Legislation Details (With Text)

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				In control:	Committee on Consumer Affairs
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Title: A Local Law to amend the New York city charter and the administrative code of the city of New York, in relation to prohibiting the City from doing business with institutions that engage, directly or indirectly, in predatory lending practices, and to regulate the participation of home improvement contractors in the home-loan market.

Sponsors: Gifford Miller, James Sanders, Jr., Philip Reed, Hiram Monserrate, Leroy G. Comrie, Jr., Joseph P. Addabbo, Jr., Maria Baez, Charles Barron, Tracy L. Boyland, Yvette D. Clarke, James E. Davis, Bill De Blasio, Eric N. Gioia, Robert Jackson, John C. Liu, Margarita Lopez, Michael E. McMahon, Bill Perkins, Christine C. Quinn, Domenic M. Recchia, Jr., Joel Rivera, Ruben Diaz, Erik Martin Dilan, Lewis A. Fidler, Simcha Felder, Helen D. Foster, James F. Gennaro, Melinda R. Katz, G. Oliver Koppell, Miguel Martinez, Michael C. Nelson, Diana Reyna, Larry B. Seabrook, Jose M. Serrano, Kendall Stewart, Peter F. Vallone, Jr., Albert Vann, Gale A. Brewer, Alan J. Gerson, Betsy Gotbaum, Helen Sears

Indexes:

Attachments: 1. Committee Report 4/1, 2. Hearing Transcript 4/1, 3. Committee Report 5/6, 4. Hearing Transcript 5/6, 5. Committee Report 7/9, 6. Hearing Transcript - 7/9, 7. Committee Report - 9/4, 8. Hearing Transcript 9/4, 9. Hearing Transcript - Stated Meeting, 10. Committee Report 11/13, 11. Hearing Transcript - Stated Meeting - 11/20, 12. Fiscal Impact Statement, 13. Local Law

Date	Ver.	Action By	Action	Result
3/13/2002	*	City Council	Introduced by Council	
3/13/2002	*	City Council	Referred to Comm by Council	
4/1/2002	*	Committee on Consumer Affairs	Hearing Held by Committee	
4/1/2002	*	Committee on Consumer Affairs	Laid Over by Committee	
4/22/2002	*	Committee on Consumer Affairs	Hearing Held by Committee	
4/22/2002	*	Committee on Consumer Affairs	Deferred	
5/6/2002	*	Committee on Consumer Affairs	Hearing Held by Committee	
5/6/2002	*	Committee on Consumer Affairs	Laid Over by Committee	
5/30/2002	*	Committee on Consumer Affairs	Hearing Held by Committee	
5/30/2002	*	Committee on Consumer Affairs	Deferred	
7/9/2002	*	Committee on Consumer Affairs	Laid Over by Committee	
7/9/2002	*	Committee on Consumer Affairs	Hearing Held by Committee	
9/4/2002	*	Committee on Consumer Affairs	Hearing Held by Committee	
9/4/2002	*	Committee on Consumer Affairs	Amendment Proposed by Comm	
9/4/2002	A	Committee on Consumer Affairs	Approved by Committee	Pass
9/4/2002	*	Committee on Consumer Affairs	Amended by Committee	

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9/12/2002	A	City Council	Laid Over by Council	
9/25/2002	A	City Council	Approved by Council	Pass
9/25/2002	A	City Council	Sent to Mayor by Council	
10/23/2002	A	Mayor	Vetoed by Mayor	
10/24/2002	A	City Council	Recved from Mayor by Council	
11/13/2002	A	Committee on Consumer Affairs	Hearing Held by Committee	
11/13/2002	A	Committee on Consumer Affairs	Approved by Committee	Pass
11/20/2002	A	City Council	Overridden by Council	Pass

Proposed Int. No. 67-A

By The Speaker (Council Member Miller), Council Members Sanders, Reed, Monserrate, Comrie, Addabbo, Baez, Barron, Boyland, Clarke, Davis, DeBlasio, Gioia, Jackson, Liu, Lopez, McMahon, Perkins, Quinn, Recchia, Rivera, Diaz, Dilan, Fidler, Felder, Foster, Gennaro, Katz, Koppell, Martinez, Nelson, Reyna, Seabrook, Serrano, Stewart, Vallone, Vann, Brewer, Gerson and the Public Advocate (Ms. Gotbaum); also Council Member Sears

A Local Law to amend the New York city charter and the administrative code of the city of New York, in relation to prohibiting the City from doing business with institutions that engage, directly or indirectly, in predatory lending practices, and to regulate the participation of home improvement contractors in the home-loan market.

Be it enacted by the Council as follows:

Section 1. Declaration of legislative findings and intent. The subprime lending industry has grown rapidly in the last few years, increasing almost tenfold since 1993. Assisted by unscrupulous mortgage brokers and home improvement contractors, some abusive subprime lenders aggressively market high-cost home loans that borrowers are unable to repay, and engage in other unfair or fraudulent credit practices that are stripping families and communities of the equity they have in their homes. These practices are commonly referred to as "predatory lending."

Predatory lending practices, as documented by the United States Departments of Housing and Urban Development and Treasury Task Force 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 the disclosure of loan terms and loan settlements; 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 to defer payments; permitting acceleration of loans at lenders' discretion; and increasing interest rates upon default.

These practices can lock borrowers into high-rate loans even when they qualify for lower rates; strip equity from borrowers' homes; lead to impoverishment as borrowers pay thousands and tens of thousands of dollars in excessive costs, while owning less and less of their homes; and lead to increased foreclosures with profoundly damaging consequences for both families and neighborhoods.

Because of increased property values and home equity, some New York residents in low-income areas are "asset rich and cash poor" and are thus prime targets for predatory lending practices. In particular, it has been documented that subprime lending is heavily concentrated in lower-income and minority areas of the City of New York, which can lead to a significant economic drain on lower-income families and communities throughout the City.

The Council of the City of New York finds that the City should not encourage or support predatory lending, which damages the economic health of our City and its residents, by doing business with institutions that engage, directly or indirectly, in predatory lending practices. The Council finds that the City should not do business with institutions that adversely impact City revenues by siphoning resources from communities, thereby decreasing City sales and property tax revenues, and that increase City expenditures necessary to assist residents that are impoverished by predatory lending. The Council further finds that the City should not permit home improvement contractors to steer borrowers to specific lenders.

Section 2. Title six of the administrative code of the city of New York is hereby amended by adding a new section 6-128, to read as follows:

Section 6-128. a. Definitions. For purposes of this section only, the following terms shall have the following meanings:

(1) "Affiliate" means any person that controls, is controlled by, or is under common control with another

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person, including any successors in interest. Control shall mean ownership of ten percent or more of any class of outstanding stock of a company or the power to direct or cause the direction of the management and policies of a person.

(2) "Annual Percentage Rate" means the annual percentage rate for a home loan calculated according to the provisions of the federal truth in lending act, as amended by the home ownership and equity protection act of 1994 (15 U.S.C. § l60l, et seq.), and its implementing regulations, as said statute or regulations may be amended from time to time.

(3) "Bona Fide Loan Discount Points" means discount points knowingly paid by the borrower, funded through any source, for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the loan, provided that the amount of the interest rate reduction purchased by the discount points is reasonably consistent with established industry norms and practices.

(4) "City Agency" means a city, county, borough, or other office, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.

(5) "Compliance Worksheet" means a form or forms contained in each file of a high-cost home loan as defined by this section provided by each lender certifying as to the presence or absence of each fact or circumstance that could give rise to the classification of the loan as a high-cost home loan, or a predatory home loan, including, without limitation, underwriter judgments as to the credit worthiness of the borrower for the loan and the tangible benefits to the borrower, the compensation paid directly or indirectly to the mortgage broker for the loan, if any, whether the high-cost home loan refinances a special mortgage and whether the high -cost home loan refinances another high-cost home loan made by the same lender or an affiliate of the lender.

(6) "Financial Institution" means a bank, savings and loan association, thrift, credit union, investment company, mortgage banker, mortgage broker, trust company, savings bank, securities broker, municipal securities broker, securities dealer, municipal securities dealer, securities underwriter, municipal securities

underwriter, investment trust, bank holding company, finance company or financial services holding company.

(7) "First-Lien Home Loan" means a home loan secured by a first lien on residential real property, a condominium unit or cooperative shares.

(8) "High-Cost Home Loan" means a home loan that meets or exceeds the threshold set forth in either subparagraph a or b of this definition:

(a) the total points and fees on the loan exceed four percent of the total loan amount if the total loan amount is fifty thousand dollars or more; or the greater of five percent of the total loan or one thousand five hundred dollars, if the total loan amount is less than fifty thousand dollars; provided that up to and including four bona fide loan discount points payable by the borrower in connection with the loan transaction shall be excluded from the calculation of the total points and fees payable by the borrower, but only if the interest rate from which the loan's interest rate will be discounted does not exceed by more than two percentage points the required net yield for a ninety-day standard mandatory delivery commitment for a reasonably comparable loan from either the federal national mortgage association or the federal home loan mortgage corporation, whichever is greater; or

(b) for a first-lien home loan, the annual percentage rate of the home loan at consummation of the transaction equals or exceeds six percentage points over the yield on United States treasury securities having comparable periods of maturity to the loan maturity, measured as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the lender; or for a junior -lien home loan, the annual percentage rate of the home loan at consummation of the transaction equals or exceeds eight percentage points over the yield on United States treasury securities having comparable periods of maturity to the loan maturity, measured as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the lender. For purposes of subparagraph b of this definition, if the terms of the home loan offer any initial or introductory period, and the annual percentage rate is less than that which will apply after the end of such initial or introductory period, then

the annual percentage rate that shall be taken into account for purposes of this section shall be the rate that is calculated and disclosed on the initial disclosure statement required under section 226.6 of title 12 of the code of federal regulations for the period after the initial or introductory period.

(9) "Home Loan" means a residential mortgage, other than a reverse mortgage transaction, but including an open-end line of credit, in which:

(a) the borrower is a natural person;

(b) the loan is secured by a mortgage on real estate upon which there is located or there is to be located a structure or structures intended principally for occupancy by from one to four families, or by a residential condominium or by a cooperative unit, or shares issued in respect thereof, which is or will be occupied by the borrower as the borrower's principal residence;

(c) the property is located in the city of New York;

(d) the principal amount of the loan does not exceed the greater of:

(i) the conforming loan size limit for a comparable dwelling as established from time to time by the federal national mortgage association; or

(ii) three hundred thousand dollars;

(e) the loan is primarily for personal, family or household purposes; and

(f) the loan is entered into on or after the date this section takes effect.

(10) "Junior-Lien Home Loan" means a home loan secured by a lien on residential real property, condominium unit or cooperative shares that is junior in priority to a first-lien home loan with respect to such property.

(11) "Lender" means any person that extends, purchases or invests in, directly or indirectly, including through collective investment or securitization entities, one or more home loans, or any person that arranges, directly or indirectly, including through collective investment or securitization, for the extension, purchase of or investment in one or more home loans, including, but not limited to, the securities trust trustee and underwriter,

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and any mortgage broker with respect to home loans. However, for purposes of this definition, a lender shall not be deemed to be:

(a) collective investment entities, including, without limitation, investment companies as defined under the Investment Company Act of 1940, hedge funds, bank collective trust funds, offshore funds and similar entities that are not created to and do not acquire pools of mortgage loans, or issue securities based on and backed by pools of mortgage loans, and any passive investor in the interests created therein that exercises no discretion regarding such interests other than to buy, hold or sell them;

(b) purchasers of mortgage loans or mortgage related securities where the seller is obligated by written agreement and, in fact, intends to repurchase all the loans or securities within 180 days of such sale;

(c) lenders whose interest in high-cost home loans is limited to a security interest or who acquire title as a result of the foreclosure of such security interest, except that such lenders shall not extend credit to a person found to be a predatory lender as defined by this section;

(d) securities broker dealers that trade in but otherwise are not involved in any material respect in the securitization of the underlying mortgages; or

(e) any passive investor in securities or interests in securities based on or backed by a pool of high-cost home loans that exercises no discretion regarding the securities other than to buy, hold or sell them.

(12) "Mortgage Broker" means any person engaged in the business of soliciting, processing, placing, or negotiating home loans who functions as an intermediary for compensation, paid directly or indirectly, between the borrower and the lender in the making of a home loan.

(13) "Person" means any natural person, domestic corporation, foreign corporation, association, syndicate, joint stock company, partnership, joint venture or unincorporated association, or other like organization, engaged in a business or commercial enterprise.

(14) "Points and Fees" means:

(a) all items listed in 15 U.S.C. sections 1605(a)(1) through (4), except interest or the time-price

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differential;

(b) 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;

(c) 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;

(d) the premium of any single-premium credit life, credit disability, credit property, credit unemployment or other life or health insurance, including any payments for debt cancellation or suspension, except that insurance premiums calculated and paid on a monthly basis shall not be included; and

(e) all prepayment fees or penalties that are charged to the borrower if the loan refinances a prior loan made by the same lender or an affiliate of the lender.

(15) "Predatory Lender" means:

(a) a lender that, in the aggregate for such lender and its affiliates, extends, purchases or invests in, during a twelve-month period, the lesser of:

(i) ten individual predatory loans, or

(ii) any number of predatory loans constituting five percent of the total number of home loans made, purchased or invested in during such twelve-month period by such lender and its affiliates.

(b) Notwithstanding subparagraph a of this definition, any lender shall not be a predatory lender if:

(i) the lender obtains the approval of the comptroller of the city of New York for a plan to discontinue the practice of making, purchasing or otherwise investing in predatory loans by the lender and its affiliates, and the lender and its affiliates then completely cease making, purchasing or otherwise investing in predatory loans within 60 days after the plan is approved by the comptroller; and

(ii) the lender and its affiliates remain in compliance with such plan; provided that no more than one

plan may be submitted to the comptroller on behalf of any lender, except a subsequent plan may be submitted to the comptroller:

(A) if ten or more years have passed since the same lender submitted a prior plan pursuant to this section; or

(B) by a person solely in connection with the acquisition of a predatory lender after the date of submission of a prior plan if such plan will discontinue the practice of making, purchasing or otherwise investing in predatory loans by the acquired predatory lender within 90 days of such acquisition; or

(iii) when directly or indirectly purchasing or investing in high-cost home loans, or arranging for the purchase or investment in high-cost home loans by collective investment or securitization, the lender reasonably believes, after reasonable investigation, conducted by or on behalf of such lender, based upon reasonable procedures consistent with industry practice for the review of the terms and other characteristics of home loans in connection with the purchase or securitization of, or investment in, high-cost home loans generally, that the home loans purchased or invested in do not constitute predatory loans as defined by this section. For purposes of this clause iii, "procedures consistent with industry practice" shall include, but not be limited to, a random statistical sample of not less than ten percent of the home loans for real property located in the city of New York included in the home loan pool to be securitized or purchased, except that if the lender has an established business relationship with the originator or wholesaler of the home loans being purchased or securitized, as demonstrated by the lender having completed not less than four transactions with said entity during the preceding two years, the lender may conduct a random statistical sample of not less than five percent of the home loans described above. Furthermore, for purposes of this clause, the lender may rely on a complete Compliance Worksheet, as defined in this section, to establish a reasonable belief that a high-cost home loan is not a predatory loan as defined in subparagraphs a, b, d (only with respect to the lender or an affiliate not having advised or recommended that the borrower obtain a waiver of home loan counseling), o, p and q of paragraph 16 of this subdivision; or

(iv) the lender is an exempt organization qualified under section 501(c)(3) of the internal revenue code, and operates to remediate predatory loans with the approval of, or in association with, a city, state or federal agency.

(16) "Predatory Loan" means any high-cost home loan with one or more of the following characteristics:

(a) Proceeds of the high-cost home loan are used to pay all or part of an existing home loan and the borrower does not receive a reasonable and tangible benefit from the new home loan considering all the circumstances, including the terms of both the new and existing home loan and any other debt being refinanced by the new loan, the cost of the new home loan, and the borrower's circumstances. For purposes of this subparagraph, there shall be a presumption that the borrower has received a reasonable and tangible benefit if, at the time the refinance loan is made, any of the following is true:

(i) 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, and this reduction will continue for at least thirty-six months after the refinance;

(ii) 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 five years for the borrower to recoup the points and fees charged for the refinance; or

(iii) the refinance loan is necessary to prevent default under an existing home loan or other secured debt of the borrower, provided that the lender for the refinanced loan is not the same as or an affiliate of the lender for the existing home loan or other secured debt.

(b) The lender does not reasonably believe at the time it makes the high-cost home loan that the borrower will be able to make the scheduled payments, based upon a consideration of the borrower's current and expected income, current obligations, employment status, and other financial resources (other than equity in the home being financed). There shall be a presumption that the borrower is able to make the scheduled

payments if, at the time the loan is made:

(i) the scheduled monthly payments (after giving effect to any index adjustments with respect to the loan) on the loan (including principal, interest, taxes, insurance, assessments, condominium fees, cooperative maintenance expenses) combined with the scheduled payments for all other debt, do not exceed fifty percent of the borrower's documented and verified monthly gross income; and

(ii) the borrower has sufficient residual income as defined in the guidelines established in section 36.4337(e) of title 38 of the code of federal regulations and United States department of veteran administration form 26-6393 to pay essential monthly expenses after paying the scheduled monthly payments and any additional debt; or

(iii) if clauses (i) or (ii) of this subparagraph do not apply, the home loan shall be a predatory loan unless the lender determines and documents prior to the closing of the loan that the making of the loan is justified based upon specific compensating factors, such as the borrower's long-term credit history, the borrower's demonstrated ability to make payments under comparable or greater debt obligations to income ratios, the conservative use of credit standards, the borrower's significant liquid assets or other reasonable factors.

(c) The lender finances points and fees, as defined in paragraph 14 of subdivision a of this section, in an amount that exceeds four percent of the total loan amount for a closed-end high-cost home loan or four percent of the maximum line of credit amount for an open-end line of credit.

(d) Prior to making the high-cost home loan, the lender does not receive a written certification from an independent housing or credit counselor, approved by the United States department of housing and urban development, that the borrower received counseling on the advisability of the loan transaction and the appropriateness of the loan for the borrower, or waived the loan counseling. Provided that a borrower may waive the loan counseling required pursuant to this subparagraph only by contacting such an 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 a notarized written statement to the counselor that he or she has elected to waive the loan counseling, and no such waiver shall be valid if the lender or any of its affiliates has recommended or advised the borrower to make such waiver.

(e) More than two periodic payments required under the high-cost home loan are consolidated and paid in advance from the loan proceeds provided to the borrower other than a loan issued by or guaranteed by an instrumentality of the United States or of any state or any city agency, such as loan products offered by the United States department of veterans administration, fair housing administration or state of New York mortgage agency.

(f) Default by the borrower triggers an interest rate increase. This provision does not apply to periodic interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan agreement, provided the change in the interest rate is not occasioned by the event of a default or the acceleration of the indebtedness.

(g) The lender, at its sole discretion, may accelerate the indebtedness and demand repayment of the entire outstanding balance of a high-cost home loan. This prohibition does not apply when repayment of the loan has been accelerated by bona fide default, pursuant to a due-on-sale provision, or pursuant to some other provision of the loan agreement unrelated to the payment schedule, such as bankruptcy or receivership.

(h) The payment schedule for the high-cost home loan requires regular periodic payments that cause the principal balance to increase, except as a result of a temporary forbearance sought by the borrower.

(i) There is a required scheduled payment that is twice as large as the average of the earlier scheduled payments, unless such increases are justified by a reamortization as a result of a new withdrawal in an open-ended line of credit. This provision does not apply:

(i) when the payment schedule is adjusted to the seasonal or irregular income of the borrower; or

(ii) if the purpose of the loan is a construction bridge loan connected with the construction of a dwelling intended to become the borrower's principal residence.

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(j) The loan agreement imposes a penalty or fee on the borrower in violation of section 5-501(3)(b) of the general obligations law or section 393(2) of the banking law for paying the balance of the loan, in whole or in part.

(k) The loan agreement contains a mandatory arbitration clause that is oppressive, unfair, unconscionable, or substantially in derogation of the rights of the borrower.

(l) Any of the proceeds of the high-cost home loan are paid to either a home improvement contractor that is an affiliate of the lender or any home improvement contractor other than:

(i) by an instrument payable solely to the borrower; or

(ii) at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the lender and the contractor prior to the disbursement.

(m) The high-cost home loan finances any credit life, credit disability, credit property, credit unemployment, health or life insurance, or proceeds of the loan are used to make payments pursuant to debt cancellation or suspension agreements. Insurance premiums calculated and paid on a monthly basis shall not be considered financed by the home loan.

(n) The borrower is charged any fees or other charges to modify, renew, extend or amend a high-cost home loan or to defer any payment due under the terms of the loan if, after the modification, renewal, extension or amendment, the loan is still a high-cost home loan or, if no longer a high-cost home loan, the annual percentage rate has not been decreased by at least two percentage points. For purposes of this subparagraph, fees shall not include interest that is otherwise payable and consistent with the provisions of the loan documents. This subparagraph shall not apply to a home loan where the lender is charging points and fees in connection with any additional proceeds received by the borrower in connection with the modification, renewal, extension or amendment (over and above the current principal balance of the existing high-cost home loan) provided that the points and fees charged on the additional sum must reflect the lender's typical point and

fee structure for high-cost home loans.

(o) The high-cost home loan refinances an existing home loan that is a special mortgage originated, subsidized or guaranteed by or through a state, tribal or local government, or nonprofit organization, which bears either a below-market interest rate at the time of origination, or has nonstandard payment terms beneficial to the borrower, such as payments that vary with income, are limited to a percentage of income, or where no payments are required under specified conditions, and where, as a result of the refinancing, the borrower would lose one or more of the benefits of the special mortgage, unless the lender is provided prior to the loan closing documentation by an independent housing or credit counselor, approved by the United States department of housing and urban development, or the lender who originally made the special mortgage, that a borrower has received home loan counseling on the advantages and disadvantages of the refinancing. There shall be no waiver of the home loan counseling requirement of this subparagraph.

(p) The lender charges points and fees on a high-cost home loan that refinances a prior high-cost home loan extended by the same lender or an affiliate of the lender and the refinancing occurs within five years of the extension of the prior home loan.

(q) The home loan is secured as a result of fraudulent or deceptive marketing or sales efforts.

(r) The home loan 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. §l60l, et seq.), the federal real estate settlement procedures act of 1974 (12 U.S.C. §2601, et seq.), or any regulations implementing these statutes, or the restrictions and limitations on high-cost home loans in the general regulations of the New York state banking board (3 NYCRR Part 41), as these statutes and these regulations may be amended from time to time.

b. City Financial Assistance. (1) No city agency shall approve, grant, award, pay, distribute or issue any city financial assistance to a financial institution where the financial institution or an affiliate of the financial institution is a predatory lender as defined by this section.

(2) As a condition to receiving any form of financial assistance from a city agency, a financial institution

shall provide a statement to the city agency certifying that neither the financial institution nor any of its affiliates is or will become a predatory lender. The statement shall be certified by the chief executive or chief financial officer of the institution, or the designee of any such person, and shall be made a part of the award, grant or assistance agreement. A violation of any provision of the certified statement shall constitute a material violation of the conditions of the award, grant or assistance agreement.

(3) After the approval or issuance of an award, grant, or any other financial assistance, the comptroller may conduct an investigation pursuant to subdivision f of this section to determine whether a financial institution or any of its affiliates is a predatory lender as defined by this section. Upon determining that the financial institution or its affiliate is a predatory lender, and where no cure is effected or corrective plan filed pursuant to subparagraph b of paragraph three of subdivision f of this section and approved by the comptroller, the comptroller shall provide evidence to the city agency that approved or issued the financial assistance that the financial institution or its affiliate is a predatory lender and request in writing that the city agency take the appropriate actions to rescind or otherwise void the award, grant or assistance. Upon receipt of the comptroller's request, the city agency shall then make a finding whether or not the financial institution or its affiliate is a predatory lender in violation of this section. Upon making a finding of violation, the city agency shall take such action as may be appropriate and provided for by law, rule or contract, including, but not limited to: declaring the financial institution in default of the award, grant or financial assistance agreement; imposing sanctions; recovering the funds advanced; or requiring repayment of any taxes or interest abated or deferred. Within sixty days of receiving notification from the comptroller, the city agency shall place a written explanation in the financial institution's file regarding any action the city agency has taken pursuant to this section, or the reasons no action was taken. Copies of the written explanation shall be immediately forwarded to the comptroller and to the city council. Nothing in this paragraph shall preclude a city agency, in the absence of a request from the comptroller, from investigating and making a determination whether or not a financial institution or its affiliate is a predatory lender in violation of this section.

(4) For the purposes of this section, city financial assistance shall include, but not be limited to, tax abatements (including, but not limited to, abatements of property, sales or mortgage recording taxes), cash payments or grants.

(5) Nothing in this section shall operate to impair any contract or agreement regarding financial assistance in effect on the date this section takes effect, except that renewal, amendment or modification of such contract or agreement occurring on or after the enactment of this section shall be subject to all conditions specified in this section.

(6) Notwithstanding any city laws, rules or regulations to the contrary, any financial institution or its affiliate that has been found by a city agency to be a predatory lender shall be prohibited from applying for or receiving any city financial assistance from any city agency for a period of three years from the date of the last disbursement or approval of an award, grant or other financial assistance, or from the date of the finding, whichever is later.

c. City Contracts. (1) No city agency shall enter into a contract for goods or services with a financial institution or an affiliate of a financial institution where either the financial institution or its affiliate is a predatory lender as defined by this section.

(2) As a condition of contracting with a city agency, the financial institution or its affiliate shall provide a statement to the city agency certifying that neither the financial institution nor any of its affiliates is or will become a predatory lender. The statement shall be certified by the chief executive or chief financial officer of the institution or affiliate, or the designee of any such person, and shall be made a part of the contract or agreement. A violation of any provision of the certified statement shall constitute a material breach of the contract.

(3) During the period of a city contract, the comptroller may conduct an investigation pursuant to subdivision f of this section to determine whether a financial institution or one of its affiliates is a predatory lender as defined by this section. Upon determining that the financial institution or its affiliate is a predatory

lender, and where no cure is effected or corrective plan filed pursuant to subparagraph b of paragraph three of subdivision f of this section and approved by the comptroller, the comptroller shall provide evidence to the city agency that issued the contract that the financial institution or its affiliate is a predatory lender and request in writing that the city agency take the appropriate actions to rescind or otherwise void the contract. Upon receipt of the comptroller's request, the city agency that issued the contract shall then make a finding whether or not the financial institution or its affiliate is a predatory lender in violation of this section. Upon making a finding of violation, the city agency shall take such action as may be appropriate and provided for by law, rule or contract, including, but not limited to: declaring the financial institution or the affiliate in default; arranging for the alternate procurement of the goods or services to which such contract relates in such manner as to prevent any loss to the city agency that otherwise might result from the immediate cessation of the contract; imposing sanctions; or recovering damages. Within sixty days of receiving notification from the comptroller, the city agency shall place a written explanation in the financial institution's or affiliate's contract file regarding any action the city agency has taken pursuant to this section, or the reasons no action was taken. Copies of the written explanation shall be immediately forwarded to the comptroller and to the city council. Nothing in this paragraph shall preclude a city agency, in the absence of a request from the comptroller, from investigating and making a determination whether or not a financial institution or its affiliate is a predatory lender in violation of this section.

(4) This subdivision shall not apply to any contract evidencing or establishing the terms of any debt obligations issued by or on behalf of the city agency, but shall apply to contracts with respect to agency, underwriting and other services provided in connection with any issuance thereof.

(5) Nothing in this section shall operate to impair any contract in effect on the date this section takes effect, except that renewal, amendment or modification of such contract occurring on or after the enactment of this section shall be subject to all conditions specified in this section.

(6) Nothing in this section shall be construed to limit the authority to cancel or terminate a contract,

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deny or withdraw approval to perform a subcontract or provide supplies, issue a non-responsibility finding, issue a non-responsiveness finding, deny a person or entity pre-qualification, or otherwise deny a person or entity city business.

(7) Notwithstanding any city laws, rules or regulations to the contrary, any financial institution or affiliate that has been found by a city agency to be a predatory lender shall be prohibited from contracting with any city agency for a period of three years from the termination date of the contract or the date of the finding, whichever is later.

d. Deposits. (1) A financial institution that is a predatory lender as defined by this section, or that has affiliates that are predatory lenders, shall not be a depository for the funds of any city agency.

(2) As a condition for being a depository of city agency funds, the financial institution shall provide a statement to the city banking commission certifying that neither the financial institution nor any of its affiliates is or will become a predatory lender. The statement shall be certified by the chief executive or chief financial officer of the institution, or the designee of any such person, and shall constitute a material provision of the deposit contract or agreement.

(3) The comptroller shall have the authority to investigate a financial institution that is a depository for city funds or its affiliates pursuant to subdivision f of this section to determine whether the financial institution or any of its affiliates is a predatory lender as defined by this section. Upon determining that the financial institution or its affiliate is a predatory lender, and where no cure is effected or corrective plan filed pursuant to subparagraph b of paragraph three of subdivision f of this section and approved by the comptroller, the comptroller shall provide evidence to the banking commission that the financial institution or its affiliate is a predatory lender and request that the banking commission revoke the designation of the financial institution as a depository pursuant to section 1524 of the city charter. The banking commission shall then make a finding whether the financial institution or its affiliate is a predatory lender pursuant to this section and is in violation of its certification pursuant to section 1524 (2)(a)(4) of the city charter. Upon making a finding of violation, the

banking commission shall take appropriate action to revoke the financial institution's or affiliate's designation as a depository of the funds of any city agency.

e. Investments. (1) The comptroller may, in his or her discretion, recommend that city moneys or funds not be invested or permitted to remain invested in the stocks, securities or other obligations of any financial institution that is a predatory lender or of an affiliate of a predatory lender.

(2) The comptroller, when investing city funds in a financial institution or an affiliate of the financial institution, may consider the institution or affiliate's compliance with federal, state and local laws or regulations governing predatory lending. The comptroller, in his or her discretion and in accordance with his or her sound investment judgment, may remove investments with financial institutions or their affiliates that fail to comply with such federal, state or local laws or regulation. Provided that in cases where the comptroller decides, in the exercise of his or her discretion and sound investment judgment, not to remove investments in a financial institution or its affiliate that is a predatory lender as defined by this section, the comptroller shall immediately place a written explanation in the financial institution or affiliate's file regarding the reasons for his or her decision not to remove the investments, and forward a copy of the written explanation to the city council.

f. Enforcement. (1) The comptroller shall have the authority to investigate whether financial institutions or their affiliates are predatory lenders as defined in this section.

(2) Whenever the comptroller has reason to believe that a financial institution or its affiliate has violated any provisions of this section, or upon a verified complaint in writing by an aggrieved borrower, the comptroller may conduct an investigation to determine whether a violation has occurred. The verified complaint shall, at a minimum, describe the violation and contain a release signed by the borrower authorizing the comptroller to obtain or otherwise gain access to all loan documents pertaining to the complaint and to any other records, files or information deemed necessary by the comptroller to conduct the investigation. An investigation by the comptroller may include, but is not limited to, reviewing information from regulatory or oversight agencies regarding lending or other activities of a financial institution as it relates to high-cost home

loans, and investigating verified complaints from borrowers that a financial institution has engaged in predatory lending practices.

(3) (a) Upon the commencement of an investigation, the comptroller shall notify the financial institution or affiliate in writing, and allow the financial institution or affiliate an opportunity to respond. If the financial institution or affiliate denies the allegations or fails to respond within thirty days of the receipt of written notice, the comptroller shall determine whether the financial institution has violated the provisions of this section.

(b) If the financial institution or affiliate has been found to have violated the provisions of this section, the financial institution or affiliate shall have thirty days to cure the violation or to submit to the comptroller for his or her approval a corrective plan to discontinue the predatory lending practices according to clauses i and ii of subparagraph b of paragraph fifteen of subdivision a of this section. Upon good cause shown, the comptroller may extend the initial thirty-day period up to an additional thirty days.

(c) If the financial institution or affiliate fails to cure the violation within the thirty days or to submit and obtain the comptroller's approval for a corrective plan pursuant to this section, the comptroller shall inform the appropriate city agency or the banking commission, as applicable, and request that it take action pursuant to either paragraph 3 of subdivision b, paragraph 3 of subdivision c, or paragraph 3 of subdivision d of this section. Until the comptroller gives notice to the applicable city agency or banking commission pursuant to this subparagraph, the comptroller shall hold confidential any information he receives, gathers, produces, collects or generates as a result of any investigation pursuant to this section. However, nothing herein shall restrict the comptroller from exchanging information with government agencies in the furtherance of an investigation pursuant to this section.

(4) Any person found to have made a false statement in a certification required under this section shall be liable to the city for a civil penalty of not less than $25,000 in addition to the other remedies that the city agency may have under this local law.

Section 3. Subdivision two of section 1524 of the charter of the City of New York is amended by adding a new subparagraph four to paragraph a and by amending paragraph b to read as follows:

§1524. Deposit Banks.

* * * *

2. a. [Except as provided in paragraph b of this subdivision, no] No bank or trust company shall be designated pursuant to this section unless:

* * * *

(4) it has certified that neither it nor any of its affiliates is or will become a predatory lender or an affiliate thereof, as such terms are defined in section 6-128 of the administrative code of the city of New York.

b. If the banking commission by a majority vote shall decide that [such policy not to discriminate] a requirement or condition contained in paragraph a of this subdivision has been violated after giving the bank or trust company an opportunity to be heard, then upon thirty days' notice to the bank or trust company such designation may be revoked.

Section 4. Section 20-393 of title twenty of the administrative code of the city of New York is amended by adding new subdivisions 17 and 18, to read as follows:

§20-393 Prohibited acts. The following acts are prohibited:

* * *

17. Notwithstanding any other provisions of this section, no person licensed under this subchapter shall, in connection with any home repair or home improvement contract, act as an agent for, or advertise, promote or arrange for the services of a lender or its affiliate to secure a home loan, as these terms are defined in section 6-128 of title 6 of the administrative code of the city of New York.

18. No contractor shall receive payment from the proceeds of a high-cost home loan except by an instrument payable solely to the borrower or at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the lender and the

contractor prior to disbursement.

Section 5. This local law shall take effect 90 days after its enactment.