

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 1216  
Commerce Committee Substitute Adopted 6/8/10  
Finance Committee Substitute Adopted 6/9/10  
House Committee Substitute Favorable 6/16/10  
House Committee Substitute #2 Favorable 6/24/10

Short Title: Extend Emergency Foreclosure Program.

(Public)

Sponsors:

Referred to:

May 19, 2010

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND AND EXTEND THE EMERGENCY PROGRAM TO REDUCE  
3 HOME FORECLOSURES ACT, TO INCREASE AND AUTHORIZE FEES UNDER  
4 THE S.A.F.E. MORTGAGE LICENSING ACT, AND TO REVISE THE DEFINITION  
5 OF CERTAIN TERMS IN THE PREDATORY LENDING LAW.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. Article 11 of Chapter 45 of the General Statutes reads as rewritten:

8 "Article 11.

9 "Emergency Program to Reduce Home Foreclosures.

10 "§ 45-100. (For expiration date, see note) Title.

11 This Article shall be known as the Emergency Program to Reduce Home Foreclosures Act.

12 "§ 45-101. (For expiration date, see note) Definitions.

13 The following definitions apply throughout this Article:

14 (1) Act as a mortgage servicer. – To engage, whether for compensation or gain  
15 from another or on its own behalf, in the business of receiving any scheduled  
16 periodic payments from a borrower pursuant to the terms of any mortgage  
17 loan, including amounts for escrow accounts, and making the payments of  
18 principal and interest and such other payments with respect to the amounts  
19 received from the borrower as may be required pursuant to the mortgage  
20 loan, the mortgage servicing loan documents, or servicing contract.

21 (1a) ~~Annual percentage rate. — Defined in G.S. 24-1.1F.~~

22 (1b) Home loan. – A loan that has all of the following characteristics:

- 23 a. The loan is not (i) an equity line of credit as defined in G.S. 24-9, (ii)  
24 a construction loan as defined in G.S. 24-10, (iii) a reverse mortgage  
25 transaction, or (iv) a bridge loan with a term of 12 months or less,  
26 such as a loan to purchase a new dwelling where the borrower plans  
27 to sell a current dwelling within 12 months.
- 28 b. The borrower is a natural person.
- 29 c. The debt is incurred by the borrower primarily for personal, family,  
30 or household purposes.
- 31 d. The principal amount of the loan does not exceed the conforming  
32 loan size limit for a single-family dwelling as established from time  
33 to time by Fannie Mae.



- 1 e. The loan is secured by (i) a security interest in a manufactured home,  
2 as defined in G.S. 143-145, in the State which is or will be occupied  
3 by the borrower as the borrower's principal dwelling, (ii) a mortgage  
4 or deed of trust on real property in the State upon which there is  
5 located an existing structure designed principally for occupancy of  
6 from one to four families that is or will be occupied by the borrower  
7 as the borrower's principal dwelling, or (iii) a mortgage or deed of  
8 trust on real property in the State upon which there is to be  
9 constructed using the loan proceeds a structure or structures designed  
10 principally for occupancy of from one to four families which, when  
11 completed, will be occupied by the borrower as the borrower's  
12 principal dwelling.
- 13 f. A purpose of the loan is to (i) purchase the dwelling, (ii) construct,  
14 repair, rehabilitate, remodel, or improve the dwelling or the real  
15 property on which it is located, (iii) satisfy and replace an existing  
16 obligation secured by the same real property, or (iv) consolidate  
17 existing consumer debts into a new home loan.
- 18 (2) Mortgage lender. – A person engaged in the business of making mortgage  
19 loans for compensation or gain.
- 20 (3) Mortgage servicer. – A person who directly or indirectly acts as a mortgage  
21 servicer as that term is defined in subdivision (1) of this section or who  
22 otherwise meets the definition of the term "servicer" in the Real Estate  
23 Settlement Procedures Act, 12 U.S.C. § 2605(i), with respect to mortgage  
24 loans.
- 25 (3a) ~~Rate spread home loan. — A home loan in which all the following apply:~~
- 26 a. ~~The difference between the annual percentage rate for the loan and~~  
27 ~~the yield on U.S. Treasury securities having comparable periods of~~  
28 ~~maturity is either equal to or greater than (i) three percentage points~~  
29 ~~(3%), if the loan is secured by a first lien mortgage or deed of trust,~~  
30 ~~or (ii) five percentage points (5%), if the loan is secured by a~~  
31 ~~subordinate lien mortgage or deed of trust. Without regard to whether~~  
32 ~~the loan is subject to or reportable under the provisions of the Home~~  
33 ~~Mortgage Disclosure Act (12 U.S.C. § 2801, et seq.) (HMDA), the~~  
34 ~~difference between the annual percentage rate and the yield on~~  
35 ~~Treasury securities having comparable periods of maturity shall be~~  
36 ~~determined using the same procedures and calculation methods~~  
37 ~~applicable to loans that are subject to the reporting requirements of~~  
38 ~~HMDA, as those procedures and calculation methods are amended~~  
39 ~~from time to time, provided that the yield on Treasury securities shall~~  
40 ~~be determined as of the fifteenth day of the month prior to the~~  
41 ~~application for the loan.~~
- 42 b. ~~The difference between the annual percentage rate for the loan and~~  
43 ~~the conventional mortgage rate is either equal to or greater than (i)~~  
44 ~~one and three fourths percentage points (1.75%), if the loan is~~  
45 ~~secured by a first lien mortgage or deed of trust, or (ii) three and~~  
46 ~~three fourths percentage points (3.75%), if the loan is secured by a~~  
47 ~~subordinate lien mortgage or deed of trust. For purposes of this~~  
48 ~~calculation, the "conventional mortgage rate" means the most recent~~  
49 ~~daily contract interest rate on commitments for fixed-rate first~~  
50 ~~mortgages published by the Board of Governors of the Federal~~  
51 ~~Reserve System in its Statistical Release H.15, or any publication~~

1 that may supersede it, during the week preceding the week in which  
2 the interest rate for the loan is set.

- 3 (4) ~~Subprime loan.—A loan, originated on or after January 1, 2005, but before~~  
4 ~~December 31, 2007, that meets the definition of a rate spread home loan~~  
5 ~~under this Article. A mortgage servicer may rely on a chart reflecting the~~  
6 ~~appropriate interest rate triggers for rate spread home loans for each day of~~  
7 ~~the period covered by this Article provided by the Commissioner of Banks~~  
8 ~~for the purposes of determining if a loan is a subprime loan covered by this~~  
9 ~~Article. The Commissioner shall provide the chart at least 60 days prior to~~  
10 ~~the effective date of this act.~~

11 **"§ 45-102. (For expiration date, see note) Pre-foreclosure notice for subprime home loans.**

12 At least 45 days prior to the filing of a notice of hearing in a foreclosure proceeding on a  
13 primary residence, mortgage servicers of subprime home loans shall send written notice by  
14 mail to the last known address of the borrower to inform the borrower of the availability of  
15 resources to avoid foreclosure, including:

- 16 (1) An itemization of all past due amounts causing the loan to be in default.  
17 (2) An itemization of any other charges that must be paid in order to bring the  
18 loan current.  
19 (3) A statement that the borrower may have options available other than  
20 foreclosure and that the borrower may discuss available options with the  
21 mortgage lender, the mortgage servicer, or a counselor approved by the U.S.  
22 Department of Housing and Urban Development.  
23 (4) The address, telephone number, and other contact information for the  
24 mortgage lender, the mortgage servicer, or the agent for either of them who  
25 is authorized to attempt to work with the borrower to avoid foreclosure.  
26 (5) The name, address, telephone number, and other contact information for one  
27 or more HUD-approved counseling agencies operating to assist borrowers in  
28 North Carolina to avoid foreclosure.  
29 (6) The address, telephone number, and other contact information for the  
30 consumer complaint section of the Office of Commissioner of ~~Banks.~~ Banks,  
31 or, alternatively, if the loan is serviced by a credit union, the address,  
32 telephone number, and other contact information for the consumer complaint  
33 section of the Credit Union Division.

34 **"§ 45-103. (For expiration date, see note) Pre-foreclosure information to be filed with the**  
35 **Administrative Office of the Courts for certain subprime home loans.**

36 (a) Within three business days of mailing the notice required by G.S. 45-102, the  
37 mortgage servicer shall file certain information with the Administrative Office of the Courts.  
38 The filing shall be in an electronic format, as designated by the Administrative Office of the  
39 Courts, and shall contain the name and address of the ~~borrower~~ borrower, the due date of the  
40 last scheduled payment made by the borrower, and the date the notice was mailed to the  
41 borrower. The Administrative Office of the Courts shall establish an internal database to track  
42 information required by this section. The Commissioner of Banks shall design and develop the  
43 database, in consultation with the Administrative Office of the Courts. Only the Administrative  
44 Office of the Courts, the Office of Commissioner of Banks, and the clerk of court as provided  
45 by G.S. 45-107 shall have access to the database.

46 (b) As permitted by applicable State and federal law, optional information may be  
47 requested from the mortgage servicer to facilitate further review by the State Home Foreclosure  
48 Prevention Project described in G.S. 45-104. ~~The nature of the optional information requested~~  
49 ~~shall be determined in connection with the design of the database established by subsection (e)~~  
50 ~~of this section.~~ This optional information shall be used by the State Home Foreclosure

1 Prevention Project to prioritize efforts to reach borrowers most likely to avoid foreclosure and  
2 to prevent delay for defaults where foreclosure is unavoidable.

3 ~~(e) No later than October 1, 2008, the Administrative Office of the Courts shall~~  
4 ~~establish an internal database to track information provided in this section. The Commissioner~~  
5 ~~of Banks shall design and develop this database, in consultation with the Administrative Office~~  
6 ~~of the Courts, in a manner to promote the efforts of the State Home Foreclosure Prevention~~  
7 ~~Project. Only the Administrative Office of the Courts, the Office of Commissioner of Banks,~~  
8 ~~and the clerk of court as provided by G.S. 45-107 shall have access to the database.~~

9 **"§ 45-104. (For expiration date, see note) State Home Foreclosure Prevention**  
10 **Project.Project and Fund.**

11 (a) The Commissioner of Banks is authorized to establish the State Home Foreclosure  
12 Prevention Project. The purpose of the Project is to seek solutions to avoid foreclosures for  
13 ~~certain subprime~~ home loans. In developing the Project, the Commissioner may include input  
14 from HUD-approved housing counselors, community organizations, the Credit Union Division  
15 and other state-State agencies, mortgage lenders, mortgage servicers, and other partners.

16 (b) There is established a State Home Foreclosure Prevention Trust Fund to be managed  
17 and maintained by the Office of the Commissioner of Banks. The funds shall be held separate  
18 from any other funds received by the Office of the Commissioner of Banks in trust for the  
19 operation of the State Home Foreclosure Prevention Project.

20 (c) Upon the filing of the information required under G.S. 45-103, the mortgage  
21 servicer shall pay a fee of seventy-five dollars (\$75.00) to the State Home Foreclosure  
22 Prevention Trust Fund. The fee shall not be charged more than once for a home loan covered  
23 by this act. The collection of this fee shall be managed by the Office of the Commissioner of  
24 Banks in a manner so as to minimize burdens on mortgage servicers in complying with the  
25 requirements of this section.

26 (d) The Commissioner of Banks shall allocate funds from the State Home Foreclosure  
27 Prevention Trust Fund to implement the purposes of this act in the following manner:

28 (1) An amount, not to exceed the greater of two million two hundred thousand  
29 dollars (\$2,200,000) or thirty percent (30%) of the funds per year, to cover  
30 the administrative costs of the operation of the program by the Office of the  
31 Commissioner of Banks, including managing on behalf of the  
32 Administrative Office of the Courts the database identified in G.S. 45-103,  
33 expenses associated with informing homeowners of State resources available  
34 for foreclosure prevention, expenses associated with connecting  
35 homeowners to available resources, and assistance to homeowners and  
36 counselors in communicating with mortgage servicers.

37 (2) An amount, not to exceed the greater of three million four hundred thousand  
38 dollars (\$3,400,000) or forty percent (40%) per year, to make grants to or  
39 reimburse nonprofit housing counseling agencies for providing foreclosure  
40 prevention counseling services to homeowners involved in the State Home  
41 Foreclosure Prevention Project.

42 (3) An amount, not to exceed thirty percent (30%) of the total funds collected  
43 per year, to make grants to or reimburse nonprofit legal service providers for  
44 services rendered on behalf of homeowners in danger of defaulting on a  
45 home loan to avoid foreclosure, limited to legal representation such as  
46 negotiation of loan modifications or other loan work-out solutions,  
47 defending homeowners in foreclosure or representing homeowners in  
48 bankruptcy proceedings, and research and counsel to homeowners regarding  
49 the status of their home loans.

1           (4) Any funds remaining upon the expiration of the State Home Foreclosure  
2           Prevention Project shall be directed to the North Carolina Housing Trust  
3           Fund.

4           (e) The Commissioner of Banks shall have the discretion to enter into an agreement to  
5           administer funds under subdivisions (2) and (3) of subsection (d) of this section in a manner  
6           that complements or supplements other State and federal programs directed to prevent  
7           foreclosures for homeowners participating in the State Home Foreclosure Prevention Project.

8           "**§ 45-105. (For expiration date, see note) Extension of foreclosure process.**

9           The Commissioner of Banks shall review information provided in the database created by  
10          G.S. 45-103 to determine which ~~subprime~~ home loans are appropriate for efforts to avoid  
11          foreclosure. If the Commissioner reasonably believes, based on a full review of the loan  
12          information, the mortgage servicer's loss mitigation efforts, the borrower's capacity and interest  
13          in staying in the home, and other appropriate factors, that further efforts by the State Home  
14          Foreclosure Prevention Project offer a reasonable prospect to avoid foreclosure on primary  
15          residences, the Commissioner shall have the authority to extend one time under this Article the  
16          allowable filing date for any foreclosure proceeding on a primary residence by up to 30 days  
17          beyond the earliest filing date established by the pre-foreclosure notice. If the Commissioner  
18          makes the determination that a loan is subject to this section, the Commissioner shall notify the  
19          borrower, mortgage servicer, and the Administrative Office of the Courts. If the mortgage  
20          servicer is a state or federally chartered credit union, the Commissioner shall also notify the  
21          Administrator of the Credit Union Division of the determination.

22          "**§ 45-106. (For expiration date, see note) Use and privacy of records.**

23          The data provided to the Administrative Office of the Courts pursuant to G.S. 45-103 shall  
24          be exclusively for the use and purposes of the State Home Foreclosure Prevention Project  
25          developed by the Commissioner of Banks in accordance with G.S. 45-104. The information  
26          provided to the database is not a public record, except that a mortgage lender and a mortgage  
27          servicer shall have access to the information submitted only with regard to its own loans. Any  
28          notice provided by the Commissioner to the Administrator of the Credit Union Division under  
29          G.S. 45-105 is not a public record. Provision of information to the Administrative Office of the  
30          Courts for use by the State Home Foreclosure Prevention Project shall not be considered a  
31          violation of G.S. 53B-8. A mortgage servicer shall be held harmless for any alleged breach of  
32          privacy rights of the borrower with respect to the information the mortgage servicer provides in  
33          accordance with this Article.

34          "**§ 45-107. (For expiration date, see note) Foreclosure filing.**

35          (a) For the duration of the program authorized by this Article, foreclosure notices filed  
36          on ~~subprime~~ home loans on or after ~~November 15, 2008,~~ November 1, 2010, shall contain a  
37          certification by the filing party that the pre-foreclosure notice required by G.S. 45-102 and the  
38          pre-foreclosure information required by G.S. 45-103 were provided in accordance with this  
39          Article and that the periods of time established by the Article have elapsed.

40          (b) The clerk of superior court or other judicial officer may have access to the  
41          pre-foreclosure database to confirm information provided in subsection (a) of this section. A  
42          materially inaccurate statement in the certification shall be cause for dismissal without  
43          prejudice of any foreclosure proceeding on a primary residence initiated by the mortgage  
44          servicer and for payment by the filing party of costs incurred by the borrower in defending the  
45          foreclosure proceeding."

46          **SECTION 2.** G.S. 45-21.16(c2) reads as rewritten:

47          "(c2) **(Expires October 31, 2010)** In any foreclosure filed on or after ~~November 15,~~  
48          ~~2008,~~ November 1, 2010, where the underlying mortgage debt is a ~~subprime~~ home loan as  
49          defined in ~~G.S. 45-101(4),~~ G.S. 45-101(1b), the notice required by subsection (b) of this section  
50          shall contain a certification by the filing party that the pre-foreclosure notice and information

1 required by G.S. 45-102 and G.S. 45-103 were provided in all material respects and that the  
2 periods of time established by Article 11 of this Chapter have elapsed."

3 **SECTION 3.** G.S. 45-21.16(d) reads as rewritten:

4 "(d) **(Effective until October 31, 2010)** The hearing provided by this section shall be  
5 held before the clerk of court in the county where the land, or any portion thereof, is situated. In  
6 the event that the property to be sold consists of separate tracts situated in different counties or  
7 a single tract in more than one county, only one hearing shall be necessary. However, prior to  
8 that hearing, the mortgagee or trustee shall file the notice of hearing in any other county where  
9 any portion of the property to be sold is located. Upon such hearing, the clerk shall consider the  
10 evidence of the parties and may consider, in addition to other forms of evidence required or  
11 permitted by law, affidavits and certified copies of documents. If the clerk finds the existence  
12 of (i) valid debt of which the party seeking to foreclose is the holder, (ii) default, (iii) right to  
13 foreclose under the instrument, (iv) notice to those entitled to such under subsection (b), and (v)  
14 that the underlying mortgage debt is not a ~~subprime-home~~ loan as defined in ~~G.S. 45-101(4),~~  
15 ~~G.S. 45-101(1b)~~, or if the loan is a ~~subprime-home~~ loan under ~~G.S. 45-101(4), G.S. 45-101(1b),~~  
16 that the pre-foreclosure notice under G.S. 45-102 was provided in all material respects, and that  
17 the periods of time established by Article 11 of this Chapter have elapsed, then the clerk shall  
18 authorize the mortgagee or trustee to proceed under the instrument, and the mortgagee or  
19 trustee can give notice of and conduct a sale pursuant to the provisions of this Article. A  
20 certified copy of any authorization or order by the clerk shall be filed in any other county where  
21 any portion of the property to be sold is located before the mortgagee or trustee may proceed to  
22 advertise and sell any property located in that county. In the event that sales are to be held in  
23 more than one county, the provisions of G.S. 45-21.7 apply."

24 **SECTION 4.** G.S. 53-244.090(b) reads as rewritten:

25 "(b) Each principal and each branch office of a mortgage broker or mortgage lender  
26 licensed under the provisions of this Article shall be issued a separate license for which the  
27 Commissioner shall assess a nonrefundable filing fee of ~~one hundred twenty five dollars~~  
28 ~~(\$125.00)~~ three hundred dollars (\$300.00) in addition to the Nationwide Mortgage Licensing  
29 System and Registry processing fee. A licensed mortgage broker or mortgage lender shall file  
30 with the Commissioner a notice on a form prescribed by the Commissioner that identifies the  
31 address of the principal office and each branch office and its designated branch manager.  
32 Payment of the license fee under subsection (a) of this section shall be deemed to cover the  
33 location license fee for the principal office of each mortgage lender, mortgage broker, or  
34 mortgage servicer without payment of an additional ~~one hundred twenty five dollars (\$125.00)~~  
35 three hundred dollars (\$300.00) under this subsection."

36 **SECTION 5.** G.S. 53-244.010(b) reads as rewritten:

37 "(b) A license may be renewed on or after November 1 of each year by complying with  
38 the requirements of subsection (c) of this section and by paying to the Commissioner, in  
39 addition to the actual cost of obtaining credit reports and State and national criminal history  
40 record checks and of processing fees of the nationwide system as the Commissioner shall  
41 require, nonrefundable renewal fees as follows:

- 42 (1) Licensed mortgage lenders, licensed mortgage brokers, and licensed  
43 mortgage servicers shall pay an annual renewal fee of six hundred  
44 twenty-five dollars (\$625.00), licensed exclusive mortgage brokers shall pay  
45 an annual renewal fee of three hundred dollars (\$300.00), and licensed  
46 mortgage lenders and mortgage brokers shall pay ~~one hundred twenty five~~  
47 ~~dollars (\$125.00)~~ three hundred dollars (\$300.00) for each licensed branch  
48 office.
- 49 (2) Licensed mortgage loan originators shall pay an annual renewal fee of  
50 ~~sixty seven dollars and fifty cents (\$67.50).~~ one hundred twenty-five dollars  
51 (\$125.00)."

1           **SECTION 6.** G.S. 53-244.119 is amended by adding a new subsection to read:

2           "(e) The Commissioner may require a licensee to pay, through the National Mortgage  
3 Licensing System, a reasonable administrative processing fee, not to exceed seventy-five  
4 dollars (\$75.00), for each of the following licensing status changes:

5           (1) A change in the name of the licensee.

6           (2) A change in the address of the licensee's principal office.

7           (3) For mortgage loan originators, a change in the licensee's sponsors.

8           (4) For mortgage lenders, mortgage brokers, and mortgage servicers, a change  
9 in the control of the licensee.

10          (5) A change in the identity of the branch manager of any branch of the licensee.

11          (6) A change in the identity of the licensee's qualified individual."

12          **SECTION 7.** G.S. 24-1.1E(a)(5) reads as rewritten:

13          "(5) "Points and fees" is defined as provided in this subdivision.

14           a. The term includes all of the following:

15           1. All items paid by a borrower at or before closing and that are  
16           required to be disclosed under sections 226.4(a) and 226.4(b)  
17           of Title 12 of the Code of Federal Regulations, as amended  
18           from time to time, except interest or the time-price  
19           differential. However, the meaning of the term "points and  
20 fees" shall not include either (i) the portion of the up-front  
21 fees collected and paid to the Federal Housing  
22 Administration, the Veterans' Administration, or the U.S.  
23 Department of Agriculture to insure or guarantee a home loan  
24 that exceeds one and one-quarter percent (1.25%) of the total  
25 loan amount or (ii) the portion of any up-front private  
26 mortgage insurance premium, charge, or fee that exceeds one  
27 and one-quarter percent (1.25%) of the total loan amount,  
28 provided that the private mortgage insurance premium,  
29 charge or fee is required to be refundable on a prorated basis,  
30 the refund is automatically issued upon notification of the  
31 satisfaction of the underlying mortgage loan, and the  
32 borrower has the right to request or receive a prorated refund  
33 in accordance with state or federal law.

34           2. All charges paid by a borrower at or before closing and that  
35           are for items listed under section 226.4(c)(7) of Title 12 of the  
36           Code of Federal Regulations, as amended from time to time,  
37           but only if the lender receives direct or indirect compensation  
38           in connection with the charge or the charge is paid to an  
39           affiliate of the lender; otherwise, the charges are not included  
40           within the meaning of the phrase "points and fees".

41           3. To the extent not otherwise included in sub-subdivision a.1.  
42           or a.2. of this subdivision, all compensation paid from any  
43           source to a mortgage broker, including compensation paid to  
44           a mortgage broker in a table-funded transaction. A bona fide  
45           sale of a loan in the secondary mortgage market shall not be  
46           considered a table-funded transaction, and a table-funded  
47           transaction shall not be considered a secondary market  
48           transaction.

49           4. The maximum prepayment fees and penalties which may be  
50           charged or collected under the terms of the loan documents.

- 1                   b.     Notwithstanding the remaining provisions of this subdivision, the  
2                   term does not include (i) taxes, filing fees, recording and other  
3                   charges and fees paid or to be paid to public officials for determining  
4                   the existence of or for perfecting, releasing, or satisfying a security  
5                   interest; and (ii) fees paid to a person other than a lender or an  
6                   affiliate of the lender or to the mortgage broker or an affiliate of the  
7                   mortgage broker for the following: fees for tax payment services;  
8                   fees for flood certification; fees for pest infestation and flood  
9                   determinations; appraisal fees; fees for inspections performed prior to  
10                  closing; credit reports; surveys; attorneys' fees (if the borrower has  
11                  the right to select the attorney from an approved list or otherwise);  
12                  notary fees; escrow charges, so long as not otherwise included under  
13                  sub-subdivision a. of this subdivision; title insurance premiums; and  
14                  premiums for insurance against loss or damage to property, including  
15                  hazard insurance and flood insurance premiums, provided that the  
16                  conditions in section 226.4(d)(2) of Title 12 of the Code of Federal  
17                  Regulations are met.
- 18                  c.     For open-end credit plans, the term includes those points and fees  
19                  described in sub-subdivisions a.1. through a.3. of this subdivision,  
20                  plus (i) the minimum additional fees the borrower would be required  
21                  to pay to draw down an amount equal to the total loan amount, and  
22                  (ii) the maximum prepayment fees and penalties which may be  
23                  charged or collected under the terms of the loan documents."

24     **SECTION 8.** G.S. 24-1.1E(a)(6) reads as rewritten:

25     "(6) "Thresholds" means:

- 26                  a.     Without regard to whether the loan transaction is or may be a  
27                  "residential mortgage transaction" (as the term "residential mortgage  
28                  transaction" is defined in section 226.2(a)(24) of Title 12 of the Code  
29                  of Federal Regulations, as amended from time to time), the annual  
30                  percentage rate of the loan at the time the loan is consummated is  
31                  such that the loan is considered a "mortgage" under section 152 of  
32                  the Home Ownership and Equity Protection Act of 1994 (Pub. Law  
33                  103-25, [15 U.S.C. § 1602(aa)]), as the same may be amended from  
34                  time to time, and regulations adopted pursuant thereto by the Federal  
35                  Reserve Board, including section 226.32 of Title 12 of the Code of  
36                  Federal Regulations, as the same may be amended from time to time;
- 37                  b.     The total points and fees, as defined in G.S. 24-1.1E(a)(5), exceed  
38                  ~~five-four~~ percent ~~(5%)~~ ~~(4%)~~ of the total loan amount if the total loan  
39                  amount is twenty thousand dollars (\$20,000) or more, or (ii) the  
40                  lesser of eight percent (8%) of the total loan amount or one thousand  
41                  dollars (\$1,000), if the total loan amount is less than twenty thousand  
42                  dollars (\$20,000); provided, the following discount points and  
43                  prepayment fees and penalties shall be excluded from the calculation  
44                  of the total points and fees payable by the borrower:
- 45                          1.     Up to and including two bona fide loan discount points  
46                          payable by the borrower in connection with the loan  
47                          transaction, but only if the interest rate from which the loan's  
48                          interest rate will be discounted does not exceed by more than  
49                          one percentage point (1%) the required net yield for a 90-day  
50                          standard mandatory delivery commitment for a reasonably



- 1 comparable loan from either Fannie Mae or the Federal Home  
2 Loan Mortgage Corporation, whichever is greater;
- 3 2. Up to and including one bona fide loan discount point  
4 payable by the borrower in connection with the loan  
5 transaction, but only if the interest rate from which the loan's  
6 interest rate will be discounted does not exceed by more than  
7 two percentage points (2%) the required net yield for a  
8 90-day standard mandatory delivery commitment for a  
9 reasonably comparable loan from either Fannie Mae or the  
10 Federal Home Loan Mortgage Corporation, whichever is  
11 greater;
- 12 3. For a closed-end loan, prepayment fees and penalties which  
13 may be charged or collected under the terms of the loan  
14 documents which do not exceed one percent (1%) of the  
15 amount prepaid, provided the loan documents do not permit  
16 the lender to charge or collect any prepayment fees or  
17 penalties more than 30 months after the loan closing;
- 18 4. For an open-end credit plan, prepayment fees and penalties  
19 which may be charged or collected under the terms of the  
20 loan documents which do not exceed one percent (1%) of the  
21 amount prepaid, provided the loan documents do not permit  
22 the lender to charge or collect any prepayment fees or  
23 penalties more than (i) 30 months after the loan closing if the  
24 borrower has no right or option under the loan documents to  
25 repay all or any portion of the outstanding balance of the  
26 open-end credit plan at a fixed interest rate over a specified  
27 period of time or, (ii) if the borrower has a right or option  
28 under the loan documents to repay all or any portion of the  
29 outstanding balance of the open-end credit plan at a fixed  
30 interest rate over a specified period of time, 30 months after  
31 the date the borrower voluntarily exercises that right or  
32 option; or
- 33 c. If the loan is a closed-end loan, the loan documents permit the lender  
34 to charge or collect prepayment fees or penalties more than 30  
35 months after the loan closing or which exceed, in the aggregate, more  
36 than two percent (2%) of the amount prepaid. If the loan is an  
37 open-end credit plan, the loan documents permit the lender to charge  
38 or collect prepayment fees or penalties (i) more than 30 months after  
39 the loan closing if the borrower has no right or option under the loan  
40 documents to repay all or any portion of the outstanding balance of  
41 the open-end credit plan at a fixed interest rate over a specified  
42 period of time or, (ii) if the borrower has a right or option under the  
43 loan documents to repay all or any portion of the outstanding balance  
44 of the open-end credit plan at a fixed interest rate over a specified  
45 period of time, more than 30 months after the date the borrower  
46 voluntarily exercises that right or option, or (iii) which exceed, in the  
47 aggregate, more than two percent (2%) of the amount prepaid."

48 **SECTION 9.** Section 6 of S.L. 2008-226 reads as rewritten:

49 **"SECTION 6.** Section 4 of this act becomes effective July 1, 2008. ~~The remainder of this~~  
50 ~~act becomes effective November 1, 2008, and expires October 31, 2010. Sections 1, 2, 3, and 5~~

1 become effective November 1, 2008, and expire May 31, 2013. The remainder of this act is  
2 effective when it becomes law."

3       **SECTION 10.** Sections 1 through 3 of this act become effective November 1,  
4 2010, and expire on May 31, 2013. Sections 4 through 8 of this act become effective September  
5 1, 2010. The remainder of this act is effective when it becomes law.