

230-RICR-40-10-3

TITLE 230 – DEPARTMENT OF BUSINESS REGULATION

CHAPTER 40 – BANKING

SUBCHAPTER 10 – LENDING

PART 3 – Home Loan Protection Act

3.1 Authority

This Part is promulgated pursuant to the authority granted in R.I. Gen. Laws § 34-25.2-12.

3.2 Purpose

The purpose of this Part is to set forth procedures, interpretations, and clarifications in order to provide guidelines and requirements to Regulated Institutions as defined in R.I. Gen. Laws § 19-1-1 (unless otherwise exempt) and Lenders and Loan Brokers as defined in R.I. Gen. Laws § 19-14-1 to ensure compliance with and the promotion of the purposes of the provisions of R.I. Gen. Laws § 34-25.2-1 *et seq.* entitled Rhode Island Home Loan Protection Act (hereinafter referred to as "the Act"). The actions and information required by this Part are hereby declared to be necessary and appropriate to the public interest. This Part is promulgated to clarify requirements necessary in order to comply with the Act. This Part does not duplicate the requirements of the Act, but rather is a supplement to aid in the enforcement and understanding of certain components and requirements of the Act.

3.3 Severability

If any provision of this Part or the application thereof to any Person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality shall not affect other provisions or applications of this Part which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Part are severable.

3.4 Definitions

- A. Unless otherwise provided by this Part or unless the context clearly requires otherwise, terms used in this Part shall have the same meaning as the terms as defined in R.I. Gen. Laws Title 19 or the Act. To the extent that this Part references federal law, Regulated Institutions as defined in R.I. Gen. Laws § 19-1-1 (unless otherwise exempt) and Lenders and Loan Brokers as defined in R.I.

Gen. Laws § 19-14-1 are required to comply with all federal legal requirements in effect at the relevant time. The following terms are defined as follows:

1. "Affiliate" means any company that controls, is controlled by, or is under common control with another company as set forth in 12 U.S.C. § 1841.1
2. "Annual percentage rate" means the annual percentage rate for the loan calculated according to the provisions of 12 C.F.R. Part 226.
3. "Applicant" means a Person who applies for a Home Loan subject to the Act.
4. "Bona fide discount points" means an amount knowingly paid by the borrower for the express purpose of reducing, and which in fact does result in a bona fide reduction of, the interest rate applicable to the Home Loan; provided the undiscounted interest rate for the Home Loan does not exceed the conventional mortgage rate by two (2) percentage points for a Home Loan secured by a first lien, or by three and one-half (3.5) percentage points for a Home Loan secured by a lien other than a first mortgage. The amount of the interest rate reduction purchased by the discount points must be reasonably consistent with established industry norms and practices for secondary market mortgage transactions. For purposes of the Act it is presumed that a point is a bona fide loan discount point if it reduces the interest rate by a minimum of 25 basis points or $\frac{1}{4}$ of a point provided all other terms of the loan remain the same.
5. "Bona fide and reasonable fees" means the following fees are examples of fees that are considered to be bona fide and reasonable:
 - a. a tax payment service fee as evidenced by an invoice or substantially similar document from the tax payment service provider and the amount of the fee does not exceed the customary fee for such service; (R.I. Gen. Laws § 19-9-2 prohibits any mortgagee holding the mortgagor's funds in escrow for the payment of taxes from charging an annual "tax service fee" or other annual fee for ascertaining whether or not the real estate taxes have in fact been paid);
 - b. flood certification fees that do not exceed the amount charged by the flood certification service provider;
 - c. pest infestation fees that do not exceed the amount charged by the pest infestation inspector service provider;
 - d. flood determination fees that do not exceed the amount charged by the flood determination service provider;

- e. appraisal fees that do not exceed the amount charged by the appraiser;
- f. inspection fees relative to inspections performed prior to closing that do not exceed the amount charged by the inspection service provider;
- g. credit report fees that do not exceed the amount charged by the credit report service provider;
- h. survey fees that do not exceed the amount charged by the survey service provider;
- i. attorney fees that do not exceed the amount charged by the attorney;
- j. notary fees that do not exceed customary fees for such service and that do not exceed the amount charged by the notary service provider;
- k. escrow charges that do not exceed customary fees for such service and that do not exceed the amount charged by the escrow service provider;
- l. title insurance premium, fire and hazard insurance premiums, and flood insurance premiums for insurance that do not exceed the amount charged by the insurance provider. Premiums for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property includes single interest insurance if the insurer waives all right of subrogation against the consumer. In order for any of the fees specified in the above paragraph to be excluded fees under the provisions of R.I. Gen. Laws § 34-25.2-4(o)(9) the following conditions must be met:
 - (1) The insurance coverage may be obtained from a person of the consumer's choice and this fact is disclosed. (A Creditor may reserve the right to refuse to accept, for reasonable cause, an insurer offered by the consumer); and
 - (2) If the coverage is obtained from or through the Creditor, the premium for the initial term of insurance coverage shall be disclosed. If the term of insurance is less than the term of the transaction, the term of insurance shall also be disclosed. The premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under 12 C.F.R. § 226.17(g), and certain closed-end credit transactions involving an insurance

plan that limits the total amount of indebtedness subject to coverage.

6. "Compensation" means payments, costs, benefits, and/or fees whether paid to a Regulated Institution as defined in R.I. Gen. Laws § 19-1-1 (unless otherwise exempt) or Lender or Loan Broker as defined in R.I. Gen. Laws § 19-14-1 in connection with a Home Loan.
7. "Composite rate" means, for any Home Loan with a variable rate feature, a composite Annual Percentage Rate, calculated taking into account the initial interest rate for as long as it remains in effect and adjusting the interest rate in accordance with the loan documents, including any periodic and maximum caps on adjustments, until the interest rate charged is a Fully Indexed Rate. For any Previous Loan, the Composite Rate means a composite Annual Percentage Rate similarly calculated, taking into account the interest rate in effect on the fifteenth (15th) day of the month immediately preceding the month in which the loan application was received by the lender and adjusting the interest rate in accordance with the Previous Loan documents, including any periodic and maximum caps on adjustments, until the interest rate charged is a Fully Indexed Rate. The principles used in calculating the Annual Percentage Rate for a loan with an adjustable rate feature pursuant to 12 C.F.R. § 226.17(c)(1) shall be applied in calculating the Composite Rate.
8. "Consummation" means the point in time at which all parties execute the promissory note, Consummation typically occurs at closing.
9. "Conventional mortgage rate" means the most recently published annual yield on conventional mortgages published by the Board of Governors of the Federal Reserve System, as published in statistical release H.15 or any publication that may supersede it, as of the applicable time set forth in 12 C.F.R. § 226.32(a)(1)(i).
10. "Creditor" means any Person who Regularly Makes Available a Home Loan and shall include a loan broker.
11. "Excluded points and fees" means the items delineated in R.I. Gen. Laws § 35-25.2-4(o)(9) for purposes of calculating the Total Points and Fees threshold contained in the Act.
 - a. Points and Fees up to and including one percent (1%) of the total Home Loan amount attributable to bona fide fees paid to a federal or state government agency that insures payment of some portion of a Home Loan plus an amount not to exceed two percent (2%) of the total new Home Loan amount attributable to a Bona Fide Discount Points or a conventional prepayment penalty. In no case shall the total Excluded Points and Fees in connection with a Home

Loan exceed three percent (3%) of the total Home Loan amount; "Excluded Points and Fees" are limited to 3% of the total new Home Loan amount regardless whether the terms of the new Home Loan include a 2% percent prepayment penalty as well as 2% Bona Fide Discount Points. To illustrate, if the total new Home Loan amount is \$100,000 and the new Home Loan terms include Bona Fide Discount Points of 2%, a prepayment penalty of 2%, and bona fide fees paid to a federal or state government agency that insures payment of some portion of the new Home Loan that total 2% of the new Home Loan amount, the total amount of Excluded Points and Fees permitted under this section shall not exceed \$3,000 (\$100,000 x .03).

- b. 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
 - c. Bona Fide and Reasonable Fees paid to a Person other than the Creditor or an Affiliate of the Creditor for the following: fees for tax payment services; 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; notary fees; escrow charges, so long as not otherwise included under R.I. Gen. Laws § 34-25.2-4(o)(1); title insurance premiums; and fire and hazard insurance and flood insurance premiums, provided that the conditions in 12 C.F.R. § 226.4(d)(2) are met;
 - d. The three percent (3%) limitation contained in § 3.4(A)(11)(a) of this Part shall not apply to the taxes and fees enumerated in § 3.4(A)(11)(b) and (c) of this Part.
12. "Flipping a home loan" means the making of a Home Loan to a borrower that refinances a Previous Loan that was consummated within the prior sixty (60) months when the new loan does not have reasonable, tangible net benefits in accordance with R.I. Gen. Laws § 34-25.2-4(q) to the borrower considering all of the circumstances, including, but not limited to, the terms of both the new and refinanced loans, the cost of the new Home Loan, and the borrower's circumstances. For purposes of this definition, one thousand eight hundred twenty-five (1,825) days shall constitute sixty (60) months, irrespective of the fact that there may be a leap year within said period.
13. "Fully indexed rate" means, for any Home Loan, or a Previous Loan with a variable rate feature, the sum of a recent value of the index used under the loan documents for interest rate adjustments plus the margin used for interest rate adjustments. For a Home Loan, a recent value of the index is

one in effect on the fifteenth (15th) day of the month immediately preceding the month in which the loan application was received by the lender. For a Previous Loan, a recent value of the index is one in effect on the fifteenth (15th) day of the month immediately preceding the month in which the loan application was received by the lender. For refinances, the date used for the recent value of the index should be the same for the Previous Loan and the Home Loan that refinances the Previous Loan.

14. "High-Cost home loan" means a Home Loan in which the terms of the loan meet or exceed one or more of the thresholds as defined in R.I. Gen. Laws § 34-25.2-4(r).
15. "Home loan" means a loan, including an open-end credit plan, other than a reverse mortgage transaction where the loan is secured by:
 - a. a mortgage or deed of trust on real estate in the State of Rhode Island upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one (1) to four (4) families which is or will be occupied by a borrower as the borrower's principal dwelling; or
 - b. a security interest on a manufactured home located or to be located within the State of Rhode Island which is or will be occupied by a borrower as borrower's principal dwelling.
16. "Negative amortization" means a gradual increase in mortgage debt that occurs when the monthly payment is insufficient to cover the interest due, and the balance owed keeps increasing.
17. "New note rate" means the rate of interest payable by a borrower on the new Home Loan. If the new Home Loan is an adjustable rate Home Loan, the New Note Rate shall be the Composite Rate.
18. "Person" means (as defined in R.I. Gen. Laws § 19-1-1(10)) individuals, partnerships, corporations, limited liability companies or any other entity however organized.
19. "Points and fees" means:
 - a. All items included in the definition of finance charge in 12 C.F.R. § 226.4(a) and 12 C.F.R. § 226.4(b) except interest or the time price differential;
 - b. All items described in 12 C.F.R. § 226.32(b)(1)(iii);
 - c. All compensation paid directly by a borrower to a loan broker including a loan broker that originates a loan in its own name in a

table-funded transaction; direct Compensation shall include any fees or benefit paid by a borrower to a loan broker.

- d. All compensation paid indirectly to a loan broker from any source other than the borrower in excess of one percentage point of the total loan amount, including a loan broker that originates a loan in its own name in a table-funded transaction; Indirect Compensation shall include any fees or benefit paid to a loan broker from any source other than the borrower.
- e. The cost of all premiums financed by the Creditor, directly or indirectly for any credit life, credit disability, credit unemployment or credit property insurance, or any other life or health insurance, or any payments financed by the Creditor directly or indirectly for any debt cancellation or suspension agreement or contract, except that insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis shall not be considered financed by the Creditor;
- f. The maximum prepayment fees and penalties that may be charged or collected under the terms of the loan documents;
- g. All prepayment fees or penalties that are incurred by the borrower if the Home Loan refinances a Previous Loan originated or currently held by the same Creditor or an Affiliate of the Creditor; and
- h. For open-end Home Loans, the Points and Fees are calculated by adding the total Points and Fees known at or before closing, including the maximum prepayment penalties which may be charged or collected under the terms of the loan documents, plus the minimum additional fees the borrower would be required to pay to draw down an amount equal to the total credit line. This section should be construed to include the minimum fee that can be charged pursuant to the provisions of the Home Loan documents during the term of the loan. The minimum fees that borrow would be required to pay to draw down the Home Loan shall include:
 - (1) in cases where the draw fee is calculated as a percentage of each draw, said percentage applied to the total amount of credit available under the open-end Home Loan. To illustrate, if the total amount of credit available under the open-end Home Loan is \$50,000 and the draw fee is 1.0% of the amount drawn, the draw fees to be included would be \$500 ($\$50,000 \times .01$);
 - (2) in cases were the draw fee is a stated dollar amount (i.e. \$25 for each draw) and the Home Loan contract does not provide

for a minimum draw amount, the amount of the minimum specified draw fee (i.e. in this example, \$25). To illustrate, if the draw fee is \$25 per draw, the draw fees to be included would be \$25;

- (3) in cases where the draw fee is a stated dollar amount and the Home Loan contract provides for a maximum draw amount, the amount of the draw fees to be included would be calculated as follows: (Total dollar amount available under the open-end loan divided by the maximum draw amount) times the stated draw fee dollar amount. To illustrate, if the draw fee is \$25 per draw and the maximum draw amount on a \$100,000 open-end loan is \$1,000, the draw fees to be included would be \$2,500 ($[\$100,000/\$1,000] \times \25)
 - (4) These examples demonstrate the minimum fees possible to draw down an amount equal to the total credit line. The above three (3) examples are not all inclusive and may not describe all possible terms with respect to draw fees. Therefore, it is the Creditor's duty to perform the correct good-faith analysis resulting in the inclusion of all additional minimum fees.
20. "Previous loan" means the outstanding Home Loan to be refinanced through the proceeds of the new Home Loan made to the same borrower. A loan is a Previous Loan even though there is not complete identity between the obligors on the Previous Loan and the new home loan, so long as at least one borrower is obligated on both the previous Home Loan and the new Home Loan. See § 3.4(A)(19)(g) of this Part.
 21. "Previous note rate" means the rate of interest payable by a borrower on a Previous Loan. If the Previous Loan is an adjustable rate Home Loan, the Previous Note Rate shall be the Composite Rate.
 22. "Regularly makes available" - A Person Regularly Makes Available a Home Loan if the Person originates or extends more than one Home Loan. See definition of Creditor in § 3.4(A)(10) of this Part.
 23. "Undiscounted interest rate" means the contract rate of interest that would be contained in the promissory note that would have been stated in the promissory note if the Bona Fide Discount Point(s) had not been paid by the borrower.

3.5 Provisions

A. Records/Record-Keeping

1. Each Person subject to the requirements of the Act shall maintain records for each and every loan file supporting and substantiating the tangible net benefit and/or High Cost Home Loan analysis performed during the transaction.
 - a. Each Person subject to the requirements of the Act must keep a list of all loans in which the “tangible net benefit” has been assented to by the borrower. The Creditor is required to maintain on file and be in possession of documentation clearly identifying and substantiating the “tangible net benefit” that existed at the time the Home Loan was consummated. Failure to clearly identify, document, and substantiate the respective tangible net benefit will be deemed a violation of this Part, of R.I. Gen. Laws § 34-25.2-5(b), and a basis for administrative action pursuant to R.I. Gen. Laws § 19-14-13. The analysis performed regarding whether the borrower has a “tangible net benefit” must be accurate and based upon verified information as reflected by the Form 3 HLP A Disclosure entitled “Rhode Island Home Loan Protection Act Disclosure Tangible Net Benefit” as required by this Part.
 - b. Each Person subject to the requirements of the Act must keep a list of all loans in which the High-Cost Home Loan has been assented to by the borrower. The analysis performed regarding whether or not a loan is a “High-Cost Home Loan” must be accurate and based upon verified information as reflected by the Forms 4 and HLP A 5 Disclosures entitled, respectively, “Rhode Island Home Loan Protection Disclosure High Cost Home Loan” and “Rhode Island Home Loan Protection Disclosure Consumer Caution and Home Ownership Counseling Notice and Certification” as required by this Part. Failure to clearly identify, document, and substantiate the respective High-Cost Home Loan will be deemed a violation of this Part, and a basis for administrative action pursuant to R.I. Gen. Laws § 19-14-13.
 - c. The individual authorizing the Home Loan after reviewing said tangible net benefit and/or High Cost Home Loan analysis shall date and sign the written record of analysis by confirming that he/she has reviewed the analysis and confirms whether or not the loan is a High Cost Home Loan under the terms of the Act.
 - d. All applicants must be provided with Disclosure Forms 1 and 2 within three (3) days of application. Verification of submission to applicant and fully executed copy of Disclosure Forms 1 and 2, provided in a bulletin issued by the Department for that purpose, must be maintained in each loan file.

- e. All Applicants who refinance a Previous Loan that was Consummated within the prior sixty (60) months must be provided with Flipping a Home Loan Disclosure Form 3 entitled "Rhode Island Home Loan Protection Act Disclosure-Tangible Net Benefit" prior to or upon Consummation of the Home Loan. Verification of the date of submission to Applicant and a fully executed copy of Disclosure Form 3, provided in a bulletin issued by the Department for that purpose, must be maintained in each loan file.
- f. All Applicants who are applying for a High-Cost Home Loan must be provided Disclosure Form 4 entitled "High-Cost Home Loan" and Form 5 entitled "Consumer Caution and Homeowner Ship Counseling Notice and Certification," provided in a bulletin issued by the Department for that purpose, at such time that it is determined by the Creditor that the new loan is a High-Cost Home Loan, but in sufficient time as to enable the Applicant to receive, prior to closing the loan, face-to-face counseling on the advisability of the High-Cost Home Loan transaction, with a third-party non-profit organization Verification of the date of submission to Applicant and a fully executed copy of Disclosure Form 4 and Disclosure Form 5 must be maintained in each loan file.
- g. All Persons subject to the Act must use the exact disclosure forms, provided in a bulletin issued by the Department for that purpose. The disclosures shall not be altered or changed in any manner.
- h. All Persons subject to the Act shall maintain evidence that includes a verifiable invoice or substantially similar document for Bona Fide and Reasonable Fees. Substantially similar documents may include, without limitation, a master service agreement with the service provider that is applicable to all loans. Such documents relating to Bona Fide and Reasonable Fees need not be maintained in each individual loan file.
- i. The above records, which may be maintained by optical imaging, electronically or in any manner which will allow retrieval, must be available to the Director of the Department or his or her designee.
- j. The above records shall in the case of a Creditor who is a loan broker, be maintained for a minimum of three (3) years from the application date, and in the case of a Creditor who is a lender, a minimum of three (3) years from the date a loan is paid in full or sold.

B. Five (5) Prohibited Acts and Practices on All Home Loans

1. Financing of Credit Insurance Premiums or Any Other Health or Life Insurance Premiums or Debt Cancellation Charges. No financing, either directly or indirectly, of any credit life, credit disability, credit unemployment, or credit property insurance, or any other life or health insurance, or any payments either directly or indirectly for any debt cancellation or suspension agreement or contract. Any insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis shall not be considered financed.
2. Flipping a Home Loan. No knowing or intentional engagement in the unfair act or practice of "Flipping a Home Loan." Flipping a Home Loan is the making of a Home Loan to a borrower that refinances a Previous Loan that was consummated within the prior sixty (60) months when the new loan does not have reasonable, tangible net benefits in accordance with R.I. Gen. Laws § 34-25.2-4(q) to the borrower considering all of the circumstances, including, but not limited to, the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances.
 - a. Tangible Net Benefit: In order to make a loan to an Applicant that refinances a Previous Loan that was Consummated within the prior sixty (60) months the Creditor must confirm in writing and maintain a record of the tangible net benefit analysis as soon as it is determined, and, explain and provide Disclosure Form 3 to the Applicant prior to or upon Consummation of the Home Loan. The Creditor is required to confirm a tangible net benefit" as defined in R.I. Gen. Laws § 34-25.2-4(q)(1) through (6):
 - (1) New Monthly Payment: The Applicant's/borrower's new monthly payment(s) must be lower than the total of all monthly obligations being financed, taking into account the costs and fees as disclosed on the Closing Disclosure Form. The "new monthly payment" on any loan product other than a conventional fixed rate mortgage would be the payment that fully amortizes the mortgage loan over the term of the loan at the highest rate of interest that may be charged under the contract over the term of the loan. Costs and fees as disclosed on the Closing Disclosure Form shall include all costs and fees regardless of whether incorporated into and financed through the subject loan. The "taking into account" and time for recouping of such costs and fees shall be calculated over a period of twenty-four (24) months and said amount should be added for the calculation of the final "new monthly payment" for purposes of R.I. Gen. Laws § 34-25.2-4(q)(1).

- (2) Beneficial Change in Amortization Period. There must be a beneficial change in the amortization period of the new Home Loan(s).
 - (3) Borrower Receives Cash in Excess of Costs and Fees. The Borrower receives cash in excess of the costs and fees as disclosed on the Closing Disclosure Form as part of the refinancing. A borrower receives cash in excess of costs and fees when the borrower receives funds and/or proceeds beyond the amount required to payoff existing Previous Loan(s) plus all fees and costs associated with the Home Loan.
 - (4) Current Interest Rate is Reduced: The Previous Note Rate of interest is reduced or in the event that more than one Previous Loan is being refinanced, the weighted average note rate of the Previous Note Rate of interest is reduced.
 - (5) Change from Adjustable Rate Loan to a Fixed Rate Loan.
 - (6) Bona Fide Personal Need: The refinancing is necessary to respond to a bona fide personal need as verified in Disclosure Form 3, provided in a bulletin issued by the Department for that purpose. The borrower must disclose and the Creditor must verify the specific nature of the "bona fide personal need."
3. Encouraging or Recommending Default. No Creditor shall recommend or encourage default on an existing loan or other debt prior to and in connection to the closing or planned closing of a Home Loan that refinances all or any portion of such existing loan or debt.
 4. Acceleration in Creditor's Sole Discretion. No Home Loan may contain a provision that permits the Creditor, in its sole discretion, to accelerate the indebtedness. This provision does not prohibit the acceleration of the Home Loan in good faith due to the Applicant's/Borrower's failure to abide by the material terms of the Home Loan.
 5. Requiring Borrowers to Assert Claims in Less Convenient, More Costly, or More Dilatory Forum. No Home Loan may contain a provision that allows a party to require an Applicant/borrower to assert any claim or defense in a forum that is less convenient, more costly, or more dilatory for the resolution of a dispute than a judicial forum established in this state where the Applicant/borrower may

otherwise properly bring a claim or defense or limits in any way a claim or defense the borrower may have.

C. Prohibited Acts: High-Cost Home Loans

1. Pursuant to R.I. Gen. Laws § 34-25.2-6 a High-Cost Home Loan is also subject to additional limitations and prohibited practices as follows:
 - a. In connection with a High-Cost Home Loan, no Creditor shall directly or indirectly finance any points or fees which total is greater than five percent (5%) of the total Home Loan amount or eight hundred dollars (\$800) whichever is greater.
 - b. No prepayment fees or penalties shall be included in the Home Loan documents for a High-Cost Home Loan.
 - c. No High-Cost Home Loan may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This provision does not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower.
 - d. No High-Cost Home Loan may include payment terms under which the outstanding principal balance or accrued interest will increase at any time over the course of the loan because the regularly scheduled periodic payments do not cover the full amount of interest due (this is known as Negative Amortization).
 - e. No High-Cost Home Loan may contain a provision that increases the New Note Rate after default. This provision does not apply to New Note Rate changes in a variable rate loan otherwise consistent with the provisions of the High-Cost Home Loan documents, provided the change in the New Note Rate is not triggered by the event of default or the acceleration of the indebtedness.
 - f. No High-Cost Home Loan may include terms under which more than two (2) periodic payments required under the High Cost Home Loan are consolidated and paid in advance from the loan proceeds provided to the applicant/borrower.
 - g. A Creditor may not make a High-Cost Home Loan without first receiving certification from a counselor with a third-party nonprofit organization approved by the United States Department of Housing and Urban Development that the applicant/borrower has received counseling on the advisability of the loan transaction.

deduction causes a subsequent default on a subsequent payment, no late payment fee may be imposed for the default.

- d. A Creditor shall treat each payment as posted on the same business day as it was received.
- 5. All High-Cost Home Loan documents that create a debt or pledge property as collateral shall contain the following notice on the first page in a conspicuous manner in at least 12-point font: "Notice: This a High-Cost Home Loan subject to special rules under state law. Purchasers or assignees of this High-Cost Home Loan may be liable for all claims and defenses by the borrower with respect to the High-Cost Home Loan."

D. Additional Provisions Regarding High Cost Home Loans

- 1. Rate Threshold: In determining whether the interest rate on a Home Loan meets or exceeds the "Rate Threshold" in R.I. Gen. Laws § 34-25.2-4(r)(1):
 - a. the interest rate used shall be the Composite Rate for any Home Loan that is not a conventional fixed rate Home Loan; and
 - b. the yield on comparable United States treasury securities in effect on the fifteenth (15th) day of the month immediately preceding the month in which the Home Loan application was received by the lender shall be determined using statistical release H.15 or any publication that may supersede it as published by the Board of Governors of the Federal Reserve System, applying the principles set forth in 12 C.F.R. § 226.32(a)(1)(i).
- 2. Points and Fees Threshold: In determining whether total points and fees meets or exceeds the points and fees threshold in R.I. Gen. Laws § 34-25.2-4(r)(2), total Home Loan amount is defined as:
 - a. the face amount of the Home Loan for closed-end credit;
 - b. the total line of credit allowed as of the closing for open-end credit.
- 3. Counseling: Upon determination that an Applicant is obtaining a High-Cost Home Loan, the Creditor must provide the applicant with Disclosure Form 4, provided in a bulletin issued by the Department for that purpose. The Creditor must provide the Applicant with Form 5 entitled "Consumer Caution and Homeownership Counseling Notice and Certification."

- E. R.I. Gen. Laws § 34-25.2-5(e) does not prohibit the waiver of the homestead exemption.

3.6 Enforcement

Any violation of this Part may constitute a basis for administrative action against a licensee of the Department pursuant to R.I. Gen. Laws § 19-14-13.

230-RICR-40-10-3

**TITLE 230 - DEPARTMENT OF BUSINESS REGULATION (INCLUDES
THE OFFICE OF THE HEALTH INSURANCE COMMISSIONER)**

CHAPTER 40 - BANKING

SUBCHAPTER 10 - LENDING

PART 3 - HOME LOAN PROTECTION ACT

Type of Filing: Amendment

Agency Signature

Agency Head Signature

Agency Signing Date

Department of State

Regulation Effective Date

Department of State Initials

Department of State Date