
- Financing points and fees in excess of \$1,000 or 6% of the original principal balance, exclusive of points and fees, whichever is greater;
- Providing for an increase in the interest rate as a result of a default; and
- Paying a contractor under a home improvement contract from the proceeds of a covered loan, other than by an instrument payable to the consumer or jointly to the consumer and contractor, or to a third party escrow agent for the benefit of the consumer.

AB 489 was approved and signed by the Governor on October 10, 2001.

A fourth bill pertaining to Predatory Lending was also approved and signed by the Governor on October 10, 2001. This bill, **AB 344 (Migden)**, regulates lending practices defined as predatory and affects loans secured by real property which are the result of such practices and provides remedies for the aggrieved borrowers and sanctions for the offending lenders. This bill was described by the author as a trailer bill to AB 489 (Migden).



ATTACHMENT II

OFFICE OF THE
CITY TREASURER

THOMAS P. FRIERY
TREASURER

CITY OF SACRAMENTO
CALIFORNIA

926 J STREET
SUITE 300
SACRAMENTO, CA
95814-2709

PI 916-264-5168
FAX 916-448-3139

August 1, 2001

Law and Legislation Committee
Sacramento, California

Honorable Members in Session:

SUBJECT: STAFF REPORT ON PREDATORY LENDING.

LOCATION AND COUNCIL DISTRICT: Citywide

RECOMMENDATION:

This report provides recommendations by staff for the Committee's consideration that, if adopted, would create and implement a non-regulatory City ordinance and an effective consumer education program as two components to curb predatory lending in the City of Sacramento.

CONTACT: Thomas P. Friery, City Treasurer, 264-5168
Ken Nishimoto, Administrative Services Director, 264-5270

FOR THE COMMITTEE MEETING OF: August 9, 2001

BACKGROUND:

On September 26, 2000, Council Member Lauren Hammond of District 5 requested staff to conduct a research study and the City Attorney to prepare a draft City ordinance dealing with predatory lending in Sacramento. Accordingly, the City Treasurer presents the attached report to the Law and Legislation Committee, which contains the findings and recommendations on predatory lending. The City Attorney's office has prepared and attached a draft ordinance for the Committee's consideration.

Staff has researched, gathered, reviewed and analyzed relevant information from various articles and publications on this topic that included existing and proposed legislation; other City ordinances on predatory lending; consumer and loan trends in the mortgage

market; reports of several Senate Committees' and Federal Trade Commission on predatory lending and other sources.

The City Treasurer and staff also met with staff from ACORN (Association of Community Organizations for Reform Now) on several occasions, several individuals impacted by predatory lending and representatives from leading banking institutions.

State law provides for the regulation and licensing of residential mortgage lenders and residential loan services through the California Residential Mortgage Lending Act (Financial Code Section 50000). Under the Act, a licensee is prohibited from committing fraud or from making a misstatement or omission of a material fact pertaining to a loan, and is subject to civil, administrative and financial sanctions for the violation of the Act. (Financial Code Sections 50500-50505.) State law also prohibits unfair competition, fraudulent business acts or practices, and untrue or misleading advertising. (Business and Professions Code Section 17200.)

Federal law also provides certain protections to consumers who are refinancing a home mortgage loan. Under the Home Ownership and Equity Protection Act (HOEPA, 15 U.S.C. Section 1639), certain disclosures must be made by the lender to the borrower, a 3-day waiting period is required before the loan may be consummated, and certain loan terms are prohibited on high cost loans such as prepayment penalties, balloon payments, negative amortization, and accelerated interest rates after default. Additionally, the lender may not issue a loan without regard to the payment ability of the consumer.

Notwithstanding the existence of state and federal regulatory law, none of the statutes and regulations governing home mortgage transactions provides a definition of predatory lending. Predatory lending is generally understood to involve engaging in lending practices that, alone or in combination, are abusive. Predatory lending usually occurs in the sub-prime mortgage market where borrowers may have limited access to the mainstream financial sector, and involves loan practices such as loan "flipping" (the repeated refinancing of the borrowers' loans in a short period of time, resulting in the stripping of the borrowers' equity in their homes); excessive fees and "packing" (fees that are "packed" into the loan amount without the borrowers' understanding and that exceed what would be expected or justified based on economic grounds); lending without regard to the borrowers' ability to repay; and using deceptive or high-pressure sales tactics on certain groups such as the elderly, minorities, and individuals with lower incomes and less education.

GENERAL DISCUSSION:

The Predatory Lending report prepared by the City Treasurer's office provides a background and introduction to the issue, distinction between prime and sub-prime home lending market, who is most at risk from predatory lenders, lenders' locations, regulatory laws that address the issue, definition of predatory lending, conclusions and staff recommendations. (Attachment I)

Predatory lending practices include the following components if a loan is a high cost loan:

- Costly and unnecessary insurance policies;
- Balloon payments within five years;
- Negative Amortization;
- Loan Flipping;
- Pre-payment penalties; and
- Practice of requiring two or more advance payments paid in advance from proceeds;

Predatory lenders target and market high cost loans to the elderly, the minority and low-income citizens of the community. Predatory lending is particularly damaging because borrowers typically seek home loans during times of financial need, and when they are in the weakest bargaining position and most susceptible to practices that can strip them of substantial sums of money and their homes.

LEGAL ANALYSIS:

It is the opinion of the City Attorney's Office that local municipalities are preempted from directly regulating the home mortgage lending industry. Under the federal doctrine of preemption, federal law may preempt a local law in one of two general ways: (1) Congress demonstrates its intent to occupy the field of regulation and supplant local authority; or (2) the local law may conflict with federal law by making it impossible to comply with federal law or by creating an obstacle to the goal of the federal law. (California Coastal Commission v. Granite Rock Company, 480 U.S. 572, 581, 107 S. Ct. 1419, 94 L. Ed 2d 577 (1987). Similarly, under state law, a local law conflicts with state law if it either (1) duplicates; (2) contradicts; or (3) enters a field, which has been fully occupied by state law, whether expressly or by legislative implication. (People ex rel. Deukemejian v. County of Mendocino, 36 Cal. 3d 476, 484 (1984); Candid Enterprises, Inc. v. Grossmont Union High School District, 39 Cal. 3d 878, 885 (1985); California Fed. Savings and Loan Association v. City of Los Angeles, 54 Cal. 3d 1 569 (1991).)

After reviewing federal and state law and its legislative history, it is the conclusion of the City Attorney's Office that the field of home mortgage lending has been fully occupied by these laws. Therefore, the proposed ordinance does not directly or indirectly attempt to regulate home mortgage lenders. However, it is well within the "home rule" authority of the City to enact legislation delineating the lenders with whom the City will do business.

PROPOSED ORDINANCE

The proposed ordinance (**Attachment II**) would add Chapter 3.148 to Title 3 of the Sacramento City Code. Under the ordinance, a predatory loan is generally defined as a loan for a home purchase, home refinance, and home equity loan that was made under circumstances that are abusive. (Section 3.148.030.) This section goes on to identify a number of lending practices and loan terms that may indicate that a loan was made under abusive circumstances. This same section defines a predatory lender as a lender that, through itself or an affiliate, has made within any 12-month period, a predatory loan that comprises 5% or more of the total annual number of loans made.

Sections 3.148.040 and 3.148.050 prohibit certain transactions between the City and a lender meeting the definition of a predatory lender, including a prohibition on the deposit or investment of City funds and entering into a City contract with a predatory lender. The City Treasurer is give a 2-year divestiture period to withdraw all city deposits and investments from any lending institution meeting the definition of a predatory lender.

Section 3.148.060 of the proposed ordinance requires all lenders with whom the City does business with to submit a certification that neither the lender nor any of its affiliates, engage in predatory lending practices. The City Treasurer may reject the certification if, in the Treasurer's sound discretion, it is inaccurate or misleading.

Section 3.148.080 of the proposed ordinance establishes a Predatory Lending Consumer Education Program. Within 90 days from the date of the adoption of the ordinance, the City Treasurer must develop a program designed to disseminate information on predatory lending practices to City residents. The information must be in a format that is easily understandable to a layperson and that is reasonably calculated to reach the largest possible audience, including the inclusion of this information in monthly or semi-annual City utility bills or other mailings, and the posting of brochures and other informational material on City owned property open to the public.

Finally, Section 3.148.090 of the proposed ordinance requires the City Treasurer to present a written informational report to the City Council on the progress of compliance with the ordinance, including a list of all deposits or investments of City funds subject to Chapter 3.148 and the progress of any divestitures; a list of all lenders who have filed a certification, including those lenders whose certifications have been rejected; and the status of the Predatory Lending Consumer Education Program. The first report is due at the first City Council meeting 180 days and one year from the date of the adoption of the ordinance; and thereafter reports are due annually for a 5-year period, or until such time as there is adequate federal and state legislation in place protecting borrowers from predatory lending practices, whichever occurs first.

FINANCIAL CONSIDERATIONS:

Depending on the Committee's direction, staff will report back on the cost to implement the recommendations.

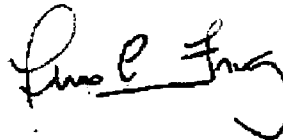
POLICY CONSIDERATIONS:

Predatory lending practices are discriminatory to the elderly, low income, people of color and virtually all predatory loan victims. The recommendations and proposed ordinance are consistent with the anti-discrimination policies adopted by the City Council.

ESBD CONSIDERATIONS:

There are no ESBD considerations. No goods or services are being purchased at this time.

Respectfully submitted:



THOMAS P. FRIERY
City Treasurer

RECOMMENDATION APPROVED:

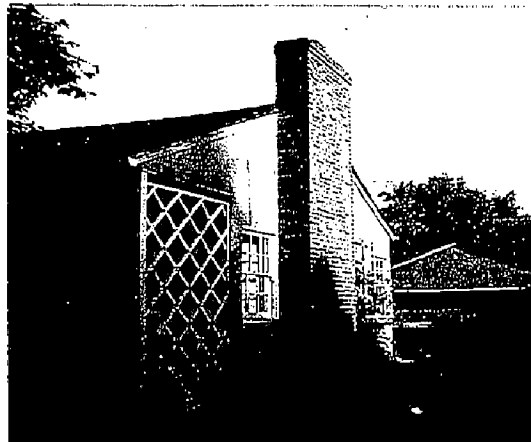


BETTY MASUOKA
Assistant City Manager



**Office of the City Treasurer
City of Sacramento**

**Staff Report
on
Predatory Lending**



Sacramento, CA 95820

July 25, 2001

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I. BACKGROUND

Council Member Lauren Hammond of District 5 requested the City Treasurer to conduct a research study on predatory lending in Sacramento. Accordingly, the City Treasurer presents this report, dated July 25, 2001, to the City Council, which contains his findings and recommendations on predatory lending.

The City Treasurer and staff spent approximately 150 hours to complete their research work on predatory lending. Gina Amayun from the Treasurer's Staff assisted the Treasurer in this undertaking. The staff gathered, reviewed and analyzed relevant information from various articles and publications on this topic that included existing and proposed legislation; other city ordinances on predatory lending; consumer and loan trends in the mortgage market; reports of several Senate committees and the Federal Trade Commission on predatory lending, etc. The City Treasurer and staff also met with ACORN staff (Association of Community Organizations for Reform Now), several individuals impacted by predatory lending, representatives from leading banking institutions and other City Staff (i.e. Ken Nishimoto, City Attorney's staff) on various occasions. At this time, we have not released this report to any members of the public, or any organizations/institutions.

II. INTRODUCTION

Historically, home ownership has been one of the fundamental means for families to build wealth and financial security. In the United States, 50%, or half of all homeowners, hold at least 50% of their net worth in home equity.¹ In the absence of data specific to the City of Sacramento, we can assume that this national data also reflects Sacramento homeownership.

¹ "State of the Nation's Housing," Joint Center for Housing Studies of Harvard University, 1997, p.18

This home equity is often used to send children to college, start a business, consolidate debt, withstand monetary crisis such as loss of employment, pay medical bills in case of major illness, and cover other financial emergencies and situations.

Unfortunately, home equity is a highly illiquid asset and can only be accessed by selling the home or by obtaining a home loan, i.e., refinancing (with or without cash out), home equity loan/second mortgage, equity line of credit.

III. PRIME AND SUB-PRIME MARKET

In the home loan market, there are two types of borrowers, a prime borrower and a sub-prime borrower. In today's terminology, a "prime" borrower has an "A" credit rating, which means an excellent credit history. On the other hand, a sub-prime borrower has less-than-perfect credit due to a variety of factors, e.g., history of late payments on credit cards and other similar personal loans, spotty employment history, high personal debt ratios, previous bankruptcy, non-traditional income. Sub-prime borrowers are categorized under "B," "C" or "D" credit ratings.

Although predatory lending thrives in the sub-prime market, it is not fair to equate the legitimate efforts of sub-prime lenders with predatory lending. Legitimate sub-prime lenders provide a service to the community. Without these legal lenders extending sub-prime loans to borrowers with less than perfect credit, borrowers are deprived of their ability to obtain loans using their homes as collateral. Without these home loans, borrowers may not be able to realize their dreams (i.e. buying a home, sending their children to college) or cover financial emergencies (i.e. medical bills, accidents, layoffs).

Unfortunately various articles and studies have shown that predatory lenders thrive in the sub-prime market. The likely consequence of predatory lending is primarily the risk

that homeowners may lose their own homes to foreclosure and their home equity as a result of abusive lending practices. Without their homes and hard-earned equity, they are stripped of their primary source of financial security. Further, a community is faced with reduced home values and blight.

IV. WHO IS MOST AT RISK FROM PREDATORY LENDING

In the United States, there are approximately 663,000 elderly homeowners who are likely targets of predatory lending because they have lived in their homes for over 20 years, have income of less than \$30,000, own these homes debt-free, and have equity of over \$100,000.² This is the basic reason why elderly homeowners are likely targets of predatory lending. According to a study conducted by ACORN, in addition to the elderly homeowners, sub-prime loans are made in a disproportionate number to minority (African-American) and in low-income neighborhoods.³ "In 1999 in the Sacramento metropolitan area, sub-prime lenders accounted for 33.3% of all the refinance loans made to African-American homeowners and 18.9% of all refinance loans made to Hispanic homeowners, but just 9.8% of the refinance loans made to Caucasian homeowners. Also, in 1999 in the Sacramento metropolitan area, sub-prime lenders accounted for 21.1% of all the conventional purchase loans made to African-American homebuyers and 14.6% of all conventional purchase loans made to Hispanic homebuyers, but just 6.2% of the conventional purchase loans made to white homeowners."⁴

According to some studies, there is also evidence that some sub-prime lenders target families in low-income neighborhoods. For example, "sub-prime loans are three times

² Comments by Senator Charles Grassley. Senate Special Committee on Aging hearing, held on March 16, 1998. Available at: <http://www.senate.gov/~aging/hr14.htm>.

³ Association of Community Organization for Reform Now (ACORN) is a political action committee (PAC) that has studied sub-prime lending in Sacramento. We are unable to confirm the accuracy of the data gathered by ACORN and therefore the data presented herein is for your information only.

⁴ "Stripping the Wealth: An Analysis of Predatory Lending in Sacramento" by the Association of Community Organization for Reform Now (ACORN).

more likely in low-income neighborhoods than in high income neighborhoods."⁵ Low-income neighborhoods are defined as census tracts wherein the median income is below 50% of the median income as shown in the Sacramento Metropolitan Statistical Area (MSA). Therefore, these loans are based solely on the collateral value of the property without regard to the individuals' repayment ability. In effect, borrowers with limited financial resources may pay the highest cost for credit, making it more likely that the borrower will default, followed by the lenders foreclosure on the property. While foreclosure is an emotionally and financially catastrophic experience for the homeowner, a predatory lender often can recover its money and more by reselling the property for market value, since typically the loan is made for only 80% (or less) of the property's fair market value.

It is extremely difficult to ascertain the exact number of families and individuals who have been victimized by predatory lending in the City of Sacramento, due to the lack of tracking mechanisms and inadequate reporting, but we recognize that this is a problem. Some individuals have come forward to share their own personal tragedies and experiences as they lost their homes as a result of predatory lending practices. Often, we read these accounts in newspaper articles. We also had the opportunity to hear a first hand account of predatory lending from a woman in the Sacramento region who lost her home.

V. LENDERS' LOCATIONS

According to research on sub-prime lending in Sacramento, there are five (5) primary sub-prime lenders in the Sacramento region, namely, The Money Store (recently filed bankruptcy), WMC Mortgage Corporation; Ameriquest Mortgage Company; New

⁵ Prepared Statement of the Federal Trade Commission before the California State Assembly Committee on Banking and Finance on Predatory Lending Practices in the Home-Equity Lending Market, February 21, 2001.

Century Mortgage Corporation; and Option One Mortgage Corporation.⁶ However, only two (2) of these entities actually have City of Sacramento addresses for their businesses. These lenders are known to have targeted and extended sub-prime loans primarily to African-Americans and low-to-moderate income communities.

This data was collected from reporting requirements of the Home Mortgage Disclosure Act (HMDA), enacted by Congress in 1975 and enforced by the Federal Reserve Board's Regulation C (12 CFR Part 203). However, since there are individuals (loan brokers) and entities (mortgage lenders) who are not regulated by the HMDA, and who do not report their mortgage activities, it is not possible to establish a complete list of sub-prime lenders in the City of Sacramento market. In addition, it would be even more difficult to ascertain sub-prime lenders who operate in the City of Sacramento, and who are engaged in predatory lending. We would have no authority to review their records even if we could identify who they are.

It is also very likely that the City of Sacramento homeowners use other mortgage companies and loan brokers that operate outside the City limits. Therefore attempting to curb predatory lending in the City of Sacramento by monitoring sub-prime mortgage lenders located in Sacramento, would not be as successful as reaching out to Sacramento residents who may anticipate getting a home loan.

Finally, we need to reiterate that sub-prime lenders provide a service that otherwise sub-prime borrowers would not have. Finally, sub-prime loans are in and of themselves not predatory lending loans. It is critical that in identifying these abuses we do not degrade prudent business practices of lenders who serve our community.

⁶ This data is collected from those lenders that have assets above a certain level and have home or branch office in a Metropolitan Statistical Area (MSA), as required by the Home Mortgage Disclosure Act (HMDA). MSA is defined as an area that contains a city with a population of at least 50,000, or contains an urbanized area with a population of 50,000 or more and has a total metropolitan population of at least 100,000.

VI. REGULATORY LAWS TO ADDRESS PREDATORY LENDING

Predatory lenders are typically mortgage lenders, mortgage brokers and financial institutions, i.e., banks, savings and loans. Federal laws, specifically the Home Ownership and Equity Protection Act (HOEPA) of 1994, which amended the Truth in Lending Act (TILA) contained in Section 32, Regulation Z, regulate them to some extent. The Board of Governors of the Federal Reserve System (12 CFR part 226) implements these regulations. Very briefly, however, HOEPA regulations only impact refinancing and home equity installment loans and do not cover loans to purchase or initially construct your home, reverse mortgages and home equity lines of credit.

The Truth in Lending Act (TILA) (Source: 15 U.S.C. 1601 et seq.)

The purpose of TILA is to promote the informed use of consumer credit by obliging lenders to disclose the terms and costs related to the loan on or before the date the loan closes. TILA and Regulation Z require lenders to provide certain disclosures on loans subject to the Real Estate Settlement Procedures Act (RESPA) within three business days after the lender receives a written application from a potential borrower. This early disclosure is based on the partial, initial information furnished by the borrower. The lender is required to provide a final disclosure statement on or before the loan closes. In addition, TILA permits the consumer to rescind any loan agreement before a loan closes.

TILA's disclosure must be in a specific format and must contain, at a minimum, the following information:

Name and address of creditor

Amount financed

Itemization of amount financed (optional, if Good Faith Estimate is provided)

Finance charge

Annual percentage rate (APR)

Variable rate information

Payment schedule

Total of payments

Demand feature

Total sales price

Prepayment policy

Late payment policy

Security interest

Insurance requirements

Certain security interest charges

Contract reference

Assumption policy

Required deposit information

Furthermore, adjustable-rate mortgage (ARM) loans have special disclosure requirements. If the annual percentage rate on a loan secured by the consumer's principal dwelling may increase after consummation and the term of the loan exceeds one year, TILA requires additional adjustable rate mortgage disclosures to be provided, including:

- The booklet entitled Consumer Handbook on Adjustable Rate Mortgages, published by the Board and the Federal Home Loan Bank Board or a suitable substitute.
- A loan program disclosure for each variable-rate program in which the consumer expresses an interest. The loan program disclosure shall contain the necessary information as prescribed by Regulation Z.

The Home Ownership Equity Protection Act OF 1994 (HOEPA) (Source: 15 U.S.C.

1639)

HOEPA is a federal disclosure law intended to curb certain unfair lending practices. The act is implemented through Section 32 of Regulation Z of the Federal Reserve Board. HOEPA seeks to protect homeowners who take out high cost loans, from exorbitant fees, and other unfair lending terms. The Act does not cover loans to purchase or initially construct your home, reverse mortgages and home equity lines of credit. The loans that are covered through HOEPA have

- (1) An annual percentage rate (APR) exceeding the rate on a comparable –maturity Treasury note by more than 10%, and/or
- (2) Total non-discount points and fees exceeding the larger of \$465 effective 1/1/2001, or 8% of the total loan amount.

As part of HOEPA requirements, lenders are mandated to include a notice in the loan documents, warning potential borrowers, in plain language, that they can lose their homes and any money put into it, if the payments are not made. In addition, the lender must give the borrower a written notice at least three days before closing the loan, (even though the agreement has been signed), that the borrower has the right to cancel the loan at any time during this period.

Under HOEPA, the following practices are generally banned:

- Balloon payments within 5 years;
- Negative amortization;
- Advance payments (when two or more payments are paid in advance from the proceeds);
- Increased interest rate (when interest is higher upon default);
- Rebates (when a refund is calculated by a method less favorable than the actuarial method for rebates of interest arising from a loan acceleration due to default);
- Prepayment penalties, except within the first 5 years of the loan, if the source of the prepayment funds is not a refinancing by the

same creditor and the borrower's total monthly debt-to-income ratio is under 50%;

- Extending credit without regard to the payment ability of the borrower; and
- Disbursing funds for home improvement loans directly to the contractor rather than directly to the borrower, jointly to the borrower and the contractor, or to the escrow agent.
- Selling or otherwise assigning a mortgage without furnishing the following statement to the purchaser or assignee: "Notice: This is a mortgage subject to special rules under the federal Truth in Lending Act. Purchasers or assignees of this mortgage could be liable for all claims and defenses with respect to the mortgage that the borrower could assert against the creditor."

Under HOEPA, the Board of Governors has rule-writing authority to lower the triggers for interest rates and associated fees by two percentage points, and modify the limitations and prohibited practices.

In summary, HOEPA only applies to refinancing and home equity installment loans, "which covers just 1% of all loans"⁷. The law does not regulate loans to purchase or initially construct a home; neither does it regulate reverse mortgages, or home equity lines of credit or revolving credit accounts. Likewise, HOEPA only covers loans, which meet the definition of a "high cost loan," and the loan terms contain any of the above practices prohibited by HOEPA. Clearly, existing federal law (HOEPA) provides insufficient consumer protection and does not cover a majority of home loans.

⁷ "Mortgage: Home Loan Protection" Hearing excerpts on Bill No. SB 608, Senate Banking, Commerce and International Trade, May 2, 2001.

VII. PREDATORY LENDING DEFINED

According to a staff report to the Chairman of the Senate Committee on Banking, Housing and Urban Affairs, "Predatory lending , not defined by regulators, seems to encompass an ever-changing and broad assortment of terms and conditions associated with a variety of financial transactions."⁸ In the absence of an existing legal definition, we believe that "predatory loan" means a loan, including but not limited to home purchase, home refinance, and/or home equity loan, that was made under circumstances that are abusive, based on the factors set forth below. Such circumstances include unfair or abusive loan terms, unscrupulous and misleading marketing, high pressure lending tactics that limit information or choices available to a borrower, or any combination thereof. The definition of predatory lending practices contained in this report includes other predatory lending practices that may be included in future regulatory action passed by federal and/or state agencies.

We believe that the following 35 practices or loan terms indicate that a loan may have been made under abusive circumstances.

Abusive Practices or Loan Terms

1. Fraudulent, high-pressure and misleading marketing and sales efforts to sell loans, including, but not limited to, false, deceptive or misleading statements or representations regarding the borrower's ability to qualify for a loan.
2. Misrepresenting or withholding information or hiding loan terms from borrowers, including, but not limited to, charging more in interest rates, points or fees on a loan than what was represented;
3. Failure to offer borrowers the full range of available loan programs for which they qualify;
4. The "steering" of borrowers to high-cost loan products, even though they can qualify for lower-cost products;

⁸ "Predatory Lending Practices: Staff Analysis of Regulators' Responses" Report of the Staff to Chairman Gramm, Committee on Banking, Housing and Urban Affairs, August 23, 2000.

5. Quoting different loan terms and conditions to minority, poor or elderly borrowers than to other types of borrowers and failing to offer them the full range of available loan programs for which they qualify;
6. The leaving of blanks in loan contracts, to be filled in after the contract is signed by the borrower;
7. Compensating, coercing or intimidating a real estate appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of the real estate that is being offered as security for the loan;
8. Making loans for more than the value of the real estate that is being offered as security for the loan;
9. Making loans for more than the borrower can repay given the borrower's current and expected income, current obligations, employment status, and non-housing assets;
10. Aiding, assisting, or counseling borrowers to misstate income for the purpose of obtaining a loan;
11. Charging borrowers excessive points and fees or other charges, or exorbitant interest rates that are beyond levels appropriate or necessary to cover risk and ensure a profitable return, including, but not limited to, duplicate fees, inflated broker's fees, fees without a clear description, costs that do not relate to services performed, and inflated recording fees;
12. Charging borrowers a fee for a product or service for which the product or service is not actually provided;
13. Misrepresenting the amount charged by, or paid to, a third party for a product or service;
14. Financing credit life or other insurance into the loan without adequate disclosure to, or permission of, the borrower. This does not apply to credit life insurance policies that require separately identified premium payments on a monthly or annual basis or to prepaid hazard, flood, or mortgage insurance policies;
15. The payment of all or part of the loan proceeds by a lender to a contractor under a home repair or home improvement contract, unless the payment: (i) is in the form of an instrument that is payable to the borrower or jointly to the borrower and the contractor; or (ii) at the election of the borrower, is by a third party escrow agent in accordance with terms established in a written

agreement signed by the borrower, the lender, and the contractor before the date of payment;

16. The payment of all or part of the loan proceeds by a lender to a contractor under a home repair or home improvement contract, when the contractor has been found by any court or federal or state agency of competent jurisdiction on two or more occasions within the previous 24 month period, to be in violation of any law or ordinance prohibiting deceptive practices or similar conduct;
17. "Flipping," i.e., the making of a loan to a borrower to refinance an existing loan when the new loan does not have a tangible benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances;
18. Offering bill consolidation home equity loans that trade short term debt for long term debt, and that do not result in any tangible benefit to the borrower;
19. Recommending or encouraging the borrower's default on an existing loan or other debt prior to and in connection with the closing or planned closing of a loan that refinances all or any portion of that existing loan or debt with the intent of increasing the loan amount;
20. Loan servicing abuses such as charging unwarranted late fees, attorneys' fees, and other costs;
21. Offering to help the borrower find new financing on the condition that the borrower deed over his or her property prior to the new loan application being processed;
22. Preventing or deterring borrowers from refinancing to a lower cost loan, such as providing untimely, inaccurate or incomplete payoff statements;
23. Failure to refer the borrower of a **high-cost loan**⁹ to a counselor approved by

⁹We are recommending a more reasonable definition of a high cost loan by lowering HOEPA's thresholds of interest rates and fees. In this report, we defined a high cost loan as a high-rate and/or high-fee loan if it meets the following tests:

A. High-Fee Loan

The total non-discount points and fees exceed four (4) percentage points of the total loan amount if the loan amount is \$16,000 or greater, or \$800 of the total loan amount if the loan amount is less than \$16,000.

B. High-Rate Loan

A loan with an interest rate more than three (3) percentage points in the case of a first lien mortgage, or more than five (5) percentage points in the case of a junior mortgage, above the rate set by the required net yield for a 90-day standard mandatory delivery commitment for a first mortgage or a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

continued at page 13

the United States Department of Housing and Urban Development, for counseling on the advisability of the loan transaction and the appropriate loan for the borrower;

24. Charging borrowers points and fees or other charges in connection with a high-cost loan if the proceeds of the loan are required to refinance an existing high-cost loan held by the same lender and it has no tangible benefit to the borrower;
25. Charging borrowers fees or other charges to modify, renew, extend, or amend a high-cost loan, or to defer any payment due under the terms of a high-cost loan and it has no tangible benefit to the borrower;
26. High-cost loans that result in negative amortization;
27. High-cost loans having a term of less than five years that feature one or more balloon payments. This sub-paragraph does not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower;
28. High-cost loans that include terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower;
29. High-cost loans that permit the lender, in its sole discretion, to accelerate the indebtedness. This subparagraph does not apply when the repayment of the loan has been accelerated by default, pursuant to a due-on-sale provision, or pursuant to some other provision of the loan documents unrelated to the payment schedule;
30. High-cost loans that finance, directly or indirectly, points and fees or any other

continued from page 12

Our definition of a "high-cost loan" will be amended accordingly to include any regulatory action taken and passed by Federal and/or State agency in the future.

We would like to point out that **HOEPA's guidelines are as follows:** A high cost loan is described as a high-rate and/or high-Fee loan if it meets the following tests:

A. High-Fee Loan

The total fees and points exceed the greater of \$465 (effective 1/1/2001) or 8 percent of the total loan amount. The \$465 amount will be adjusted annually by the Federal Reserve Board, based on changes in the Consumer Price Index.

B. High-Rate Loan

The annual percentage rate (APR) or interest rate exceeds the Treasury note's rate of comparable maturity by more than **ten (10) percentage points** (for example as of May, 2001, interest rate exceeding 13.66%, based on one-year Treasury bill rate of 3.66%) and/or,

charges payable directly to third parties;

31. Refinancing a loan into a high-cost loan where the existing loan is a special mortgage originated, subsidized, or guaranteed by a state, tribal, or local government or nonprofit organization that bears either a below market interest rate or has nonstandard payment terms beneficial to the borrower, such as payments that vary with income or that are limited to a percentage of income, and where as a result of the refinancing the borrower will lose one or more of the benefits of the special mortgage;
32. High-cost loans that impose prepayment fees or penalties on borrowers, beyond five years from loan closing date, for paying all or part of the principal loan amount before the date on which the principal is due. For the purposes of this sub-paragraph, any method of computing a refund of unearned scheduled interest is a prepayment penalty if it is less favorable to the borrower than the actuarial method as that term is defined in 15 United States Code Section 1615(d);
33. High-cost loans that increase the interest rate after default. Interest rate increases do not constitute a predatory loan practice in a variable rate loan in which the increase is otherwise consistent with the provisions of the loan documents, provided that the event of default or the acceleration of the indebtedness does not trigger the change in the interest rate;
34. High-cost loans that contain a mandatory arbitration clause that limits in any way the right of the borrower to seek relief through a court of law or equity;
35. Any other act, practice or loan term or feature, which is abusive.

The predatory lending practices listed above will be amended to include other predatory lending practices not defined herein, which may be included in future regulatory action passed on the federal and/or state level.

From the above list of 35 abusive practices, they tend to fall into the following 10 categories. The descriptions and definitions of the 10 most common predatory lending practices are as follows:

Predatory Lending Practices

1. Costly and Unnecessary Insurance Policies

Predatory lenders often require the borrower to buy unnecessary and expensive insurance coverage such as credit life insurance, credit disability insurance or unemployment insurance. This practice is called "packing." If the insurance costs are financed as part of the loan, the borrower loses more home equity.

2. Balloon Payments Within Five Years

Predatory lenders often structure the loan to have lower monthly payments, which can be a short-term relief to the borrower, but require a large "balloon" payment at the end of the loan term, i.e., balloon payments within five years to pay off the loan. In many cases, this is not explained clearly to the borrower, and the borrower's ability to pay the remaining loan balance at the end of the term has not been adequately considered by the lender. To compound this abuse, predatory lenders would entice the borrower to refinance again a few months after closing the original loan, to eliminate the balloon payment.

3. Negative Amortization

Negative amortization involves smaller monthly payments that do not fully pay off the loan and that cause an increase in the consumer's total principal debt.

4. Loan Flipping

Loan "flipping" or frequent refinancing that steadily increases the borrower's debt. The term "flipping," means the making of a loan to a borrower to refinance an existing loan when the new loan does not have a tangible benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances.

5. Pre-payment Penalties

Pre-payment penalties, except within the first 5 years of the loan, if the source of the prepayment funds is not a refinancing by the same creditor and the borrower's total monthly debt-to-income ratio is under 50%. Lenders use pre-payment penalties to discourage borrowers from refinancing their mortgages, because when a borrower refinances more quickly than the lender anticipates, the lender's profit from the loan is less than expected. As a result borrowers are locked into high-interest bearing loans 5 years or more, thereby preventing the borrower from refinancing for lower rates and better loan terms.

6. Disbursing Funds Directly to the Contractor

Funds for home improvement loans must be disbursed directly to the (1) borrower, or (2) jointly to the borrower and the contractor, or (3) the escrow agent.

7. Two or More Advance Payments

The practice of requiring two or more payments paid in advance from the proceeds.

8. Increased Interest Rate

Where interest rate is higher upon default.

9. Extending Credit Without Regard to the Payment Ability of the Borrower

Creditors of high cost loans are prohibited from providing home loans to homeowners based solely on the collateral value of the property without regard to the homeowner's ability to repay the loan, i.e., sufficient income, debt-to-income ratio. It is pointed out, however, that in these circumstances some borrowers will not be able to make a loan and may be required to sell their home.

10. Predatory lending practice may include other fraudulent lending activities, other unfair or abusive loan terms, unscrupulous and misleading marketing, high pressure lending tactics that limit information or choices available to a borrower, or any combination thereof. We have identified 35 such practices and loan terms on pages 10 -14.

VIII. CONCLUSIONS

- Predatory lenders target and market these high cost loans to the elderly, the minority and low-income citizens of the community. Predatory lending is particularly damaging because borrowers typically seek home loans during times of great financial need, when they are in the weakest bargaining position and most susceptible to practices that can strip them of substantial sums of money and, ultimately, their homes.
- When victims lose their homes and equity, they are often forced into poverty; the community becomes blighted, which leads to reduced home values, the erosion of the tax base and increased demands for City services. The citizens of Sacramento and the City of Sacramento are harmed by predatory lending practices.

- It is equally important to point out that homeowners may be uninformed or overwhelmed by all the documents in loan transactions and may be simply unaware of their rights.
- Although predatory lending thrives in the sub-prime market, not all sub-prime loans are considered abusive. Legitimate sub-prime lenders provide a service to the community. Without lenders extending sub-prime loans to borrowers with less than perfect credit, borrowers may not be able to realize their dreams (i.e. buy a home, start a business, send their children to school, consolidate loans) and/or cover financial emergencies (i.e. pay medical bills and any other financial emergencies or situations).
- It is unlikely that predatory lenders actually have offices in every city. It is also likely that City residents may be making predatory loans at loan offices not within the City boundaries. Further, it is likely the loan office or their parent company involved is not located within, or doing business within, City limits.
- Regarding predatory lending, existing federal laws such as HOEPA offer inadequate protection to Sacramento residents.
 - First, since HOEPA only applies to refinancing and home equity installment loans, the law does not regulate purchase loans, loans to construct a home, reverse mortgages, and home equity lines of credit (or otherwise known as revolving credit accounts), and
 - Second, HOEPA only applies to HOEPA's definition of a "high cost loan" and the loan terms contain any of the abusive practices prohibited by HOEPA, and
 - Third, HOEPA guidelines do not address the majority of the abusive practices or loan terms listed on pages 10– 14 of this report.

IX. RECOMMENDATIONS: THE SACRAMENTO CITY COUNCIL CREATE A CITY ORDINANCE AND A CONSUMER EDUCATION PROGRAM

- ***It is recommended that the Sacramento City Council:***

1. Create a ***City Ordinance*** that:

- Discourages predatory lenders from doing business within the City;
- Directs City resources not be used to support, directly or indirectly, lenders that engage in predatory lending practices;
- Establishes a more sensible definition of a high cost loan by lowering the interest rate and fees/points thresholds set by HOEPA;
- Applies to all homes loan including refinancing, home equity installment loans, purchase loans, loans to construct your homes, reverse mortgages and home equity lines of credit; and
- Automatically is amended to include future laws on predatory lending rules, regulations, and guidelines, passed on the State and/or Federal level.

2. Create a ***Consumer Education Program*** that:

- Clearly identifies the interest rate and fees/points "triggers" or "thresholds" of a high cost loan;
- Enumerates the predatory lending practices in easy-to-understand language contained in selected material; and
- Disseminates public information to Sacramento residents using the following work plans:
 - a. Mail informative brochures at least twice a year as part of utility bills and/or property tax bills (with the cooperation of the County);
 - b. Distribute predatory lending materials, i.e. refrigerator magnets, rolodex-size index cards and pens containing

- telephone number referrals to local government and agencies, that can be contacted regarding predatory lending;
- c. Seek local radio stations to help in public service announcements regarding predatory lending;
 - d. Work with local non-profit organizations (African-American, Asian and Hispanic Organizations) and local interest groups to disseminate information on predatory lending; and
 - e. Display informative materials on predatory lending such as posters and brochures in frequented public places (i.e., public library, City Hall)

- 3. Direct the Sacramento City Treasurer to submit to the City Council an:
 - **Annual Budget** to initiate, manage, monitor and maintain a Consumer Education Program; and
 - **Annual Report** of activities, status, etc. of the Consumer Education Program; and
- 4. Direct the City Treasurer to present to the City Council any pending and future state/federal legislation for consideration.

ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

AN ORDINANCE ADDING CHAPTER 3.148 TO TITLE 3 OF THE SACRAMENTO CITY CODE, RELATING TO PREDATORY LENDING.

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Chapter 3.148, pertaining to predatory lending, is added to Title 3 of the City Code to read as follows:

CHAPTER 3.148 Predatory Lending

3.148.010 Findings and Declarations

The Sacramento City Council hereby finds and declares that:

- A. The subprime lending industry has grown rapidly in the last few years in order to fill a void created by the practice of mainstream banking institutions avoiding doing business in poor or minority communities and neighborhoods ("redlining");
- B. While the subprime market has extended credit to worthy and previously underserved borrowers, the subprime lending industry has also been the venue for an increasing number of abuses;
- C. Subprime loans are typically higher interest loans intended for borrowers with limited or blemished credit histories, and by its very nature subprime lending exacerbates the potential for abuses within the scope of this market;
- D. Some of these subprime lenders aggressively market high-cost loans to low-income and minority borrowers, resulting in these communities experiencing the impacts of abusive loan practices in disproportionately high numbers;

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- E. Some of these subprime lenders also target elderly and vulnerable borrowers who are least able to afford these loans, and engage in other unfair credit practices that may be stripping families and communities of the equity they have in their homes;
- F. The activities specified in Paragraphs D and E are considered "predatory lending", as defined in Section 3.148.030 herein;
- G. Predatory loans are characterized by abusive loan terms and exorbitant fees, financed into loans that may already carry higher interest rates;
- H. The HUD/Treasury Task Force on Predatory Lending, in its recent report entitled Curbing Predatory Home Mortgage Lending, has documented the problem of predatory lending and has recommended measures to combat predatory lending practices;
- I. The HUD/Treasury Task Force on Predatory Lending has concluded that "[f]oreclosed homes are often a primary source of neighborhood instability in terms of depressed property values and increased crime";
- J. The problem of predatory lending exists in Sacramento, and predatory lending practices are heavily concentrated in low-income and minority areas of the City;
- K. Predatory lenders have contributed to further deterioration of low-income and minority communities in the City by stripping homeowners of their equity and charging exorbitant interest rates leading to foreclosures and vacant houses;
- L. Citizens from many low-income and minority neighborhoods in Sacramento have been unable to access legitimate financing for home purchases and refinances, allowing predatory lenders to thrive;
- M. Predatory lending practices can lead to a significant economic drain on Sacramento low-income and minority families and communities;
- N. Predatory lenders are charging exorbitant fees and interest rates and are persuading Sacramento residents to incur loan debt in excess of their needs or ability to pay, often through fraudulent means;
- O. Predatory lending practices contribute to an increase in the number of foreclosures in Sacramento, that can result in abandoned houses and blighted neighborhoods and contribute to the physical and economic deterioration of low-income and minority communities;
- P. Predatory lending practices lead to the loss of affordable housing in Sacramento, increase displacement and economic dislocation, reduce property values, erode the tax base, and increase the strain on City services;

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- Q. It is counterproductive for the City to do business with predatory lenders, whose harmful business practices adversely affect the economic health and well-being of the City;
- R. Federal and state laws offer insufficient protection against predatory lending practices, and regulatory legislation aimed at curbing these practices is needed at both the federal and state levels;
- S. Until such time as there is adequate federal and state legislation in place protecting borrowers from predatory lending practices, the City of Sacramento must discourage lenders from participating in lending practices that strip hard earned equity from City residents and contribute to the problem of vacant and abandoned houses by making loans that individuals and families cannot afford to repay.

3.148.020 Intent and Purpose

It is the intent and purpose of this chapter.

- A. To discourage predatory lenders from doing business within the City;
- B. That City resources not be used to support, directly or indirectly, lenders that engage in predatory lending practices, as defined in Section 3.148.030;
- C. To make available to City residents information concerning predatory lending practices so that City residents may protect themselves against these practices; and
- D. To encourage legislators at both the federal and state level to adopt regulatory legislation to combat predatory lending practices.

3.148.030 Definitions.

As used in this chapter, the following words and phrases shall have the meaning given them in this section, unless the context clearly requires otherwise:

"Affiliate" means any company that controls, is controlled by, or is under common control with another company, including any successors in interest or alter egos, as set forth in the Bank Holding Company Act of 1956 (12 United States Code Section 1841 et seq.), as that Act may be amended from time to time.

"Annual interest rate" means the annual percentage rate for the loan calculated according to the provisions of the federal Truth-In-Lending Act (15 United States Code Section 1601 et seq.), and the regulations promulgated thereunder by the Federal Reserve Board, as that Act and the implementing regulations may be amended from time to time.

"Balloon payment" means a loan that contains a scheduled loan payment that is

more than twice as large as the average of earlier scheduled payments or that contains a provision that gives the lender, in its sole discretion, the right to accelerate the indebtedness in the absence of the default of the borrower.

"Borrower" or "Borrowers" mean any natural person obligated to repay a loan, including a co-borrower, co-signer, or guarantor.

"City", or "City of Sacramento" mean the City of Sacramento, or any entity or official agent acting under the direction of the City Council of the City of Sacramento.

"City Attorney" means the City Attorney of the City of Sacramento, or any authorized representative of the City Attorney.

"City funds" mean all otherwise unrestricted monies, grants, or other funds received and managed by or otherwise under the control of the City Treasurer, in the City General Fund. "City funds" shall not include any funds of the Sacramento City Employees Retirement System or funds that the City holds pursuant to assessments and special taxes.

"City Manager" means the City Manager of the City of Sacramento, or any authorized representative of the City Manager.

"City Treasurer" means the City Treasurer of the City of Sacramento, or any authorized representative of the City Treasurer.

"High-cost loan" means:

- A. A loan with an interest rate more than three percentage points in the case of a first lien mortgage, or more than five percentage points in the case of a junior mortgage, above the rate set by the required net yield for a 90-day standard mandatory delivery commitment for a first mortgage or a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater, and as recorded and made available to the public on a regular basis by the Commissioner of Financial Institutions; or
- B. The total points and fees exceed four percentage points of the total loan amount if the loan amount is \$16,000.00 or greater, or \$800 of the total loan amount if the loan amount is less than \$16,000.00.

"Lender" means any individual, domestic corporation, foreign corporation, association, syndicate, joint stock company, partnership, limited liability company, joint venture, trust, or unincorporated association, including parent company, subsidiary, exclusive distributor or company affiliated therewith, engaged in the business of making loans subject to this chapter.

"Loan" or "Loans" mean a loan, including an open end credit plan, other than a reverse mortgage transaction, in which: (i) the principal amount of the loan does not exceed the conforming loan size limit for a single-family dwelling as established from time to time by the Federal National Mortgage Association; (ii) the borrower is a natural person; (iii) the debt is incurred by the borrower primarily for personal, family, or household purposes; and (iv) the loan is secured by a mortgage or deed of trust on real estate that is located within the City of Sacramento, and upon which there is located or there will be located a structure or structures designed principally for occupancy of from one to four families, and to be occupied by the borrower as the borrower's principal dwelling.

"Negative amortization" means a loan that contains terms under which the outstanding principal balance will increase at any time over the course of the loan because the regular periodic payments do not cover the full amount of interest due.

"Otherwise unrestricted" means City funds that are not subject to any external restrictions as to the manner or type of investment, deposit, or use of the funds. "External restrictions" shall include, but not be limited to, trust or other fiduciary instruments; bond or other financing indentures or covenants; or other document specifying any form of investment or use restriction. "External restrictions" shall not include restrictions set forth in the California Government Code as to the deposit or investment of City funds.

"Points and fees" mean all of the following:

- (i) All items required to be disclosed under Sections 226.4(a) and (b) of Title 12 of the Code of Federal Regulations, as amended from time to time, except interest or the time-price differential;
- (ii) All charges for items listed under Section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, as amended from time to time, but only if the lender receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate of the lender; otherwise, the charges are not included within the meaning of the phrase "points and fees";
- (iii) All compensation paid directly or indirectly to a mortgage broker.

"Points and fees" shall not include any of the following:

- (iv) Taxes, filing fees, recording and other charges, and fees paid or to be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest;
- (v) Fees paid to a person other than a lender or an affiliate of the lender or to the mortgage broker or an affiliate of the mortgage broker for any of the following: fees for flood certification; fees for pest infestation and flood determination; appraisal fees; fees for inspections performed prior to

closing; credit reports; surveys; attorneys' fees if the borrower has the right to select the attorney from an approved list or otherwise; notary fees; escrow charges so long as not included under subparagraph (i); title insurance premiums; and fire insurance and flood insurance premiums, provided that the conditions in Section 226.4(d)(2) of Title 12 of the Code of Federal Regulations are met.

"Predatory lender" means a lender that, through itself and/or an affiliate, has made, issued or arranged, or assisted others in so doing, within any 12 month period, a predatory loan as defined herein that comprises 5% or more of the total annual number of loans made. The term predatory lender shall not include a lender that has submitted to the City Treasurer a plan to discontinue the practice of making predatory loans, if the plan ensures: (i) the prompt disengagement from the practice of making predatory loans by the lender; and (ii) the complete cessation of the making of predatory loans by the lender within 90 days after the plan is submitted.

"Predatory loan" means a loan, including but not limited to a loan for a home purchase, home refinance, and home equity loan, that was made under circumstances that are abusive, based on the factors set forth in this paragraph. These circumstances shall include unfair or abusive loan terms, high pressure lending tactics that limit information or choices available to a borrower, or any combination thereof. Practices or loan terms that indicate that a loan was made under abusive circumstances include, but are not limited to, the following:

- A. Fraudulent, high-pressure or misleading marketing and sales efforts to sell loans, including, but not limited to, false, deceptive or misleading statements or representations regarding the borrower's ability to qualify for a loan.
- B. Misrepresenting or withholding information or hiding loan terms from borrowers, including, but not limited to, charging more in interest rates, points or fees on a loan than what was represented;
- C. Failure to offer borrowers the full range of available loan programs for which they qualify;
- D. The "steering" of borrowers to high-cost loan products, even though they can qualify for lower-cost products;
- E. Quoting different loan terms and conditions to minority, low-income or elderly borrowers than to other types of borrowers;
- F. The leaving of blanks in loan contracts, to be filled in after the contract is signed by the borrower;
- G. Compensating, coercing or intimidating a real estate appraiser for the

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purpose of influencing the independent judgment of the appraiser with respect to the value of the real estate that is being offered as security for the loan;

- H. Making loans for more than the value of the real estate that is being offered as security for the loan;
- I. Making loans for more than the borrower can repay given the borrower's current and expected income, current obligations, employment status, and non-housing assets. A borrower shall be presumed to be able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, the borrower's total monthly debts, including amounts owed under the loan, do not exceed fifty percent of the borrower's monthly gross income as verified by the credit application, the borrower's financial statement, a credit report, financial information provided to the lender by or on behalf of the borrower, or any other reasonable means. If, at the time the loan is consummated the borrower's total monthly debts exceed fifty percent of the borrower's monthly gross income, there shall be no presumption of the borrower's inability to pay, provided that the lender has fully justified the decision to approve the loan by taking into account factors such as whether the borrower has: (i) an excellent long-term credit rating; (ii) a history of conservative use of consumer credit; (iii) minimal consumer debt; (iv) significant liquid assets to repay the debt; (v) a satisfactory history of home ownership experience; and (vi) any other factors that may reasonably justify the approval of the loan;
- J. Aiding, assisting, or counseling borrowers to misstate income for the purpose of obtaining a loan;
- K. Charging borrowers excessive points and fees or other charges or exorbitant interest rates that are beyond levels appropriate or necessary to cover risk and ensure a profitable return, including, but not limited to, duplicate fees, inflated broker's fees, fees without a clear description, costs that do not relate to services performed, and inflated recording fees;
- L. Charging borrowers a fee for a product or service where the product or service is not actually provided;
- M. Misrepresenting the amount charged by or paid to a third party for a product or service;
- N. Financing credit life or other insurance into the loan without adequate disclosure to or permission of the borrower. This does not apply to credit life insurance policies that require separately identified premium payments on a monthly or annual basis or to prepaid hazard, flood, or mortgage

insurance policies;

- O. The payment of all or part of the loan proceeds by a lender to a contractor under a home repair or home improvement contract, unless: (i) the lender is presented with a signed and dated certificate of completion showing that the home improvements have been completed; (ii) the payment is in the form of an instrument that is payable to the borrower or jointly to the borrower and the contractor; or (iii) at the election of the borrower, the payment is by a third party escrow agent in accordance with terms established in a written agreement signed by the borrower, the lender, and the contractor before the date of payment;
- P. The payment of all or part of the loan proceeds by a lender to a contractor under a home repair or home improvement contract, where the contractor has been found by any court or federal or state agency of competent jurisdiction on two or more occasions within the previous 24 month period, to be in violation of any law or ordinance prohibiting deceptive practices or similar conduct;
- Q. "Flipping", which is defined to mean the making of a loan to a borrower to refinance an existing loan when the new loan does not have a tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances;
- R. Offering bill consolidation home equity loans that trade short term debt for long term debt, and that do not result in any tangible net benefit to the borrower;
- S. Recommending or encouraging the borrower's default on an existing loan or other debt prior to and in connection with the closing or planned closing of a loan that refinances all or any portion of that existing loan or debt;
- T. Loan servicing abuses such as charging unwarranted late fees, attorneys' fees, and other costs;
- U. Offering to help the borrower find new financing on the condition that the borrower deed over his or her property prior to the new loan application being processed;
- V. Preventing or deterring borrowers from refinancing to a lower cost loan, such as providing untimely, inaccurate or incomplete payoff statements;
- W. Failure to refer the borrower of a high-cost loan to a counselor approved by the United States Department of Housing and Urban Development, for

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counseling on the advisability of the loan transaction and the appropriate loan for the borrower;

- X. Charging borrowers points and fees or other charges in connection with a high-cost loan if the proceeds of the loan are used to refinance an existing high-cost loan held by the same lender;
- Y. Charging borrowers fees or other charges to modify, renew, extend, or amend a high-cost loan, or to defer any payment due under the terms of a high-cost loan;
- Z. High-cost loans that result in negative amortization;
- AA. High-cost loans having a term of less than five years that feature one or more balloon payments. This subparagraph does not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower;
- BB. High-cost loans that include terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower;
- CC. High-cost loans that permit the lender, in its sole discretion, to accelerate the indebtedness. This subparagraph does not apply when the repayment of the loan has been accelerated by default, pursuant to a due-on-sale provision, or pursuant to some other provision of the loan documents unrelated to the payment schedule;
- DD. High-cost loans that finance, directly or indirectly, points and fees or any other charges payable to third parties;
- EE. Refinancing a loan into a high-cost loan where the existing loan is a special mortgage originated, subsidized, or guaranteed by a state, tribal, or local government or nonprofit organization that bears either a below market interest rate or has nonstandard payment terms beneficial to the borrower, such as payments that vary with income or that are limited to a percentage of income, and where as a result of the refinancing the borrower will lose one or more of the benefits of the special mortgage;
- FF. High-cost loans that impose prepayment fees or penalties on borrowers for paying all or part of the principal loan amount before the date on which the principal is due. For the purposes of this subparagraph, any method of computing a refund of unearned scheduled interest is a prepayment penalty if it is less favorable to the borrower than the actuarial method as that term is defined in 15 United States Code Section 1615(d);

- GG. High-cost loans that increase the interest rate after default. Interest rate increases do not constitute a predatory loan practice in a variable rate loan where the increase is otherwise consistent with the provisions of the loan documents, provided that the event of default or the acceleration of the indebtedness does not trigger the change in the interest rate;
- HH. High-cost loans that contain a mandatory arbitration clause that limits in any way the right of the borrower to seek relief through a court of law or equity;
- II. Any other act, practice or loan term or feature that is abusive.

In the event that federal or state legislation is enacted protecting borrowers from predatory lending practices, the words and phrases herein shall be given the same meaning that is ascribed to the same or similar words and phrases in the federal or state legislation, including implementing regulations and decisional law.

3.148.040 Prohibited Transactions - Deposits and Investments of City Funds

- A. Prohibition on Deposit of City Funds. Subject to the provisions of Government Code Sections 53600 et seq., no City funds shall be deposited or remain deposited with any predatory lender or its affiliates.
- B. Prohibition on Investment of City Funds. Subject to the provisions of Government Code Sections 53600 et seq., no City funds shall be invested or remain invested in the stocks, bonds, securities or other obligations of any predatory lender or its affiliates.
- C. Preexisting Obligations. The prohibitions of this section shall not apply to City funds held or invested under a trust indenture or investment agreement in effect on or before the effective date of this chapter, or that have otherwise been or are required to be held or invested by the City under a preexisting contractual obligation, provided that such indenture, agreement or contractual obligation shall not be extended beyond its current maturity date.
- D. Waiver of Prohibition by City Treasurer. The prohibitions of this section shall not apply if the City Treasurer, in his or her sound discretion, finds that it would be in the best interests of the City to continue to do business with a lender who may otherwise fit the definition of a predatory lender. In such a case, the lender is not a predatory lender for the purposes of this section.
- E. Divestiture. Within one year from the date of the adoption of this chapter, the City Treasurer shall reduce by one-half the value of all deposits and investments of City funds in lenders or their affiliates subject to this chapter. Divestiture and withdrawal of the balance of investments and deposits of City funds shall be completed within two years from the date of the adoption of this chapter.

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- F. Extension of Divestiture Period. If, prior to the expiration of the two year time limit, the City Treasurer determines that completion of divestiture will necessitate a significant financial loss to the City, then the Treasurer shall request from the City Council not later than sixty days prior to the expiration of the time limit, a reasonable extension of time within which to complete divestiture.
- G. Notice of Divestiture. The City Treasurer shall advise an affected lender as soon as practicable and in any event no later than sixty days prior to the withdrawal or divestiture, that the withdrawal or divestiture of City funds is required by this chapter due to the lender's non-compliance with Section 3.148.060.

3.148.050 Prohibited Transactions - City Contracts

- A. Prohibition on Contracting. No lender shall be awarded a contract with the City unless a certification is filed with and accepted by the City Treasurer pursuant to Section 3.148.060.
- B. Preexisting Obligations. This section shall not apply to any valid contracts entered into on or before the effective date of this Chapter.
- C. Waiver of Prohibition by City Treasurer. The City Treasurer may suspend the ineligibility of a predatory lender in order to allow execution of a contract with the lender, if the City Treasurer, in his or her sound discretion, finds that it would be in the best interests of the City to allow execution of the contract. In such a case, the lender is not a predatory lender for the purposes of this section.

3.148.060 Certification

- A. Mandatory Certification. Except as provided in Sections 3.148.040(D) and 3.148.050(C), no City funds shall be invested or deposited or remain invested or deposited with any lender, and no lender shall be awarded a contract with the City, unless the lender files with the City Treasurer an affidavit certifying that neither it, nor any of its affiliates, engage in or will engage in predatory lending practices as defined in Section 3.148.030. The affidavit shall be in a form prescribed by the City Treasurer and shall be sworn by one or more of the officers of the lender.
- B. Notice to Lender. No later than sixty days from the date of the adoption of this chapter, the City Treasurer shall notify all lenders in writing from whom a certification is required, of the requirements of this section. Each lender so notified shall file within thirty days of the date of the Treasurer's notice, a certification that meets all of the requirements of subparagraph A herein,.
- C. Voluntary Certification. Any other lender may voluntarily file an affidavit with the City Treasurer that meets all of the requirements of subparagraph A herein.

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- D. Maintenance of Certifications. The City Clerk shall make all lender certifications available for public inspection in conformity with the California Public Records Act (Government Code Section 6250 et seq.).
- E. Rejection of Certification by City Treasurer. The City Treasurer may refuse to accept or may strike any certification that, in the City Treasurer's sound discretion, is inaccurate or misleading as to whether the lender or its affiliates engage in predatory lending practices.

3.148.070 Decision of City Treasurer is Final

The decision of the City Treasurer whether to waive the prohibitions of Sections 3.148.040 and 3.148.050, or whether to accept or strike the certification required under Section 3.148.060, shall be final.

3.148.080 Predatory Lending Consumer Education Program

- A. Implementation of Program by City Treasurer. No later than ninety days from the date of the adoption of this chapter, the City Treasurer shall implement a Predatory Lending Consumer Education Program, for the purpose of providing information to City residents on predatory lending practices.
- B. Dissemination of Information. Information disseminated to City residents pursuant to this section shall be in a format that is easily understandable to a layperson, and that is reasonably calculated to reach the largest possible audience, including, but not limited to, the inclusion of this information in monthly or semi-annual City utility bills and other mailings, and the posting of brochures and other informational material on City owned property that is open to the public.
- C. Disclaimer of Liability. The City shall not be liable for any information disseminated pursuant to this section, and all information disseminated to City residents shall include language, in a format acceptable to the City Attorney, disclaiming the City from any and all civil liability arising out of or related to the use of this information.

3.148.090 City Treasurer Reports

- A. Contents of Report. The City Treasurer shall present a written informational report to the City Council on the following items:
 - i. A list of all deposits or investments of City funds subject to this chapter, the progress of the divestiture of those funds, and if applicable, a statement of the reasons why any City funds so held or invested should not be divested within the required time period;
 - ii. A list of all lenders who have filed a certification within the current reporting

period pursuant to Section 3.148.060(A) and (C);

- iii. A list of all lenders whose certification has been stricken or rejected within the current reporting period pursuant to Section 3.148.060(E), and a statement of the reason(s) why each lender's certification was stricken or rejected; and
- iv. The status of the Predatory Lending Consumer Education Program pursuant to Section 3.148.080.

B. Reporting Periods. The City Treasurer's report shall be due as follows:

- i. The first report shall be due at the first City Council meeting one hundred and eighty days from the date of the adoption of this chapter;
- ii. The second report shall be due at the first City Council meeting one year from the date of the adoption of this chapter;
- iii. Thereafter, reports shall be due annually, not to exceed a five year period or until such time as there is adequate federal and state legislation in place protecting borrowers from predatory lending practices, whichever occurs first.

SECTION 2.

3.148.100 Severability

If any section, subsection, clause, phrase or portion of this chapter is for any reason held invalid by any court or federal or state agency of competent jurisdiction, that portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions thereof.

3.148.110 Conflict with City Charter or City Code Provisions

Any section or part of any section in this chapter, insofar as it should conflict with any section of the City Charter, shall be superseded by the contents of said sections. Any section or part of any section of the City Code, insofar as it should conflict with any section or part of any section in this chapter, shall be superseded by this chapter.

DATE PASSED FOR PUBLICATION:

DATE ENACTED:

DATE EFFECTIVE:

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ORDINANCE NO. _____

DATE ADOPTED: _____

MAYOR

ATTEST:

CITY CLERK

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ORDINANCE NO. _____

DATE ADOPTED: _____

REVISED

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

**AN ORDINANCE AMENDING THE OAKLAND
MUNICIPAL CODE TO PROHIBIT PREDATORY
LENDING PRACTICES FOR HOME LOANS IN THE
CITY OF OAKLAND**

WHEREAS, the subprime lending industry has grown rapidly in the last few years, increasing almost ten-fold since 1993, and has increased its share of conventional home loan applications; and

WHEREAS, some subprime lenders seek to fill a void created by redlining, i.e., the practice of mainstream banking institutions avoiding doing business in poor or minority communities; and

WHEREAS, some subprime lenders and other home lenders aggressively market high-cost home loans that borrowers are unable to repay, and engage in other unfair or fraudulent credit practices that may be stripping families and communities of the equity they have in their homes; and

WHEREAS, some of these lenders target those communities with residents least able to afford these loans, particularly the elderly and those on fixed incomes; and

WHEREAS, these practices are commonly referred to as "predatory lending"; and

WHEREAS, the HUD/Treasury Task Force on Predatory Lending, in its recent report Curbing Predatory Home Mortgage Lending (the "HUD/Treasury report"), has documented and analyzed the problem of predatory lending in home mortgage lending; and

WHEREAS, the HUD/Treasury report has concluded that predatory lenders tend to target their efforts at the neighborhood level; and

WHEREAS, predatory lending practices, as documented by the HUD/Treasury Task report and other commentators, include, among other things: repeated refinancing of a loan without any tangible benefit to the borrower; charging excessive prepayment penalties; financing single premium credit insurance; encouraging a borrower to default on his or her other debts; failing to comply with federal requirements with respect to disclosure of loan terms and loan settlement; making a loan for more than the borrower can repay; financing excessive points and fees; requiring advance payments; charging fees to modify a loan or defer payments; permitting acceleration of a loan at lender's discretion; and increasing the interest rate upon default; and

WHEREAS, the practice of repeatedly refinancing a home loan when there is no tangible benefit to the borrower from the refinancing, commonly known as loan "flipping," costs borrowers unnecessary up-front fees, prepayment fees, and points, and may lead to the progressive loss of equity in the home; and

WHEREAS, high prepayment penalties can lock a borrower into a higher interest rate even when the borrower qualifies for a better loan, and are generally unjustified because they bear little relationship to any legitimate costs incurred by the lender due to the prepayment, and because they punish the borrower simply because the borrower chooses to pay off debt; and

WHEREAS, the practice of financing single-premium credit insurance into a home loan usually provides little or no benefit to the borrower, greatly increases loan costs, inhibits or prevents borrowers from shopping for competing insurance products, inhibits or prevents borrowers from canceling coverage when no longer needed, and increases the potential for fraud and abuse; and

WHEREAS, the practice of a lender recommending or encouraging a borrower to default on his or her other debts in order to facilitate refinancing those debts is a widespread practice that can set up borrowers for abusive loan terms that are imposed on borrowers at the last minute, due to the pressure of being in default on other debts; and

WHEREAS, the practice of making a loan for more than the borrower can repay given the borrower's income, non-housing assets, and debt burden, commonly known as "asset-based lending," leads to foreclosure, loss of equity, and displacement, particularly for low-income elderly persons on fixed incomes; and

WHEREAS, financing excessive up-front points and fees into high-cost home loans often disguises the true cost of the loan to the borrower, greatly increases the cost of the loan to the borrower, and inhibits or prevents the borrower from shopping for better loan terms; and

WHEREAS, the practice of requiring advance payments on high-cost home loans is sometimes used to mask unaffordable loans, and unfairly gives the lender free use of the borrower's funds on which the borrower is paying interest; and

WHEREAS, the practice of charging fees to modify a loan or defer payments adds unjustified costs to high-cost loans and creates the potential for abuse; and

WHEREAS, high-cost loan terms that permit acceleration of the loan at the lender's discretion often unfairly force the borrower to refinance at a higher interest rate and incur additional points and fees; and

WHEREAS, high-cost loan terms that allow an increase in the interest rate upon default unfairly prevent the borrower from curing loan defaults, leading to foreclosure and loss of equity; and

WHEREAS, independent counseling of prospective borrowers who are considering high-cost home loans can raise borrower awareness of predatory lending practices and help prevent predatory lending abuses; and

WHEREAS, because of the high number of minority and lower-income homeowners in Oakland, and the pressures of gentrification in certain neighborhoods that increase property values and home equity, Oakland residents in low-income areas have been perceived to be "house rich and cash poor" and thus are prime targets for predatory lending practices; and

WHEREAS, the Association of Community Organizations for Reform Now ("ACORN") has documented the problem of predatory lending in Oakland in its recent report Stripping the Wealth: An Analysis of Predatory Lending in Oakland (the "ACORN study"); and

WHEREAS, the ACORN study demonstrates that subprime lending is heavily concentrated in lower-income and minority areas of Oakland; and

WHEREAS, testimony before this Council from community organizations and victims of predatory lending practices, as well as reports from City housing counseling and community development staff, demonstrates that predatory lending is a widespread, significant and growing problem in low-income Oakland neighborhoods; and

WHEREAS, there is strong anecdotal evidence that predatory lenders have been deliberately targeting low-income neighborhoods in Oakland through intensive mail campaigns and door-to-door solicitation; and

WHEREAS, predatory lending practices can lead to a significant economic drain on lower-income families and communities in Oakland; and

WHEREAS, predatory lending practices contribute to an increase in the number of foreclosures that can result in abandoned houses and blighted neighborhoods and contribute to the physical and economic deterioration of lower-income, minority and inner-city communities in Oakland; and

WHEREAS, the HUD/Treasury report has concluded that "[f]oreclosed homes are often a primary source of neighborhood instability in terms of depressed property values and increased crime," and the ACORN study has concluded that in Oakland "predatory lenders have contributed to further deterioration of lower-income and minority communities by stripping homeowners of their equity and charging exorbitant interest rates leading to foreclosures and vacant houses"; and

WHEREAS, predatory lending practices lead to conditions of blight and the loss of affordable housing in Oakland, increase displacement and economic dislocation, reduce property values, erode the tax base, and increase the strain on City services; and

WHEREAS, state and federal lending laws and regulations do not adequately address the problem of predatory lending in Oakland because either the laws do not regulate many common predatory lending practices, regulatory oversight of predatory lenders is lacking, and/or remedies and enforcement provisions are weak or nonexistent; and

WHEREAS, the Council has received and considered a number of staff reports on the problem of predatory lending, including reports from the City Manager dated March 21, 2000, June 13, 2000, October 10, 2000, October 24, 2000, as well as the staff report accompanying this Ordinance, and a legal opinion from the City Attorney dated October 10, 2000; now therefore

The Council of the City of Oakland does ordain as follows:

SECTION 1. This Ordinance shall be known as the "Anti-Predatory Lending Ordinance."

SECTION 2. Chapter 5.33 is hereby added to the Oakland Municipal Code to read as follows:

Chapter 5.33

HOME MORTGAGE LENDING

5.33.010 Purpose.

The purpose of this chapter is to prohibit certain predatory lending practices for home loans made in the City of Oakland.

5.33.020 Findings.

The City Council finds and determines the following:

A. The City of Oakland as a home rule charter city has the right and power to make and enforce all laws and regulations that are its municipal affair, including the power to regulate business practices to promote the health, morals, safety, property, good order, well-being, general prosperity or general welfare of Oakland residents.

B. Predatory lending on home loans is a widespread, significant and growing problem in the City of Oakland, and threatens the well-being and general prosperity of Oakland residents and the City as a whole. Predatory lending practices are a significant economic drain on lower-income families and communities in Oakland. Predatory lending practices also lead to conditions of blight and the loss of affordable housing in Oakland, increase displacement and economic dislocation, reduce property values, erode the tax base, and increase the strain on City services.

C. Because of socioeconomic and market conditions in Oakland which give rise to predatory lending practices, predatory lending is a municipal affair and a matter of unique local interest and concern for the City of Oakland.

D. Neither state law nor federal law adequately address the predatory lending problem in Oakland.

E. The regulation of home mortgage lending practices by the City to prevent predatory lending, by prohibiting certain lending practices and requiring independent counseling on high-cost home loans, serves the public interest, is necessary to protect the health, morals, safety, property, general welfare, well being and prosperity of the residents of Oakland, and is within the home rule powers and police powers of the City.

5.33.030 Definitions.

As used in this chapter, the following terms have the following meanings:

An "affiliate" means any business entity that controls, is controlled by, or is under common control with, another entity, as set forth in the federal Bank Holding Company Act of 1956 (12 U.S.C. §1841, et seq.), as such statute may be amended from time to time, and includes any successors in interest or alter egos to the business entity.

"Annual percentage rate" means the annual percentage rate for a home loan calculated according to the provisions of the federal Truth in Lending Act (15 U.S.C. §1601, et seq.) and its implementing regulations, as such statute or regulations may be amended from time to time.

A "borrower" means singularly or collectively any natural person or persons with an obligation to repay a home loan, including without limitation a coborrower, cosigner, or guarantor.

A "business entity" means any individual, domestic corporation, foreign corporation, association, syndicate, joint stock company, partnership, joint venture, limited liability company, sole proprietorship, or unincorporated association engaged in a business or commercial enterprise.

The "City" means the City of Oakland.

A "first mortgage" means a home loan secured by a deed of trust or mortgage on real property if the deed of trust or mortgage is senior in priority to any other deed of trust or mortgage on the real property.

A "high-cost home loan" means a home loan that meets either of the following thresholds:

- (1) the annual percentage rate of the loan equals or exceeds
 - (a) by more than 3 percentage points, if the home loan is a first mortgage, or
 - (b) by more than 5 percentage points, if the home loan is a junior mortgage,
 the rate set by the required net yield for a 90-day standard mandatory delivery commitment for a first mortgage loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Association, whichever is greater, as such yield is reported on the fifteenth day of the month immediately preceding the month in which the application for the home loan is received by the lender; or
- (2) the total points and fees on the loan equal or exceed either 5% of the total loan amount or \$800, whichever amount is greater.

If the terms of the home loan provide for an initial or introductory period during which the annual percentage rate is lower than that which will apply after the end of such initial or introductory period, then the annual percentage rate to be considered for purposes of this definition is the rate which applies after the initial

or introductory period. If the terms of the home loan provide for an annual percentage rate that varies in accordance with an index plus a margin, then the annual percentage rate to be considered for purposes of this definition is the rate that is in effect on the date of loan consummation. In the case of a home loan with a regular interest rate that varies in accordance with an index plus a margin, but with an initial or introductory interest rate established in some other manner, the annual percentage rate to be considered is the rate that would have been in effect on the date of loan consummation were the regular rate determined by the index plus the margin to apply, that is, the fully-indexed rate on the date of loan consummation.

A "home loan" means a loan of money, including without limitation a line of credit or an open-end credit plan, if all of the following apply:

- (1) the principal amount of the loan does not exceed the current conforming first mortgage loan size limit for a single-family dwelling as established by the Federal National Mortgage Association,
- (2) the borrower incurred the loan primarily for his or her personal, family, or household uses,
- (3) the loan is secured in whole or in part by a deed of trust, a mortgage (as defined under California Civil Code §2920 or §2924), or a similar security device or instrument, on real property located within the City of Oakland,
- (4) this real property contains or will contain either (a) one to four residential units, or (b) individual residential units of condominiums or cooperatives, and
- (5) one of these residential units is or will be occupied by the borrower as the borrower's principal dwelling.

In the case of multiple borrowers, the criteria in subsections (2) and (5) above will be considered satisfied if at least one of the borrowers has met the stated criteria. A "home loan" does not include a reverse mortgage as defined in California Civil Code §1923.

A "junior mortgage" means a home loan secured by a deed of trust or mortgage on real property if the deed of trust or mortgage is junior in priority to another deed of trust or mortgage on the real property.

A "lender" means any person or business entity that extends a home loan or arranges for the extension of a home loan. Notwithstanding the above, a "lender" does not include a bank chartered under the federal National Bank Act (12 U.S.C. §21, et seq.), a credit union chartered under the Federal Credit Union Act (12 U.S.C. §1751, et seq.), or a savings and loan association regulated under the federal Home Owners' Loan Act of 1933 (12 U.S.C. §1461, et seq.); however, an affiliate of any such federally chartered or regulated bank, credit union, or savings and loan association that extends home loans is considered a "lender" if the affiliate itself is not a bank, credit union, or savings and loan association chartered or regulated under the above-referenced federal statutes.

A "mortgage broker" means any person who functions as intermediary for a fee between the borrower and the lender in the making of a home loan.

A "person" means a natural person or a business entity.

"Points and fees" means the following:

- (1) all items required to be disclosed under §226.4(a) and §226.4(b) of Title 12 of the Code of Federal Regulations, as amended from time to time, except interest or the time-price differential;
- (2) all charges for items listed under §226.4(c)(7) of Title 12 of the Code of Federal Regulations, as amended from time to time, but only if the lender receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate of the lender;
- (3) all compensation not otherwise specified in this definition paid directly or indirectly to a mortgage broker, including a broker that originates a home loan in its own name through an advance of funds and subsequently assigns the home loan to the person advancing the funds;
- (4) the premium of any single premium credit life, credit disability, credit unemployment or other life or health insurance; and
- (5) all prepayment fees or penalties.

The term "points and fees" does not include any of the following:

- (1) taxes, filing fees, recording and other charges and fees paid or to be paid to public officials for determining the existence of, or for perfecting, releasing, or satisfying a security interest; or
- (2) charges paid to a person other than the lender, an affiliate of the lender, a mortgage broker, or an affiliate of a mortgage broker, as follows: fees for flood certification; fees for pest infestation and flood determinations; appraisal fees, fees for inspections performed prior to loan closing; credit report fees; survey fees; attorneys' fees (if the borrower has the right to select the attorney from an approved list or otherwise); notary fees; escrow charges that are not required to be disclosed under §226.4(a) and §226.4(b) of Title 12 of the Code of Federal Regulations; title insurance premiums; or fire insurance or flood insurance premiums (provided that the conditions in §226.4(d)(2) of Title 12 of the Code of Federal Regulations are met).

"Total loan amount" means the total credit received by the borrower as part of the loan, excluding points and fees.

5.33.040 Prohibited terms and practices for home loans in general.

No lender may make a home loan in violation of any of the following prohibited terms or practices:

A. No excessive prepayment penalties. No lender may charge a prepayment penalty on a home loan, unless the home loan is not a high-cost home loan, and the prepayment penalty is only imposed on prepayments within the first three years of the date of the promissory note for the home loan, and then solely as set forth herein and otherwise allowed by state and federal law. Any such prepayment penalty is limited to 3% of the total loan amount during the first year after the date of the note, 2% of the total loan amount during the second year, and 1% of the total loan amount during the third year. Notwithstanding the above, when a borrower refinances a home loan, at no time may a lender charge a prepayment penalty on the home loan being refinanced if the same lender or an affiliate of that lender will be the holder of the note for the new home loan. For purposes of this paragraph, a "prepayment penalty" means any penalty, fee, or charge imposed on a borrower by the lender or an affiliate of the lender for paying all or part of the principal of the home loan before the date when the principal payment is due.

B. No financing of credit insurance. No lender may finance any credit life, credit disability, credit property, or credit unemployment insurance, or any other life or health insurance premiums when making a home loan. Insurance premiums not included in the home loan principal and calculated and payable on a monthly basis will not be considered financed by the lender for purposes of this paragraph.

C. No recommending default. No lender may recommend or encourage a borrower to default or not to make payment on a home loan or any other debt, when such lender action is in connection with the closing or planned closing of a home loan that refinances all or part of the borrower's debt.

D. No loans violating federal lending laws. No lender may make a home loan that violates any applicable provision of the federal Truth in Lending Act, as amended by the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. §1601, et seq.), or any applicable provision of the federal Real Estate Settlement Procedures Act of 1974 (12 U.S.C. §2601, et seq.), or any regulations implementing these statutes, as these statutes and regulations may be amended from time to time. The City intends that any violation of provisions in these laws pertaining to home loans shall give rise to a cause of action under this chapter independent of federal law, and shall entitle the aggrieved party or the City Attorney to pursue any of the rights and remedies set forth in this chapter.

5.33.050 Prohibited terms and practices for high-cost home loans.

No lender may make a high-cost home loan in violation of any of the following prohibited terms or practices:

A. No lending without home loan counseling. No lender may make a high-cost home loan without first receiving written certification from an independent housing or credit counselor approved by the United States Department of Housing and Urban Development, the State of California, or the City of Oakland, that the borrower either has received counseling on the advisability of the loan transaction and the appropriateness of the loan for the borrower, or has waived the counseling option as provided for in this subsection. A borrower may waive the counseling option by contacting an approved independent housing or credit counselor by personal meeting or live telephone conversation at least three days prior to the closing of the home loan and certifying in writing to the counselor that he or she has elected to waive the counseling option. The counselor shall keep any such certification of waiver on file for at least three years following the certification. A lender is not liable for the content of any advice or counseling an independent counselor gives to the borrower, nor is an independent counselor liable to a lender for the content of any advice or counseling the counselor gives to the borrower.

B. No lending without regard for repayment ability. No lender may make a high-cost home loan unless the lender reasonably believes at the time it makes the loan that one or more of the borrowers under the loan will be able to make the scheduled payments on the loan. Such a determination of the lender must be based upon a consideration of the borrower's current and expected income, current obligations, employment status, and other financial resources (other than the borrower's equity in the dwelling which secures repayment of the loan). A borrower is presumed to be able to make the scheduled payments to repay the loan if, at the time the loan is made, the borrower's debt-to-income ratio does not exceed 50%. If the borrower's debt-to-income ratio exceeds 50%, the lender must fully justify the decision to approve the high-cost home loan in a written statement provided to the borrower at loan closing that sets forth specific compensating factors, such as the excellent long-term credit history of the borrower, a demonstrated ability in the past by the borrower to make payments under comparable or greater debt-to-income ratios, conservative use of credit standards, significant liquid assets of the borrower, or other factors that reasonably justify the approval of the loan. For purposes of this paragraph, "debt" means the scheduled monthly principal and interest payments on all of the borrower's debts, including amounts owed under the home loan as well as other secured or unsecured debts of the borrower, plus payments associated with the dwelling prorated monthly for property taxes and assessments, homeowners insurance premiums, mortgage insurance premiums, and condominium or homeowners association dues or fees, and "income" means the borrower's monthly gross income as verified by the credit application, the borrower's financial statement, a credit report, financial information provided to the lender by or on behalf of the borrower, or any other reasonable means. In the case of a high-cost home loan offering a lower introductory or initial interest rate, the lender's determination of borrower debt must be based on the borrower's monthly payments on said loan at the interest rate following the

introductory or initial rate rather than the monthly payments under the introductory rate. The provisions of this paragraph apply only to a high-cost home loan in which all of the borrowers have an income, as reported on the loan application that the lender relied on in making the credit decision, no greater than 120% of the median family income for the Oakland Metropolitan Statistical Area (as determined by the United States Department of Housing and Urban Development), adjusted for family size.

C. No excessive financing of points and fees. No lender may finance points and fees in excess of either 5% of the total loan amount or \$800, whichever amount is greater, when making a high-cost home loan.

D. No advance payments. No lender may make a high-cost home loan that includes terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.

E. No modification or deferral fees. No lender may charge a borrower any fees or charges to modify, renew, extend, or amend a high-cost home loan or to defer any payment due under the terms of a high-cost home loan, unless after the modification, renewal, extension or amendment, the home loan is no longer a high-cost home loan and the annual percentage rate on the home loan has decreased by at least two percentage points as a result of the modification, renewal, extension or amendment. The prohibition on such fees or charges shall not apply if the high-cost home loan is in default and the modification, renewal, extension, amendment, or deferral is part of a work-out arrangement.

F. No prepayment penalties. No lender may charge a prepayment penalty on a high-cost home loan. For purposes of this paragraph, a "prepayment penalty" means any penalty, fee, or charge imposed on a borrower by the lender or an affiliate of the lender for paying all or part of the principal of the high-cost home loan before the date when the principal payment is due.

G. No call provisions. No lender may make a high-cost home loan that includes terms which permit the lender in its discretion to accelerate the indebtedness. This restriction does not apply to terms that provide for the acceleration of repayment of the high-cost home loan upon default or pursuant to a due-on-sale clause.

H. No increased interest rate upon default. No lender may make a high-cost home loan that includes any provision increasing the interest rate after default or delinquency. This restriction does not apply to interest rate changes for a variable rate home loan otherwise consistent with the provisions of the loan documents, if the change in the interest rate is not triggered by an event of default, delinquency, or acceleration of the indebtedness.

I. No refinancing without borrower benefit. No lender may make a high-cost home loan if the high-cost home loan pays off all or part of an existing home loan or other debt of the borrower, and the borrower does not receive a reasonable and tangible net benefit from the new high-cost home loan considering all the circumstances, including the terms of both the new home loan and the refinanced debt, the cost of the new home loan, and the borrower's circumstances. A borrower is presumed to receive a reasonable and tangible net benefit from a refinance if any of the following are true: (1) as a result of the refinance there is a net reduction in the borrower's total monthly payments on all debts consolidated into the new home loan combined with the borrower's payments, prorated monthly, for homeowners insurance, mortgage insurance, and property taxes and assessments, whether such insurance and taxes are paid through the lender or not, and this reduction will continue for at least 36 months after the refinance, (2) as a result of the refinance there is a reduction in the borrower's blended interest rate on all debts consolidated into the new home loan, and it will not take more than 5 years for the borrower to recoup the points and fees charged for the refinance, (3) the borrower receives cash proceeds from the refinance, provided that either the amount of the points and fees charged for the refinance is no greater than 5% of the amount of the cash proceeds received by the borrower, or the cash proceeds received by the borrower equals or exceeds the greater of 15% of the total loan amount of the new loan or \$12,000, or (4) the new home loan is necessary to prevent default under an existing home loan or other secured debt of the borrower, provided that the lender for the new home loan is not the same as or an affiliate of the creditor for the existing home loan or other secured debt.

J. No refinancing special mortgages. No lender may make a high-cost home loan if the high-cost home loan pays off all or part of an existing home loan, and such existing loan (1) is originated, subsidized, or guaranteed by the State of California, the City or other unit of local government, or a nonprofit organization, and (2) either has an interest rate at least two percentage points below prevailing market mortgage interest rates, or has one or more nonstandard payment terms beneficial to the borrower, such as deferred payments, loan forgiveness features, or payments that vary with income, that would be lost as a result of the refinance. This restriction shall not apply if an independent housing or credit counselor has reviewed the terms of the refinance of the special mortgage and has determined that the refinance is in the best interests of the borrower.

5.33.060 Corrections.

A lender who, when acting in good faith, fails to comply with this chapter, will not be considered to have violated this chapter if the lender establishes that, within 30 calendar days of the closing of the home loan and prior to the institution of any action under this chapter, the lender has notified the borrower of the compliance failure, the lender has made appropriate restitution, and the

lender has adjusted the terms of the home loan in a manner beneficial to the borrower to make the loan comply with this chapter.

5.33.070 Investments and loan assignments.

A lender may not make investments that are backed by any home loan that violates this chapter. Any person who purchases or is otherwise assigned a home loan is subject to all claims, actions and defenses related to that home loan that the borrower, the City Attorney, or others could assert against the original lender.

5.33.080 Civil enforcement and remedies.

A. An aggrieved borrower or an organization acting on behalf of an aggrieved borrower or borrowers may bring a civil action for injunctive relief or damages in a court of competent jurisdiction for any violation of this chapter. If the court finds that a violation of this chapter has occurred, the court shall award: (1) actual damages sustained by the borrower as a result of the violation; (2) exemplary damages to the borrower in the amount of the points and fees charged for the home loan plus 10% of the total loan amount; and (3) reasonable costs and attorneys' fees. In addition the court may, as the court deems appropriate: (1) issue an order or injunction rescinding a home loan contract which violates this chapter, or barring the lender from collecting under any home loan which violates this chapter; (2) issue an order or injunction barring any judicial or nonjudicial foreclosure or other lender action under the mortgage or deed of trust securing any home loan which violates this chapter; (3) issue an order or injunction reforming the terms of the home loan to conform to this chapter; (4) issue an order or injunction enjoining a lender from engaging in any prohibited conduct; (5) award punitive damages as the court may deem appropriate if the court determines by clear and convincing evidence that the lender has shown reckless disregard for the rights of the borrower; or (6) impose such other relief, including injunctive relief, as the court may deem just and equitable.

B. A borrower may also assert a violation of this chapter as a defense, bar, or counterclaim to any default action, collection action or judicial or nonjudicial foreclosure action in connection with a home loan.

C. Any relief granted to a borrower under this chapter under law or equity may not reflect negatively in the credit history of the borrower. A lender may not report any action or relief granted to a borrower under this chapter to any credit agency, and may not consider any such action or relief when considering the making of any future home loans to the borrower.

D. The City Attorney may bring a civil action for any violation of this chapter. If the court finds in any such action that a lender or other party has

violated this chapter, the court shall impose civil penalties of not less than \$500 and not more than \$50,000 per violation, and shall award reasonable costs and attorneys' fees to the City Attorney. For purposes of this paragraph, each home loan made in violation of this chapter is considered a separate violation.

E. The remedies provide under this chapter are cumulative. The protections and remedies provided under this chapter are in addition to other protections and remedies that may be otherwise available under law. Nothing in this chapter is intended to limit the rights of any injured person to recover damages or pursue any other legal or equitable action under any other applicable law or legal theory.

5.33.090 Limitations on actions.

A borrower must file any civil action brought under this chapter within three years after the discovery of the violation by the borrower. This limitation does not apply in the case of a borrower asserting a violation of this chapter as a defense, bar, or counterclaim to any default action, collection action or judicial or nonjudicial foreclosure action. The City Attorney must file any action brought under this chapter within six years after the violation.

5.33.100 Criminal liability.

Any person who wilfully violates this chapter is guilty of an infraction.

5.33.110 Nonwaiverability.

Any written or oral agreement in which a borrower purports to waive any rights or remedies that he or she may have under this chapter is against public policy and is void and unenforceable.

5.33.120 Applicability.

The provisions of this chapter apply to home loans made on or after November 1, 2001. For purposes of this paragraph, a home loan is considered "made" on the date the promissory note for the loan is signed by the borrower.

SECTION 3. The record before this Council relating to this Ordinance and supporting the findings made herein includes, without limitation, the following:

- A. All staff reports and legal opinions produced by or on behalf of the City with respect to predatory lending practices and this Ordinance, and other documentation and information attached to or cited in those reports or cited in this Ordinance;

- B. The ACORN study and the HUD/Treasury report;
- C. All oral and written information received by City staff and the City Council including its committees before and during the consideration of this Ordinance, including public comments and testimony; and
- D. All matters of common knowledge and all official enactments and acts of the City, such as the Oakland City Charter and all applicable state and federal laws, rules and regulations.

SECTION 4. The recitals contained in this Ordinance are true and correct and are an integral part of the Council's decision.

SECTION 5. The custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) the Community and Economic Development Agency, Housing and Community Development Division, 250 Frank H. Ogawa Plaza, 5th floor, Oakland, California; and (b) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, California.

SECTION 6. The City Manager and his or her designee is hereby authorized to adopt rules and regulations consistent with this Ordinance as needed to implement this Ordinance, and to make such interpretations of this Ordinance as he or she may consider necessary to achieve the purposes of this Ordinance.

SECTION 7. The provisions of this Ordinance are severable, and if any clause, sentence, paragraph, provision, or part of this Ordinance, or the application of this Ordinance to any person, is held to be invalid or preempted by state or federal law, such holding shall not impair or invalidate the remainder of this Ordinance. If any provision of this Ordinance is held to be inapplicable to any specific category, type, or kind of loan or points and fees, or category of lender, the provisions of this Ordinance shall nonetheless continue to apply with respect to all other covered loans, points and fees, and lenders. It is hereby declared to be the

legislative intent of the City Council that this Ordinance would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from its coverage.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2001

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, CHANG, MAYNE, NADEL, REID, SPEES, WAN, AND
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

**AN ORDINANCE AMENDING THE OAKLAND MUNICIPAL
CODE TO PROHIBIT PREDATORY LENDING
PRACTICES FOR HOME LOANS IN THE CITY OF
OAKLAND**

NOTICE AND DIGEST

This Ordinance adds Chapter 5.33 to the Oakland Municipal Code to prohibit certain predatory lending terms and practices for home loans secured by residential property located in the City of Oakland, and makes certain findings in support of its enactment.

OAKLAND CITY COUNCIL**ORDINANCE NO. _____ C. M. S.**

**AN ORDINANCE AMENDING ORDINANCE NO. 12066 C.M.S., THE
LINKED BANKING SERVICES ORDINANCE, TO REQUIRE LENDERS TO
CERTIFY THAT NEITHER THEY NOR THEIR AFFILIATES ENGAGE IN
PREDATORY LENDING PRACTICES**

WHEREAS, the subprime lending industry has grown rapidly in the last few years and has increased its share of conventional home loan applications; and

WHEREAS, some subprime lenders seek to fill a void created by redlining, i.e., the practice of mainstream banking institutions avoiding doing business in poor or minority communities; and

WHEREAS, some of these lenders aggressively market high-cost home loans that borrowers are unable to repay and engage in other unfair credit practices that may be stripping families and communities of the equity they have in their homes; and

WHEREAS, some of these lenders target those communities least able to afford these loans; and

WHEREAS, these practices are commonly referred to as "predatory lending"; and

WHEREAS, the HUD/Treasury Task Force on Predatory Lending, in its recent report Curbing Predatory Home Mortgage Lending (the "HUD/Treasury report"), has documented and analyzed the problem of predatory lending in home mortgage lending; and

WHEREAS, the HUD/Treasury report has concluded that predatory lenders tend to target their efforts at the neighborhood level; and

WHEREAS, predatory lending practices, as documented by the

HUD/Treasury Task report and other commentators, can include, among other things: repeated refinancing of a loan without any tangible benefit to the borrower; charging excessive prepayment penalties; financing single premium credit insurance; encouraging a borrower to default on his or her other debts; failing to comply with federal requirements with respect to disclosure of loan terms and loan settlement; making a loan for more than the borrower can repay; financing excessive points and fees; requiring advance payments; charging fees to modify a loan or defer payments; permitting acceleration of a loan at lender's discretion; and increasing the interest rate upon default; and

WHEREAS, the Association of Community Organizations for Reform Now ("ACORN") has documented the problem of predatory lending in Oakland in its recent report Stripping the Wealth: An Analysis of Predatory Lending in Oakland (the "ACORN study"); and

WHEREAS, because of the high number of minority and lower-income homeowners in Oakland, and the pressures of gentrification in certain neighborhoods that increase property values and home equity, Oakland residents in low-income areas have been perceived to be "house rich and cash poor" and thus are prime targets for predatory lending practices; and

WHEREAS, the ACORN study demonstrates that subprime lending is heavily concentrated in lower-income and minority areas of Oakland; and

WHEREAS, testimony before this Council from community organizations and victims of predatory lending practices, as well as reports from City housing counseling and community development staff, demonstrates that predatory lending is a widespread, significant and growing problem in low-income Oakland neighborhoods; and

WHEREAS, there is strong anecdotal evidence that predatory lenders have been deliberately targeting low-income neighborhoods in Oakland through intensive mail campaigns and door-to-door solicitation; and

WHEREAS, predatory lending practices can lead to a significant economic drain on lower-income families and communities in Oakland; and

WHEREAS, predatory lending practices contribute to an increase in the number of foreclosures that can result in abandoned houses and blighted neighborhoods and contribute to the physical and economic deterioration of lower-income, minority and inner-city communities in Oakland; and

WHEREAS, the HUD/Treasury report has concluded that "[f]oreclosed homes are often a primary source of neighborhood instability in terms of depressed property values and increased crime," and the ACORN study has concluded that in Oakland "predatory lenders have contributed to further deterioration of lower-income and minority communities by stripping homeowners of their equity and charging exorbitant interest rates leading to foreclosures and vacant houses"; and

WHEREAS, predatory lending practices lead to conditions of blight and the loss of affordable housing in Oakland, increase displacement and economic dislocation, reduce property values, erode the tax base, and increase the strain on City services; and

WHEREAS, the City adopted the Linked Banking Services Ordinance, Ordinance No. 11607 C.M.S., in 1993 to prohibit the City from doing business with depositories and other financial institutions that fail to meet community lending goals; and

WHEREAS, the Linked Banking Services Ordinance was amended and restated by Ordinance No. 12066 C.M.S. in 1998; and

WHEREAS, it is counterproductive for the City to participate in development projects that generate profits and income to predatory lenders, profits and income that such lenders can use to continue harmful business practices that adversely affect the economic health and well-being of the City; and

WHEREAS, it is also counterproductive for the City to support first-time homebuyer programs, housing rehabilitation programs, and other mortgage assistance programs to homebuyers when first liens on these properties are imposed through predatory lending practices, since such liens unfairly threaten the equity position of the homeowner and the security position of the City; and

WHEREAS, it is the intent of the City that City resources not be used to support, directly or indirectly, institutions that engage in such predatory lending practices; and

WHEREAS, the Council has received and considered a number of staff reports on the problem of predatory lending, including reports from the City Manager dated March 21, 2000, June 13, 2000, October 10, 2000, October 24, 2000, as well as the staff report accompanying this Ordinance, and a legal opinion from the City Attorney dated October 10, 2000; now therefore

The Council of the City of Oakland does ordain as follows:

Section 1. Section 3 of Ordinance No. 12066 C.M.S. is hereby amended to read as follows (additional text is underlined):

SECTION 3. Depositories providing the City with Banking Services must provide annually to the City such information as established from time to time by the City Manager or his or her designee in order to establish whether the depository has met the requirements of an Eligible Depository as defined in Section 2.D. In particular, depositories must provide annually information to establish whether they have provided sufficient levels of Community Credit Lending, as defined in Section 2. A., to meet their Fair Share Goals. A depository meeting the definition of a small bank contained

in the federal Community Reinvestment Act may elect to submit information annually on one or more reporting areas to demonstrate that it has met its Fair Share Goal of providing community credit. All other depositories must provide information on all Community Credit Need reporting areas as established by the City Manager.

Additionally, depositories and other private financial institutions seeking City business under the Linked Banking Service Program, seeking to participate as a lender in any development project financed by City loans or monetary grants, or seeking to participate in mortgage programs sponsored by the City, must certify that neither they nor any of their affiliates engage in predatory lending practices. Depositories will not receive credit towards their Fair Share Goals for predatory loans. An entity that is not a "lender" as defined under Chapter 5.33 of the Oakland Municipal Code will be subject to the certification requirement only if and to the extent any of its affiliates is a "lender" under that Chapter.

For purposes of this certification, a lender is engaged in predatory lending practices if, within the 12 months prior to the certification date, it has made predatory loans that comprise either 5% of the total home loans made by that entity during that period or 10 individual home loans, whichever is fewer. A "predatory loan" means any home loan that violates Chapter 5.33 of the Oakland Municipal Code. An "affiliate" means any business entity that controls, is controlled by, or is under common control with, another entity, as set forth in the federal Bank Holding Company Act of 1956 (12 U.S.C. §1841, et seq.), as may be amended from time to time, and includes any successors in interest or alter egos to the entity. However, "affiliate" specifically does not include any entity whose predominant business is the providing of tax deferred, defined contribution, pension plans to public employees in accordance with Sections 403(b) and 457 of the Internal Revenue Code. A "home loan" has the meaning set forth in Chapter 5.33 of the Oakland Municipal Code.

SECTION 2. Except as specifically amended herein, all other provisions in Ordinance No. 12066 C.M.S. shall remain in full force and effect.

SECTION 3. The record before this Council relating to this Ordinance and supporting the findings made herein includes, without limitation, the following:

- A. All staff reports and legal opinions produced by or on behalf of the City with respect to predatory lending practices and this Ordinance, and other documentation and information attached to or cited in those reports or cited in this Ordinance;
- B. The ACORN study and the HUD/Treasury report;

- C. All oral and written information received by City staff and the City Council including its committees before and during the consideration of this Ordinance, including public comments and testimony; and
- D. All matters of common knowledge and all official enactments and acts of the City, such as the Oakland City Charter and all applicable state and federal laws, rules and regulations.

SECTION 4. The recitals contained in this Ordinance are true and correct and are an integral part of the Council's decision.

SECTION 5. The custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are: (a) the Community and Economic Development Agency, Housing and Community Development Division, 250 Frank H. Ogawa Plaza, 5th floor, Oakland, California; and (b) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, California.

SECTION 6. The City Manager and his or her designee is authorized to adopt rules and regulations consistent with this Ordinance as needed to implement this Ordinance, and to make such interpretations as he or she considers necessary to implement the policies adopted under this Ordinance, and is authorized to take whatever other action is necessary or appropriate with respect to these policies consistent with this Ordinance and its basic purpose.

SECTION 7. The provisions of this Ordinance are severable, and if any clause, sentence, paragraph, provision, or part of this Ordinance, or the application of this Ordinance to any person, is held to be invalid or preempted by state or federal law, such holding will not impair or invalidate the remainder of this Ordinance.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2001

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, CHANG, MAYNE, NADEL, REID, SPEES, WAN, AND PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

**AN ORDINANCE AMENDING ORDINANCE NO. 12066 C.M.S., THE
LINKED BANKING SERVICES ORDINANCE, TO REQUIRE LENDERS TO
CERTIFY THAT NEITHER THEY NOR THEIR AFFILIATES ENGAGE IN
PREDATORY LENDING PRACTICES**

NOTICE AND DIGEST

This Ordinance amends Ordinance No. 12066 C.M.S., the "Linked Banking Ordinance," to add the requirement that lenders who seek to do certain business with the City or participate in projects or programs that involve the City in certain ways must certify that neither they nor their lender affiliates have engaged in certain predatory lending practices for home loans in the City of Oakland. This Ordinance also makes certain findings in support of its enactment.