

## **Policy Requiring Certification of Compliance With Regard to Certain Prohibited Predatory Lending Practices**

1. It is the policy of **[name of agency or fund here]** that, unless otherwise inconsistent with any fiduciary duties that may apply, a financial institution that receives [deposits or investments] from **[name of agency or fund here]**, and that financial institution's affiliates and operating subsidiaries, shall not make, invest in, or service loans where the following conditions apply:

(1) The loan is a "high risk home loan," identified as a loan meeting one of the following two triggers:

(a) The annual percentage rate on the loan exceeds the return on U.S. Treasury securities with comparable maturity periods by more than 6% for a first mortgage or more than 8% for a second mortgage; or

(b) The total points and fees paid by the borrower at or before the loan closing exceed the greater of 5% of the total loan amount or \$800 (the \$800 figure shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index for All Urban Consumers for all items published by the United States Department of Labor).

And,

(2) The loan contains any of the following prohibited terms or involves any of the following forbidden practices:

(a) Ability to repay. No high risk home loan may be made if the institution does not believe at that time that the borrower will be able to make the scheduled payments to repay the obligation based upon a consideration of his or her current and expected income, current obligations, employment status, and other financial resources (other than the borrower's equity in the dwelling that secures repayment of the loan). A borrower shall be presumed to be able to repay the loan if, at the time the loan is consummated, or at the time of the first rate adjustment, in the case of a lower introductory interest rate, the borrower's scheduled monthly payments on the loan (including principal, interest, taxes, insurance, and assessments), combined with the scheduled payments for all other disclosed debts, do not exceed 50% of the borrower's monthly gross income;

(b) Fraudulent or deceptive practices. No institution covered by this policy may employ fraudulent or deceptive acts or practices regarding a high risk home loan, including deceptive marketing and sales efforts;

(c) Prepayment penalty. No high risk home loan may include a penalty provision for payment made: ( i ) after the expiration of the 36-month period following the date the loan was made; or ( ii ) that is more than:

- (1) 3% of the total loan amount if the prepayment is made within the first 12-month period following the date the loan was made;
- (2) 2% of the total loan amount if the prepayment is made within the second 12-month period following the date the loan was made; or
- (3) 1% of the total loan amount if the prepayment is made within the third 12-month period following the date the loan was made.

(d) Pre-paid insurance products and warranties. No high risk home loan may finance a single premium credit life, credit disability, credit unemployment, or any other life or health insurance, directly or indirectly. Insurance calculated and paid on a monthly basis shall not be considered to be financed by the institution;

(e) Refinancing prohibited in certain cases. No institution covered by this policy may refinance any high risk home loan resulting in charges of additional points and fees within a 12-month period after the original loan agreement was signed, unless the refinancing results in a tangible net benefit to the borrower;

(g) Financing of points and fees. No high risk home loan may finance points and fees in excess of 6% of the total loan amount;

(h) Payments to contractors. No institution covered by this policy may make a payment of any proceeds of a high risk home loan directly to a contractor under a home improvement contract other than:

- (1) by instrument payable to the borrower or payable jointly to the borrower and contractor; or
- (2) at the election of the borrower, by a third-party escrow agent in accordance with the terms established in a written agreement that is signed by the borrower, the lender, and the contractor before the date of payment.

( i ) Negative amortization. No high risk home loan, other than a loan secured only by a reverse mortgage, may have terms under which the outstanding balance will increase at any time over the course of the loan because the regular periodic payments do not cover the full amount of the interest due, unless the negative amortization is the consequence of a temporary forbearance sought by the borrower;

( j ) Negative equity. No high risk home loan may exceed the value of the property securing the loan;

(k) Late payment fee. No high risk home loan may provide for a late payment fee, except under the following conditions:

- (1) the late payment fee shall not be in excess of 5% of the amount of the payment past due;
- (2) the late payment fee shall only be assessed for a payment past due for 15 days or more;
- (3) the late payment fee shall not be imposed more than once with respect to a single late payment;
- (4) a late payment fee that an institution has collected shall be reimbursed if the borrower presents proof of having made a timely payment; and
- (5) an institution shall treat each payment as posted on the same business day as it was received by the institution, the institution's agent, or at the address for making payments provided to the borrower by the institution.

( 1 ) Payment compounding. No high risk home loan may include terms under which more than 2 periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower; or

(m) Call provision. No high risk home loan may contain a provision that permits the lender, in its sole discretion, to accelerate the indebtedness, provided that this provision does not prohibit acceleration of a loan in good faith due to a borrower's failure to abide by the material terms of the loan.

2. In order for the financial institution to be eligible for investment or deposit of public funds by **[name of agency or fund here]**, the financial institution must submit a certification form (see Exhibit A., attached hereto) by May 15 of each calendar year certifying that the institution and any of its affiliates and operating subsidiaries do not make, invest in, or service loans described in the provisions of Paragraph 1., *above*.

Adopted by

\_\_\_\_\_ This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signed

_____	_____
_____	_____
_____	_____
_____	_____

**CERTIFICATION**

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, on behalf of \_\_\_\_\_ and any of its affiliates and operating subsidiaries, being first duly sworn under oath, and having personal knowledge of all matters set forth herein, state and certify as follows:

1. I am a representative of \_\_\_\_\_ and am duly authorized to make this certification on its behalf.

2. I hereby certify that \_\_\_\_\_ and any of its affiliates and operating subsidiaries are in compliance with the policy of the **[name of agency or fund here]** prohibiting deposits or investments in institutions that engage in predatory lending practices.

3. \_\_\_\_\_ will immediately notify **[name of agency or fund here]**, if we become aware of any activities that would be in violation of the **[name of agency or fund here]** policy.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Company Representative

\_\_\_\_\_  
Printed Name & Title of Company Representative

\_\_\_\_\_  
Company Name and Address

Subscribed and sworn before me by

\_\_\_\_\_ as a representative of \_\_\_\_\_ this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public