

## Maine Revised Statute Title 9-A, Article 8: TRUTH-IN-LENDING

### Table of Contents

Section 8-101. SHORT TITLE.....	3
Section 8-102. FINDINGS AND DECLARATION OF PURPOSE.....	3
Section 8-103. DEFINITIONS AND RULES OF CONSTRUCTION.....	3
Section 8-104. REGULATIONS; MODEL FORMS.....	7
Section 8-105. DETERMINATION OF FINANCE CHARGE.....	9
Section 8-106. DETERMINATION OF ANNUAL PERCENTAGE RATE.....	11
Section 8-106-A. NUMBER OF PERCENTAGE POINTS.....	12
Section 8-107. EXEMPTION.....	13
Section 8-108. ENFORCEMENT.....	13
Section 8-109. CRIMINAL LIABILITY FOR WILLFUL AND KNOWING VIOLATION.....	14
Section 8-110. PENALTIES INAPPLICABLE TO GOVERNMENTAL AGENCIES.....	14
Section 8-201. GENERAL REQUIREMENT OF DISCLOSURE.....	14
Section 8-202. FORM OF DISCLOSURE; ADDITIONAL INFORMATION; TABULAR FORMAT REQUIRED FOR CERTAIN CREDIT AND CHARGE CARD DISCLOSURES.....	15
Section 8-203. EFFECT OF SUBSEQUENT OCCURRENCE.....	16
Section 8-204. RIGHT OF RESCISSION AS TO CERTAIN TRANSACTIONS.....	16
Section 8-205. OPEN-END CONSUMER CREDIT PLANS.....	19
Section 8-206. CONSUMER CREDIT NOT UNDER OPEN-END CREDIT PLANS.....	26
Section 8-206-A. HIGH-RATE, HIGH-FEE MORTGAGES.....	30
Section 8-206-B. REVERSE MORTGAGES.....	33
Section 8-206-C. HIGH-RATE, HIGH-FEE MORTGAGES; ADDITIONAL REQUIREMENTS (REPEALED).....	34
Section 8-206-D. RESIDENTIAL MORTGAGE LOAN REQUIREMENTS (REPEALED).....	34
Section 8-206-E. SPECIAL LIABILITY FOR VIOLATIONS OF RESIDENTIAL MORTGAGE LOAN, HIGHER-PRICED MORTGAGE LOAN AND HIGH-RATE, HIGH-FEE MORTGAGE LOAN REQUIREMENTS.....	34
Section 8-206-F. INVESTIGATIVE AND LEGAL COMPLIANCE PERSONNEL.....	36
Section 8-206-G. ANNUAL REPORT TO LEGISLATURE.....	37
Section 8-206-H. HIGH-RATE, HIGH-FEE MORTGAGES.....	37
Section 8-206-I. HIGHER-PRICED MORTGAGE LOANS.....	39
Section 8-206-J. RESIDENTIAL MORTGAGE LOAN REQUIREMENTS.....	41
Section 8-207. CONSUMER LEASE DISCLOSURES.....	43
Section 8-208. CIVIL LIABILITY.....	45
Section 8-208-A. CERTAIN LIMITATIONS ON LIABILITY.....	47
Section 8-209. LIABILITY OF ASSIGNEES.....	48
Section 8-301. ISSUANCE OF CREDIT CARDS.....	49

Section 8-302. LIABILITY OF HOLDER OF CREDIT CARD..... 50

Section 8-303. CREDIT CARD RESTRICTIONS..... 50

Section 8-304. DISCLOSURE OF LISTS OF THE NAMES, ADDRESSES AND ACCOUNT  
NUMBERS OF CREDIT CARD HOLDERS..... 53

Section 8-305. RECURRING CHARGES TO CREDIT OR CHARGE CARDS..... 53

Section 8-401. CORRECTION OF BILLING ERRORS..... 54

Section 8-402. REGULATION OF CREDIT REPORTS..... 56

Section 8-403. TREATMENT OF CREDIT BALANCES; RETURNS..... 56

Section 8-404. PROMPT CREDITING OF PAYMENTS..... 57

## Part 1: GENERAL PROVISIONS

### 9-A §8-101. SHORT TITLE

This Article may be cited as the "Maine Consumer Credit Code -- Truth-in-Lending." [1981, c. 243, §25 (NEW).]

#### SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD).

### 9-A §8-102. FINDINGS AND DECLARATION OF PURPOSE

The Legislature finds that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this Article to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices. [1981, c. 243, §25 (NEW).]

#### SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD).

### 9-A §8-103. DEFINITIONS AND RULES OF CONSTRUCTION

#### 1.

[ 2007, c. 273, Pt. A, §41 (AFF); 2007, c. 273, Pt. A, §3 (RP) .]

**1-A.** As used in this Article, unless the context otherwise indicates, the following words have the following meanings.

A. "Accepted credit card" means any credit card that the cardholder has requested and received or has signed or has used or authorized another to use for the purpose of obtaining money, property, labor or services on credit. [2007, c. 273, Pt. A, §4 (NEW); 2007, c. 273, Pt. A, §§37, 41 (AFF).]

B. "Adequate notice" as used in section 8-302 means a printed notice to a cardholder that sets forth the pertinent facts clearly and conspicuously so that a person against whom it is to operate could reasonably be expected to have noticed it and understood its meaning. That notice may be given to a cardholder by printing the notice on any credit card, on each periodic statement of account issued to the cardholder or by any other means reasonably ensuring the receipt by the cardholder. [2007, c. 273, Pt. A, §4 (NEW); 2007, c. 273, Pt. A, §§37, 41 (AFF).]

C. "Affiliate" has the same meaning as set forth in 12 United States Code, Section 1841. [2007, c. 273, Pt. A, §4 (NEW); 2007, c. 273, Pt. A, §§37, 41 (AFF).]

D. "Annual percentage rate" means the annual percentage rate for a loan calculated according to the provisions of 12 Code of Federal Regulations, Part 226. [2007, c. 273, Pt. A, §4 (NEW); 2007, c. 273, Pt. A, §§37, 41 (AFF).]

E. "Bona fide discount points" means an amount knowingly paid by a borrower for the express purpose of reducing, and which in fact does result in a bona fide reduction of, the interest rate applicable to a residential mortgage loan, as long as the undiscounted interest rate for the residential mortgage loan does not exceed the conventional mortgage rate by more than 2 percentage points for a residential mortgage

loan secured by a first lien or by 3 1/2 percentage points for a residential mortgage loan secured by a subordinated lien. [2007, c. 273, Pt. A, §4 (NEW); 2007, c. 273, Pt. A, §§37, 41 (AFF).]

F. "Borrower" means any natural person obligated to repay a loan, including a coborrower, cosigner or guarantor. [2007, c. 273, Pt. A, §4 (NEW); 2007, c. 273, Pt. A, §§37, 41 (AFF).]

G. "Bureau of Consumer Credit Protection" has the same meaning as set out in section 6-103. [2007, c. 273, Pt. A, §4 (NEW); 2007, c. 273, Pt. A, §§37, 41 (AFF).]

H. "Cardholder" means any person to whom a credit card is issued or any person who has agreed with the card issuer to pay obligations arising from the issuance of a card to another person. [2007, c. 273, Pt. A, §4 (NEW); 2007, c. 273, Pt. A, §§37, 41 (AFF).]

I. "Card issuer" means any person who issues a credit card or the agent of that person with respect to that card. [2007, c. 273, Pt. A, §4 (NEW); 2007, c. 273, Pt. A, §§37, 41 (AFF).]

J. "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 superseding publication, as of the applicable time set forth in 12 Code of Federal Regulations, Section 226.32(a)(1)(i). [2007, c. 273, Pt. A, §4 (NEW); 2007, c. 273, Pt. A, §§37, 41 (AFF).]

K. "Conventional prepayment penalty" means any prepayment penalty or fee that may be collected or charged in a residential mortgage loan and that is authorized by law other than this section, as long as the residential mortgage loan does not have an annual percentage rate that exceeds the conventional mortgage rate by more than 2 percentage points and does not permit any prepayment fees or penalties that exceed 2% of the amount prepaid. [2007, c. 273, Pt. A, §4 (NEW); 2007, c. 273, Pt. A, §§37, 41 (AFF).]

L. "Creditor" has the same meaning as set forth in section 1-301, subsection 17, and in addition includes those entities defined as "lender" as set forth in 24 Code of Federal Regulations, Section 3500.2 and includes a mortgage broker. [2009, c. 362, Pt. A, §1 (RPR).]

M. "Discount" as used in section 8-303 means a reduction made from the regular price. The term "discount" does not mean a surcharge. [2007, c. 273, Pt. A, §4 (NEW); 2007, c. 273, Pt. A, §§37, 41 (AFF).]

N. "Dwelling" means a residential structure or mobile home that contains one to 4 family housing units, or individual units of condominiums or cooperatives. [2007, c. 273, Pt. A, §4 (NEW); 2007, c. 273, Pt. A, §§37, 41 (AFF).]

O. "Excluded points and fees" means, in connection with a residential mortgage loan, 1% of the total loan amount attributable to bona fide fees paid to a federal or state government agency that insures payment of some portion of a residential mortgage loan plus an amount not to exceed 2% of the total loan amount attributable to bona fide discount points or a conventional prepayment penalty. [2007, c. 273, Pt. A, §4 (NEW); 2007, c. 273, Pt. A, §§37, 41 (AFF).]

P. "Flipping a residential mortgage loan" means the making of a residential mortgage loan to a borrower that refinances an existing residential mortgage loan when the new loan does not have reasonable, tangible net benefit 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. [2007, c. 273, Pt. A, §4 (NEW); 2007, c. 273, Pt. A, §§37, 41 (AFF).]

P-1. "Fully amortizing payment schedule" means a schedule based on the term of the loan. For a balloon mortgage that contains an option for an extended amortization period, the fully amortizing payment schedule may be based on the full term available to the borrower. [2007, c. 471, §2 (NEW); 2007, c. 471, §18 (AFF).]

P-2. "Fully indexed rate" means the index rate prevailing at origination plus the margin that will apply after the expiration of an introductory interest rate. [2007, c. 471, §3 (NEW); 2007, c. 471, §18 (AFF).]

Q. "High-rate, high-fee mortgage" means a residential mortgage loan in which the terms of the loan meet or exceed one or more of the thresholds defined in paragraph CC.

"High-rate, high-fee mortgage" means a residential mortgage loan in which the terms of the loan meet or exceed one or more of the thresholds defined in paragraph FF. [2007, c. 466, Pt. B, §6 (AMD); 2007, c. 466, Pt. B, §10 (AFF).]

Q-1. "Higher-priced mortgage loan" means either:

- (1) A residential mortgage loan that is a "nontraditional mortgage" as defined in paragraph T; or
- (2) A "rate spread home loan" as defined in paragraph V. [2009, c. 362, Pt. A, §2 (NEW).]

R. "Material disclosures" means the disclosure, as required by this Article, of the annual percentage rate, the method of determining the finance charge and the balance upon which a finance charge will be imposed, the amount of the finance charge, the amount to be financed, the total of payments, the number and amount of payments and the due dates or periods of payments scheduled to repay the indebtedness. [2007, c. 273, Pt. A, §4 (NEW); 2007, c. 273, Pt. A, §§37, 41 (AFF).]

S. "Mortgage broker" has the same meaning as set forth in 24 Code of Federal Regulations, Section 3500.2, except as otherwise provided in this Article. [2009, c. 362, Pt. A, §3 (AMD).]

T. "Nontraditional mortgage" has the same meaning as those mortgages described in the "Interagency Guidance on Nontraditional Mortgage Product Risks" issued September 29, 2006 and published in 71 Federal Register, 58609 on October 4, 2006 and as updated from time to time, except that "nontraditional mortgage" does not include a mortgage that does not allow a borrower to defer repayment of principal or interest. [2007, c. 471, §4 (AMD); 2007, c. 471, §18 (AFF).]

U. "Points and fees" has the same meaning as set forth in 12 Code of Federal Regulations, Section 226.32(b)(1). In addition, "points and fees" includes:

- (1) The maximum prepayment fees and penalties that may be charged or collected under the terms of the loan documents;
- (2) All prepayment fees and penalties that are incurred by the borrower if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor; and
- (3) All compensation paid directly or indirectly to a mortgage broker from any source, including a mortgage broker that originates a loan in its own name in a table-funded transaction.

For open-end loans, points and fees are calculated by adding the total points and fees known at or before closing, including the maximum prepayment penalties that may be charged or collected under the terms of the loan documents and the minimum additional fees the borrower would be required to pay to draw down an amount equal to the total credit line. [2009, c. 362, Pt. A, §4 (RPR).]

V. "Rate spread home loan" means any loan for which the rate spread must be reported under the Home Mortgage Disclosure Act of 1975, Regulation C except that, beginning October 1, 2009, "rate spread home loan" has the same meaning as set forth for "higher-priced mortgage loans" in 12 Code of Federal Regulations, Section 226.35(a). In addition, "rate spread home loan" means any loan that meets the criteria of a high-rate, high-fee mortgage. [2009, c. 362, Pt. A, §5 (AMD).]

W. "Residential mortgage loan" means an extension of credit, including an open-end credit plan, in which:

- (1) The loan does not exceed the maximum original principal obligation as set forth in and from time to time adjusted according to the provisions of 12 United States Code, Section 1454(a)(2);
- (2) The loan is considered a federally related mortgage loan as set forth in 24 Code of Federal Regulations, Section 3500.2;

(3) The loan is not a reverse mortgage transaction or a loan made primarily for business, agricultural or commercial purposes;

(4) The loan is not a construction loan; and

(5) The loan is secured by the borrower's principal dwelling. [2007, c. 471, §6 (AMD); 2007, c. 471, §18 (AFF).]

X. "Residential mortgage transaction" means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract or equivalent consensual security interest is created or retained against the consumer's dwelling to finance the acquisition or initial construction of that dwelling. [2007, c. 273, Pt. A, §4 (NEW); 2007, c. 273, Pt. A, §§37, 41 (AFF).]

Y. "Reverse mortgage transaction" means a nonrecourse transaction in which a mortgage, deed of trust or equivalent consensual security interest is created against the consumer's principal dwelling to secure one or more advances and with respect to which the payment of any principal, interest and shared appreciation or equity is due and payable, other than in the case of default, only after the transfer of the dwelling, after the consumer ceases to occupy the dwelling as a principal dwelling or after the death of the consumer. [2007, c. 273, Pt. A, §4 (NEW); 2007, c. 273, Pt. A, §§37, 41 (AFF).]

Z. "Servicer" has the same meaning as set forth in 24 Code of Federal Regulations, Section 3500.2. [2007, c. 273, Pt. A, §4 (NEW); 2007, c. 273, Pt. A, §§37, 41 (AFF).]

AA. "Servicing" has the same meaning as set forth in 24 Code of Federal Regulations, Section 3500.2 and includes any other activities or responsibilities undertaken in connection with a residential mortgage loan by a person who acts as a servicer with respect to that residential mortgage loan, including collection and default management functions. [2007, c. 273, Pt. A, §4 (NEW); 2007, c. 273, Pt. A, §§37, 41 (AFF).]

BB. [2009, c. 362, Pt. A, §6 (RP).]

CC. "Superintendent of Consumer Credit Protection" has the same meaning as set out in section 6-103. [2007, c. 273, Pt. A, §4 (NEW); 2007, c. 273, Pt. A, §§37, 41 (AFF).]

DD. "Surcharge" means any means of increasing the regular price to a cardholder that is not imposed upon customers paying by cash, check or similar means. [2007, c. 273, Pt. A, §4 (NEW); 2007, c. 273, Pt. A, §§37, 41 (AFF).]

EE. "Tax refund loan," also known as "refund anticipation loan," means a transaction in which a creditor lends an amount less than or equal to a consumer's expected tax refund. [2007, c. 273, Pt. A, §4 (NEW); 2007, c. 273, Pt. A, §§37, 41 (AFF).]

FF. "Threshold" means either:

(1) Rate threshold, which is, for a residential mortgage loan, the point at which the annual percentage rate equals or exceeds the rate set forth in 12 Code of Federal Regulations, Section 226.32(a)(1)(i), without regard to whether the residential mortgage loan may be considered a "residential mortgage transaction" or an extension of "open-end credit" as those terms are set forth in 12 Code of Federal Regulations, Section 226.2; or

(2) The total points and fees threshold, which is:

(a) For loans in which the total loan amount is \$40,000 or more, the point at which the total points and fees payable in connection with the residential mortgage loan less any excluded points and fees exceed 5% of the total loan amount; and

(b) For loans in which the total loan amount is less than \$40,000, the point at which the total points and fees payable in connection with the residential mortgage loan less any excluded points and fees exceed 6% of the total loan amount. [2007, c. 273, Pt. A, §4 (NEW); 2007, c. 273, Pt. A, §§37, 41 (AFF).]

GG. "Total loan amount" means the principal of a loan minus those points and fees that are included in the principal amount of the loan. For open-end loans, the total loan amount must be calculated using the total line of credit allowed under the residential mortgage loan at closing. [2007, c. 273, Pt. A, §4 (NEW); 2007, c. 273, Pt. A, §§37, 41 (AFF).]

HH. "Unauthorized use," as used in section 8-303, means a use of a credit card by a person other than the cardholder who does not have actual, implied or apparent authority for such use and from which the cardholder receives no benefit. [2007, c. 273, Pt. A, §4 (NEW); 2007, c. 273, Pt. A, §§37, 41 (AFF).]

[ 2009, c. 362, Pt. A, §§1-6 (AMD) .]

2. The following rules of construction are applicable for the purposes of this Article.

A. Any reference to any requirement imposed under this Article or any provision thereof includes reference to the regulations of the administrator under this Article or the provision thereof in question. [1981, c. 243, §25 (NEW).]

B. The disclosure of an amount or percentage which is greater than the amount or percentage required to be disclosed under this Article does not in itself constitute a violation of this Article. [1981, c. 243, §25 (NEW).]

[ 1981, c. 243, §25 (NEW) .]

#### SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 1991, c. 330, §1 (AMD). 1995, c. 326, §§2,3 (AMD). 2003, c. 49, §1 (AMD). 2007, c. 273, Pt. A, §§3, 4 (AMD). 2007, c. 466, Pt. B, §6 (AMD). 2007, c. 471, §§2-7 (AMD). 2007, c. 273, Pt. A, §§37, 41 (AFF). 2007, c. 466, Pt. B, §10 (AFF). 2007, c. 471, §18 (AFF). 2009, c. 362, Pt. A, §§1-6 (AMD).

### 9-A §8-104. REGULATIONS; MODEL FORMS

1. The administrator shall adopt rules to carry out the purposes of this Article.

A. The rules may contain classifications, differentiations or other provisions, and may provide for those adjustments and exceptions for any class of transactions, that in the judgment of the administrator are necessary or proper to effectuate the purposes of this Article, to prevent circumvention or evasion of this Article and to facilitate compliance with this Article. Rules adopted pursuant to this Article are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2009, c. 362, Pt. A, §7 (NEW) .]

B. The administrator is authorized to adopt rules substantially similar to, or that afford more protection for consumers than, those codified in 12 Code of Federal Regulations, Part 226, except where this Article expressly directs otherwise. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2009, c. 362, Pt. A, §7 (NEW) .]

[ 2009, c. 362, Pt. A, §7 (RPR) .]

2. The administrator shall publish model disclosure forms and clauses for common transactions to facilitate compliance with the disclosure requirements of this Article and to aid the consumer in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures. In devising those forms, the administrator shall consider the use by creditors of data processing or similar automated equipment. Nothing in this Article may be construed to require a creditor to use any such model form or clause prescribed by the administrator under this subsection.

A. A creditor shall be deemed to be in compliance with the disclosure provisions of this Article with respect to other than numerical disclosures if the creditor:

- (i) Uses any appropriate model form or clause as published by the administrator; or
- (ii) Uses any such model form or clause and changes it by:
  - (a) Deleting any information which is not required by this Article; or
  - (b) Rearranging the format, if in making such deletion or rearranging the format, the creditor does not affect the substance, clarity or meaningful sequence of the disclosure; [1981, c. 243, §25 (NEW).]

B. Model disclosure forms and clauses shall be adopted by the administrator after notice and an opportunity for public comment in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375. [1989, c. 502, Pt. D, §5 (AMD).]

[ 1989, c. 502, Pt. D, §5 (AMD) .]

3. Any regulation of the administrator, or any amendment or interpretation thereof, requiring any disclosure which differs from the disclosures previously required by this Article shall have an effective date of October 1st which follows by at least 6 months the date of promulgation, or the effective date of the comparable regulatory action taken by the Federal Reserve Board, whichever is earlier. This requirement shall not prevent the administrator from taking action to lengthen the time period for compliance or to shorten the length of time for compliance when he makes a specific finding that such action is necessary to comply with the findings of a court or to prevent unfair or deceptive disclosure practices. Any creditor may comply with newly promulgated disclosure requirements prior to the effective date of the requirements.

[ 1981, c. 243, §25 (NEW) .]

4. The administrator may exempt, by rule, from all or part of this Title any class of transactions, other than transactions involving a mortgage described in section 8-103, subsection 1-A, paragraph Q, for which, in the determination of the administrator, coverage under all or part of this Title does not provide a meaningful benefit to consumers in the form of useful information or protection. In determining which classes of transactions to exempt in whole or in part under this subsection, the administrator shall consider the following factors:

A. The amount of the loans and whether the disclosures, right of rescission and other provisions provide a benefit to the consumers who are parties to such transactions, as determined by the administrator; [1997, c. 155, Pt. C, §2 (NEW).]

B. The extent to which the requirements of this Title complicate, hinder or make more expensive the credit process for the class of transactions; [1997, c. 155, Pt. C, §2 (NEW).]

C. The status of the borrowers, including:

- (1) Any related financial arrangements of the borrowers, as determined by the administrator;
- (2) The financial sophistication of the borrowers relative to the type of transaction; and
- (3) The importance to the borrowers of the credit, related supporting property and coverage under this Title, as determined by the administrator; [1997, c. 155, Pt. C, §2 (NEW).]

D. Whether a loan is secured by the principal residence of the consumer; and [1997, c. 155, Pt. C, §2 (NEW).]

E. Whether the goal of consumer protection would be undermined by such an exemption. [1997, c. 155, Pt. C, §2 (NEW).]

[ 2007, c. 471, §8 (AMD); 2007, c. 471, §18 (AFF) .]

5. The administrator, by rule, may exempt from the requirements of this Title certain credit transactions if:

A. The transaction involves a consumer:

- (1) With an annual earned income of more than \$200,000; or
- (2) Having net assets in excess of \$1,000,000 at the time of the transaction; and [1997, c. 155, Pt. C, §2 (NEW).]

B. A waiver that is handwritten, signed, and dated by the consumer is first obtained from the consumer. [1997, c. 155, Pt. C, §2 (NEW).]

The administrator, at the administrator's discretion, may adjust the annual earned income and net asset requirements of this subsection for inflation.

[1997, c. 155, Pt. C, §2 (NEW) .]

#### SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 1989, c. 502, §§4,5 (AMD). 1997, c. 155, §2 (AMD). 2007, c. 471, §8 (AMD). 2007, c. 471, §18 (AFF). 2009, c. 362, Pt. A, §7 (AMD).

### 9-A §8-105. DETERMINATION OF FINANCE CHARGE

1. Except as otherwise provided in this section, the amount of the finance charge in connection with any consumer credit transaction shall be determined as the sum of all charges payable directly or indirectly by the person to whom the credit is extended and imposed directly or indirectly by the creditor as an incident to the extension of credit. The finance charge does not include charges of a type payable in a comparable cash transaction. Examples of charges included in the finance charge include, but are not limited to:

A. Interest, time price differential and any amount payable under a point, discount or other system of additional charges; [1981, c. 243, §25 (NEW).]

B. Service or carrying charge; [1981, c. 243, §25 (NEW).]

C. Loan fees, finder's fee or similar charge; [1981, c. 243, §25 (NEW).]

D. Fee for an investigation or credit report; [1995, c. 614, Pt. B, §1 (AMD); 1995, c. 614, Pt. B, §4 (AFF).]

E. Premium or other charge for any guarantee or insurance protecting the creditor against the obligor's default or other credit loss; or [1995, c. 614, Pt. B, §1 (AMD); 1995, c. 614, Pt. B, §4 (AFF).]

F. Borrower-paid mortgage broker fees, including fees paid directly to the broker or to the lender for delivery to the broker, whether the fees are paid in cash or financed. [1995, c. 614, Pt. B, §2 (NEW); 1995, c. 614, Pt. B, §4 (AFF).]

[1995, c. 614, Pt. B, §§1, 2 (AMD); 1995, c. 614, Pt. B, §4 (AFF) .]

**1-A.** The finance charge may not include fees and amounts imposed by 3rd-party closing agents, including settlement agents, attorneys and escrow and title companies but not including fees for administering escrow accounts, if the creditor does not require the imposition of the charges or the services provided and does not retain the charges.

[1995, c. 614, Pt. A, §6 (NEW) .]

**2.** Charges or premiums for credit life, accident or health insurance or involuntary unemployment insurance written in connection with any consumer credit transaction must be included in the finance charge unless:

A. The coverage of the debtor by the insurance is not a factor in the approval by the creditor of the extension of credit and this fact is clearly disclosed in writing to the person applying for or obtaining the extension of credit; and [1981, c. 243, §25 (NEW).]

B. In order to obtain the insurance in connection with the extension of credit, the person to whom the credit is extended must give specific affirmative written indication of the desire to do so after written disclosure to the person of the cost of the insurance. [1995, c. 329, §2 (AMD).]

[ 1995, c. 329, §2 (AMD) .]

**3.** Charges or premiums for insurance, written in connection with any consumer credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property, shall be included in the finance charge unless a clear and specific statement in writing is furnished by the creditor to the person to whom the credit is extended, setting forth the cost of the insurance if obtained from or through the creditor, and stating that the person to whom the credit is extended may choose the person through which the insurance is to be obtained.

[ 1987, c. 129, §72 (AMD) .]

**4.** If any of the following items is itemized and disclosed in accordance with the regulations of the administrator in connection with any transaction, then the creditor need not include that item in the computation of the finance charge with respect to that transaction:

A. Fees and charges prescribed by law that actually are or will be paid to public officials for determining the existence of or for perfecting or releasing or satisfying any security related to the credit transaction; [1995, c. 614, Pt. A, §7 (AMD).]

B. The premium payable for any insurance in lieu of perfecting any security interest otherwise required by the creditor in connection with the transaction, if the premium does not exceed the fees and charges described in paragraph A that would otherwise be payable; or [1995, c. 614, Pt. A, §7 (AMD).]

C. Any tax levied on security instruments or on documents evidencing indebtedness if the payment of those taxes is a precondition for recording the instrument securing the evidence of indebtedness. [1995, c. 614, Pt. A, §8 (NEW).]

[ 1995, c. 614, Pt. A, §§7, 8 (AMD) .]

**5.** The following items, when charged in connection with any extension of credit secured by an interest in real property, shall not be included in the computation of the finance charge with respect to that transaction:

A. Fees or premiums for title examination, title insurance or similar purposes; [1981, c. 243, §25 (NEW).]

B. Fees for preparation of loan-related documents; [1995, c. 614, Pt. A, §9 (AMD).]

C. Escrows for future payments of taxes and insurance; [1981, c. 243, §25 (NEW).]

D. Fees for notarizing deeds and other documents; [1981, c. 243, §25 (NEW).]

E. Appraisal fees, including fees related to any pest infestation or flood hazard inspections conducted prior to closing; and [1995, c. 614, Pt. A, §9 (AMD).]

F. Credit reports. [1981, c. 243, §25 (NEW).]

[ 1995, c. 614, Pt. A, §9 (AMD) .]

6. In connection with credit transactions not under an open-end credit plan that are secured by real property or a dwelling, the disclosure of the finance charge and other disclosures affected by any finance charge are deemed accurate:

A. For purposes of this Title, if the amount disclosed as the finance charge:

- (i) Does not vary from the actual finance charge by more than \$100; or
- (ii) Is greater than the amount required to be disclosed under this Title; or [1995, c. 614, Pt. B, §3 (NEW); 1995, c. 614, Pt. B, §4 (AFF).]

B. For purposes of section 8-204:

- (i) If, except as provided in subparagraph (ii), the amount disclosed as the finance charge does not vary from the actual finance charge by more than an amount equal to 1/2 of 1% of the total amount of credit extended; or
- (ii) In the case of a transaction, other than a high-rate, high-fee mortgage as defined in section 8-103, subsection 1-A, paragraph Q, that:
  - (a) Is a refinancing of the principal balance then due and any accrued and unpaid finance charges of a residential mortgage transaction, as defined in section 8-103, subsection 1-A, paragraph W, or is any subsequent refinancing of such a transaction; and
  - (b) Does not provide any new consolidation or new advance, if the amount disclosed as the finance charge does not vary from the actual finance charge by more than an amount equal to 1% of the total amount of credit extended. [2009, c. 362, Pt. C, §2 (AMD).]

[ 2009, c. 362, Pt. C, §2 (AMD) .]

#### SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 1987, c. 129, §§71,72 (AMD). 1995, c. 329, §2 (AMD). 1995, c. 614, §§A6-9,B1-3 (AMD). 1995, c. 614, §B4 (AFF). 2009, c. 362, Pt. C, §2 (AMD).

### 9-A §8-106. DETERMINATION OF ANNUAL PERCENTAGE RATE

1. The annual percentage rate applicable to any extension of consumer credit shall be determined, in accordance with the regulations of the administrator:

A. In the case of any extension of credit other than under an open-end credit plan, as:

- (i) That nominal annual percentage rate which will yield a sum equal to the amount of the finance charge when it is applied to the unpaid balances of the amount financed, calculated according to the actuarial method of allocating payments made on a debt between the amount financed and the amount of the finance charge, pursuant to which a payment is applied first to the accumulated finance charge and the balance is applied to the unpaid amount financed; or
- (ii) The rate determined by any method prescribed by the administrator as a method which materially simplifies computation while retaining reasonable accuracy as compared with the rate determined under subparagraph (i); and [1981, c. 243, §25 (NEW).]

B. In the case of any extension of credit under an open-end credit plan, as the quotient, expressed as a percentage, of the total finance charge for the period to which it relates divided by the amount upon which the finance charge for that period is based, multiplied by the number of such periods in a year. [1981, c. 243, §25 (NEW).]

[ 1981, c. 243, §25 (NEW) .]

2. Where a creditor imposes the same finance charge for balances within a specified range, the annual percentage rate shall be computed on the median balance within the range, except that if the administrator determines that a rate so computed would not be meaningful, or would be materially misleading, the annual percentage rate shall be computed on such other basis as the administrator may by regulation require.

[ 1981, c. 243, §25 (NEW) .]

3. The disclosure of an annual percentage rate is accurate for the purposes of this Article if the rate disclosed is within a tolerance not greater than 1/8 of one per cent more or less than the actual rate or rounded to the nearest 1/4 of one per cent. The administrator may allow a greater tolerance to simplify compliance where irregular payments are involved.

[ 1981, c. 243, §25 (NEW) .]

4. The administrator may authorize the use of rate tables or charts which may provide for the disclosure of annual percentage rates which vary from the rate determined in accordance with subsection 1, paragraph A, subparagraph (i) by not more than such tolerances as the administrator may allow. The administrator may not allow a tolerance greater than 8% of that rate except to simplify compliance where irregular payments are involved.

[ 1981, c. 243, §25 (NEW) .]

5. In the case of creditors determining the annual percentage rate in a manner other than as described in subsection 4, the administrator may authorize other reasonable tolerances.

[ 1981, c. 243, §25 (NEW) .]

6. In the case of a tax refund loan, if it is the practice of the creditor to demand repayment upon delivery of the refund, the annual percentage rate is based on the creditor's reasonable estimate of the time the refund will be delivered.

[ 2009, c. 248, §1 (AMD) .]

#### SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 1991, c. 330, §2 (AMD). 2009, c. 248, §1 (AMD).

## 9-A §8-106-A. NUMBER OF PERCENTAGE POINTS

1. Beginning 2 years after the effective date of the regulations adopted under the federal Riegle Community Development and Regulatory Improvement Act of 1994, Public Law No. 103-325, Section 155, 108 Stat. 2160, 2197 (1994) and no more often than biennially after the first increase or decrease in the number of percentage points under this section, the administrator may by rule increase or decrease the number of percentage points specified in section 8-103, subsection 1-A, paragraph FF if the administrator determines that the increase or decrease is:

A. Consistent with the consumer protection against abusive lending provided by amendments made by the federal Riegle Community Development and Regulatory Improvement Act of 1994, Title I, subtitle B, Public Law No. 103-325, 108 Stat. 2160, 2190 (1994); and [1995, c. 326, §4 (NEW) .]

B. Warranted by the need for credit. [1995, c. 326, §4 (NEW) .]

[ 2007, c. 471, §9 (AMD); 2007, c. 471, §18 (AFF) .]

2. An increase or decrease under subsection 1 may not result in the number of percentage points referred to in subsection 1 being less than 8 percentage points or greater than 12 percentage points.

[ 1995, c. 326, §4 (NEW) . ]

3. In determining whether to increase or decrease the number of percentage points referred to in subsection 1, the administrator shall consult with representatives of consumers, including low-income consumers, and lenders.

[ 1995, c. 326, §4 (NEW) . ]

The dollar amount specified in section 8-103, subsection 1-A, paragraph FF must be adjusted annually on January 1st by the annual percentage change in the Consumer Price Index, as reported on June 1st of the year preceding the adjustment. [2007, c. 471, §10 (AMD); 2007, c. 471, §18 (AFF).]

This section may not be construed to limit the rate of interest or the finance charge that a person may charge a consumer for an extension of credit. [1995, c. 326, §4 (NEW).]

#### SECTION HISTORY

2007, c. 273, Pt. C, §5 (AMD). 2007, c. 471, §§9, 10 (AMD). 2007, c. 471, §18 (AFF).

### 9-A §8-107. EXEMPTION

1. The administrator may make application to the Federal Reserve Board for a determination that under the laws of this State any class of credit transaction within this State is subject to requirements substantially similar to federal requirements and that there is adequate provision for enforcement.

[ 1981, c. 243, §25 (NEW) . ]

2. This Article shall not apply to any class of credit transactions within this State which are subject to the requirements of Title 1 of the Federal Consumer Credit Protection Act enacted by Congress, unless any such class of transactions has first been exempted by a regulation of the Board of Governors of the Federal Reserve Board and that exemption remains in effect.

[ 1981, c. 243, §25 (NEW) . ]

#### SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD).

### 9-A §8-108. ENFORCEMENT

1. This Article shall be enforced by the administrator under the provisions of Article VI.

[ 1981, c. 243, §25 (NEW) . ]

2. To keep the administrator's regulations in harmony with the Federal Consumer Credit Protection Act and the regulations prescribed from time to time pursuant to that Act by the Board of Governors of the Federal Reserve System and with the regulations of administrators in other jurisdictions, the administrator, so far as is consistent with the purposes, policies and provisions of this Article, shall:

A. Before adopting, amending and repealing regulations, advise and consult with administrators in other jurisdictions which enact truth-in-lending laws; and [1981, c. 243, §25 (NEW).]

B. In adopting, amending and repealing regulations, take into consideration:

- (i) The regulations so prescribed by the Board of Governors of the Federal Reserve System; and
  - (ii) The regulations of administrators in other jurisdictions which enact truth-in-lending laws.
- [1981, c. 243, §25 (NEW).]

**3. Reimbursement.** The administrator may adopt, by rule, a reimbursement program such that creditors subject to an administrative order under section 6-108 may be ordered to make whatever adjustments are necessary to insure that any person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower. In determining any readjustment, the administrator shall apply, with respect to the annual percentage rate, a tolerance allowed under section 8-106 and, with respect to the finance charge, a corresponding numerical tolerance as generated by the tolerance allowed by section 8-106 for the annual percentage rate.

The administrator may order partial adjustment or partial payments over an extended period if the administrator determines that a partial adjustment or making partial payments over an extended period is necessary to avoid causing the creditor to become undercapitalized pursuant to the Federal Deposit Insurance Act.

[ 1997, c. 155, Pt. C, §3 (AMD) .]

#### SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 243, §25 (NEW). 1981, c. 551, §3 (AMD). 1997, c. 155, §C3 (AMD).

### **9-A §8-109. CRIMINAL LIABILITY FOR WILLFUL AND KNOWING VIOLATION**

Whoever willfully and knowingly gives false or inaccurate information or fails to provide information which he is required to disclose under the provisions of this Article or any regulation issued thereunder, uses any chart or table authorized by the administrator under section 8-106 in such a manner as to consistently understate the annual percentage rate determined under section 8-106, subsection 1, paragraph A, subparagraph (i) or otherwise fails to comply with any requirement imposed under this Article, is guilty of a Class D crime. [1981, c. 243, §25 (NEW).]

#### SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD).

### **9-A §8-110. PENALTIES INAPPLICABLE TO GOVERNMENTAL AGENCIES**

No civil or criminal penalty provided under this Article for any violation thereof may be imposed upon the United States or any agency thereof, or upon any state or political subdivision thereof, or any agency of any state or political subdivision. [1981, c. 243, §25 (NEW).]

#### SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD).

## **Part 2: DISCLOSURE REQUIREMENTS**

### **9-A §8-201. GENERAL REQUIREMENT OF DISCLOSURE**

**1.** Subject to subsection 2, a creditor shall disclose to the person who is obligated on a consumer credit transaction the information required under this article. A person who regularly extends credit that is payable in installments, or is subject to a finance charge, to consumers for personal, family or household purposes, when such extensions are secured by personal property, real property or both and such property is used or

expected to be used as the consumer's principal dwelling, shall also disclose the information required under this article. In a transaction involving more than one obligor, a creditor, except in a transaction under section 8-204, need not disclose to more than one of such obligors if the obligor given disclosure is a primary obligor.

[ 1987, c. 129, §73 (AMD) . ]

2. If a transaction involves one creditor as defined in section 1-301, subsection 17, that creditor shall make the disclosures. If a transaction involves more than one creditor, only one creditor shall be required to make the disclosures. The administrator shall by regulation specify which creditor shall make the disclosures.

[ 1981, c. 243, §25 (NEW) . ]

3. The administrator may provide by regulation that any portion of the information required to be disclosed by this article may be given in the form of estimates when the provider of that information is not in a position to know exact information. When a portion of the interest on any consumer credit transaction is determined on a per diem basis and collected upon the consummation of the transaction, any disclosure with respect to that portion of interest is deemed accurate for purposes of this Title if the disclosure is based on information actually known to the creditor at the time the disclosure documents are being prepared for the consummation of the transaction.

[ 1995, c. 614, Pt. A, §10 (AMD) . ]

4. The administrator shall determine whether tolerances for numerical disclosures other than the annual percentage rate are necessary to facilitate compliance with this Article, and if he determines that those tolerances are necessary to facilitate compliance, he shall by regulation permit disclosures within those tolerances. The administrator shall exercise his authority to permit tolerances for numerical disclosures other than the annual percentage rate so that tolerances are narrow enough to prevent tolerances from resulting in misleading disclosures or disclosures that circumvent the purposes of this Article.

[ 1981, c. 243, §25 (NEW) . ]

#### SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 1987, c. 129, §73 (AMD). 1995, c. 614, §A10 (AMD).

### **9-A §8-202. FORM OF DISCLOSURE; ADDITIONAL INFORMATION; TABULAR FORMAT REQUIRED FOR CERTAIN CREDIT AND CHARGE CARD DISCLOSURES**

1. Information required by this Article shall be disclosed clearly and conspicuously, in accordance with regulations of the administrator. The terms "annual percentage rate" and "finance charge" shall be disclosed more conspicuously than other terms, data or information provided in connection with a transaction, except information relating to the identity of the creditor. Except as provided in subsection 3, regulations of the administrator need not require that disclosures pursuant to this Article be made in the order set forth in this Article and, except as otherwise provided, may permit the use of terminology different from that employed in this Article if it conveys substantially the same meaning.

[ 1989, c. 472, §1 (AMD) . ]

2. Any creditor may supply additional information or explanation with any disclosures required under this Article, except as provided in section 8-206, subsection 2.

[ 1981, c. 243, §25 (NEW) . ]

3. Tabular format shall be required for certain disclosures under section 8-205, subsection 3.

A. The information described in section 8-205, subsection 3, paragraph A, subparagraph (i); section 8-205, subsection 3, paragraph C, subparagraph (ii), division (a), subdivision (1); section 8-205, subsection 3, paragraph D, subparagraph (i) and subparagraph (iii), division (a), subdivision (1) shall be:

- (i) Disclosed in the form and manner which the administrator shall prescribe by regulations; and
- (ii) Placed in a conspicuous and prominent location on or with any written application, solicitation or other document or paper with respect to which that disclosure is required. [1989, c. 472, §1 (NEW).]

B. Tabular format shall be as follows:

(i) In the regulations prescribed under paragraph A, subparagraph (i), the administrator shall require that the disclosure of the information shall, to the extent the administrator determines to be practicable and appropriate, be in the form of a table which:

- (a) Contains clear and concise headings for each item of the information; and
- (b) Provides a clear and concise form for stating each item of information required to be disclosed under each heading.

(ii) In prescribing the form under subparagraph (i), the administrator may:

- (a) List the items required to be included in the table in a different order than the order in which those items are set forth in section 8-205, subsection 3, paragraph A, subparagraph (i) or paragraph D, subparagraph (i); and
- (b) Subject to subparagraph (iii), employ terminology which is different from the terminology which is employed in section 8-205, subsection 3, if that terminology conveys substantially the same meaning.

(iii) Either the heading or the statement under the heading which relates to the time period referred to in section 8-205, subsection 3, paragraph A, subparagraph (i), division (c) shall contain the term "grace period." [1989, c. 472, §1 (NEW).]

#### SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 1989, c. 472, §1 (NEW). 1989, c. 472, §1 (AMD).

### 9-A §8-203. EFFECT OF SUBSEQUENT OCCURRENCE

If information disclosed in accordance with this Article is subsequently rendered inaccurate as the result of any act, occurrence or agreement subsequent to the delivery of the required disclosures, the inaccuracy resulting therefrom does not constitute a violation of this Article. [1981, c. 243, §25 (NEW).]

#### SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD).

### 9-A §8-204. RIGHT OF RESCISSION AS TO CERTAIN TRANSACTIONS

1. Except as otherwise provided in this section, in the case of any consumer credit transaction in which a security interest, including any such interest arising by operation of law, is or will be retained or acquired on any property which is used as the principal dwelling of the person to whom credit is extended, the obligor may rescind the transaction until midnight of the 3rd business day following the consumation of the transaction or the delivery of the information and rescission forms required under this section together with the material disclosures required under this Article, whichever is later, by notifying the creditor, in accordance with regulations of the administrator, of his intention to do so. The creditor shall clearly and conspicuously disclose, in accordance with regulations of the administrator, to any obligor in a transaction subject to

this section the rights of the obligor under this section. The creditor shall also provide, in accordance with regulations of the administrator, appropriate forms for the obligor to exercise his right to rescind any transaction subject to this section.

[ 1981, c. 243, §25 (NEW) . ]

2. When an obligor exercises his right to rescind under subsection 1, he is not liable for any finance or other charge, and any security interest given by the obligor, including any such interest arising by operation of law, becomes void upon such a rescission. Within 20 days after receipt of a notice of rescission, the creditor shall return to the obligor any money or property given as earnest money, down payment or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the obligor, the obligor may retain possession of it. Upon the performance of the creditor's obligations under this section, the obligor shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the obligor shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the obligor, at the option of the obligor. If the creditor does not take possession of the property within 20 days after tender by the obligor, ownership of the property vests in the obligor without obligation on his part to pay for it. The procedures of this section shall apply except when otherwise ordered by a court.

[ 1981, c. 243, §25 (NEW) . ]

3. Notwithstanding any rule of evidence, written acknowledgment of receipt of any disclosures required under this Article by a person to whom information, forms and a statement is required to be given pursuant to this section does no more than create a rebuttable presumption of delivery.

[ 1981, c. 243, §25 (NEW) . ]

4. The administrator may, if he finds that such action is necessary in order to permit homeowners to meet bona fide personal financial emergencies, prescribe regulations authorizing the modification or waiver of any rights created under this section to the extent and under the circumstances set forth in those regulations.

[ 1981, c. 243, §25 (NEW) . ]

5. This section does not apply to:

A. A residential mortgage transaction as defined in section 8-103, subsection 1-A, paragraph W;

[2007, c. 273, Pt. C, §6 (AMD).]

B. A transaction which constitutes a refinancing or consolidation, with no new advances, of the principal balance then due and any accrued and unpaid finance charges of an existing extension of credit by the same creditor secured by an interest in the same property; [1981, c. 243, §25 (NEW).]

C. A transaction in which an agency of a state is the creditor; or [1981, c. 243, §25 (NEW).]

D. Advances under a preexisting open-end credit plan if a security interest has already been retained or acquired in conformance with this section and such advances are in accordance with a previously established credit limit for such plan adopted in conformance with this section. [1987, c. 129, §74 (AMD).]

[ 2007, c. 273, Pt. C, §6 (AMD) . ]

6. An obligor's right of rescission expires 3 years after the date of consummation of the transaction or upon the sale of the property, whichever occurs first, notwithstanding the fact that the information and forms required under this section or any other disclosures required under this Article have not been delivered to the obligor, except that if:

A. The administrator institutes a proceeding to enforce the provisions of this section within 3 years after the date of consummation of the transaction; [1981, c. 243, §25 (NEW).]

B. The administrator finds a violation of this section; and [1981, c. 243, §25 (NEW).]

C. The obligor's right to rescind is based in whole or in part on any matter involved in such proceeding, then the obligor's right of rescission expires 3 years after the date of consummation of the transaction or upon the earlier sale of the property, or upon the expiration of one year following the conclusion of the proceeding, or any judicial review or period for judicial review thereof, whichever is later. [1981, c. 243, §25 (NEW).]

[ 1981, c. 243, §25 (NEW) .]

7. In any action in which it is determined that a creditor has violated this section, in addition to rescission, the court may award relief under section 8-208 for violations of this Article not relating to the right to rescind.

[ 1981, c. 698, §20 (AMD) .]

8. An obligor has no rescission rights arising solely from the form of written notice used by the creditor to inform the obligor of the rights of the obligor under this section if the creditor provided the obligor the appropriate form of written notice published and adopted by the administrator or provided the obligor a comparable written notice of the rights of the obligor that was properly completed by the creditor and otherwise complied with all other requirements of this section regarding notice.

[ 1995, c. 614, Pt. A, §11 (NEW) .]

9. Rescission rights in foreclosure are determined in accordance with the following.

A. Notwithstanding section 8-208-A, and subject to the time period provided in subsection 6, in addition to any other right of rescission available under this section for a transaction, after the initiation of any judicial or nonjudicial foreclosure process on the primary dwelling of any obligor securing an extension of credit, the obligor has a right to rescind the transaction equivalent to other rescission rights provided by this section, if:

(i) A mortgage broker fee is not included in the finance charge in accordance with the laws and regulations in effect at the time the consumer credit transaction was consummated; or

(ii) The form of notice of rescission for the transaction is not the appropriate form of written notice published and adopted by the administrator or a comparable written notice, and otherwise complied with all the requirements of this section regarding notice. [1995, c. 614, Pt. A, §11 (NEW) .]

B. Notwithstanding section 8-105, subsection 6, and subject to the time period provided in subsection 6, for the purposes of exercising any rescission rights after the initiation of any judicial or nonjudicial foreclosure process on the principal dwelling of the obligor securing an extension of credit, the disclosure of the finance charge and other disclosures affected by any finance charge are deemed accurate for purposes of this section if the amount disclosed as the finance charge does not vary from the actual finance charge by more than \$35 or is greater than the amount required to be disclosed under this Title. [1995, c. 614, Pt. A, §11 (NEW) .]

C. This subsection does not affect a consumer's right of rescission in recoupment under law. [1995, c. 614, Pt. A, §11 (NEW) .]

D. This subsection applies to all consumer credit transactions in existence or consummated on or after September 30, 1995. [1995, c. 614, Pt. A, §11 (NEW).]

[ 1995, c. 614, Pt. A, §11 (NEW) .]

#### SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 1981, c. 698, §20 (AMD). 1983, c. 720, §22 (AMD). 1987, c. 129, §74 (AMD). 1995, c. 614, §A11 (AMD). 2007, c. 273, Pt. C, §6 (AMD).

### 9-A §8-205. OPEN-END CONSUMER CREDIT PLANS

1. Before opening any account under an open-end consumer credit plan, the creditor shall disclose to the person to whom credit is to be extended each of the following items, to the extent applicable:

A. The conditions under which a finance charge may be imposed, including the time period within which any credit extended may be repaid without incurring a finance charge, except that the creditor may, at his election and without disclosure, impose no such finance charge if payment is received after the termination of that time period, and if no time period is provided, the creditor shall disclose that fact; [1981, c. 243, §25 (NEW).]

B. The method of determining the balance upon which the finance charge will be imposed; [1981, c. 243, §25 (NEW).]

C. The method of determining the amount of the finance charge, including any minimum or fixed amount imposed as a finance charge; [1981, c. 243, §25 (NEW).]

D. Where one or more periodic rates may be used to compute the finance charge, each rate, the range of balances to which it is applicable and the corresponding nominal annual percentage rate determined by multiplying the periodic rate by the number of periods in a year; [1981, c. 243, §25 (NEW).]

E. Identification of other charges which may be imposed as part of the plan, and their method of computation, in accordance with regulations of the administrator; [1981, c. 243, §25 (NEW).]

F. In cases where the credit is or will be secured, a statement that a security interest has been or will be taken in:

(i) The property purchased as part of the credit transaction; or

(ii) Property not purchased as part of the credit transaction identified by item or type; and [1981, c. 243, §25 (NEW).]

G. A statement in a form prescribed by regulations of the administrator of the protection provided by section 8-303, subsection 6, and section 8-401 to an obligor and the creditor's responsibilities under section 8-303, subsection 6 and section 8-402. With respect to one billing cycle per calendar year, at intervals of not less than 6 months or more than 18 months, the creditor shall transmit the statement to each obligor to whom the creditor is required to transmit a statement pursuant to subsection 2 for the billing cycle. [1981, c. 243, §25 (NEW).]

[ 1981, c. 243, §25 (NEW) .]

2. The creditor of any account under an open-end consumer credit plan shall transmit to the obligor, for each billing cycle at the end of which there is an outstanding balance in that account or with respect to which a finance charge is imposed, a statement setting forth each of the following items to the extent applicable:

A. The outstanding balance in the account at the beginning of the statement period; [1981, c. 243, §25 (NEW).]

B. The amount and date of each extension of credit during the period and a brief identification, on or accompanying the statement of each extension of credit in a form prescribed by the administrator, sufficient to enable the obligor either to identify the transaction or to relate it to copies of sales vouchers or similar instruments previously furnished, except that a creditor's failure to disclose such information in accordance with this paragraph shall not be deemed a failure to comply with this Article if:

- (i) The creditor maintains procedures reasonably adapted to procure and provide such information; and
- (ii) The creditor responds to and treats any inquiry for clarification or documentation as a billing error and an erroneously billed amount under Part 4; [1981, c. 243, §25 (NEW).]

C. In lieu of complying with the requirements of paragraph B, in the case of any transaction in which the creditor and seller are the same person, and such person's open-end credit plan has fewer than 15,000 accounts, the creditor may elect to provide only the amount and date of each extension of credit during the period and the seller's name and location where the transaction took place if:

- (i) A brief identification of the transaction has been previously furnished; and
- (ii) The creditor responds to and treats any inquiry for clarification or documentation as a billing error and an erroneously billed amount under Part 4. [1981, c. 243, §25 (NEW).]

D. The total amount credited to the account during the period; [1981, c. 243, §25 (NEW).]

E. The amount of any finance charge added to the account during the period, itemized to show the amounts, if any, due to the application of percentage rates and the amount, if any, imposed as a minimum or fixed charge; [1981, c. 243, §25 (NEW).]

F. Where one or more periodic rates may be used to compute the finance charge, each rate, the range of balances to which it is applicable and, unless the annual percentage rate determined under section 8-106, subsection 1, paragraph B, is required to be disclosed pursuant to paragraph G, the corresponding nominal annual percentage rate determined by multiplying the periodic rate by the number of periods in a year; [1981, c. 243, §25 (NEW).]

G. Where the total finance charge exceeds 50¢ for a monthly or longer billing cycle, or the pro rata part of 50¢ for a billing cycle shorter than monthly, the total finance charge expressed as an annual percentage rate determined under section 8-106, subsection 1, paragraph B, except that if the finance charge is the sum of 2 or more products of a rate times a portion of the balance, the creditor may, in lieu of disclosing a single rate for the total charge, disclose each such rate expressed as an annual percentage rate, and the part of the balance to which it is applicable; [1981, c. 243, §25 (NEW).]

H. The balance on which the finance charge was computed and a statement of how the balance was determined; [1981, c. 243, §25 (NEW).]

I. The outstanding balance in the account at the end of the period; [1981, c. 243, §25 (NEW).]

J. The date by which or the period within which payment shall be made to avoid additional finance charges, except that the creditor may, at his election and without disclosure, impose no such additional finance charge if payment is received after the date or the termination of that period; and [1981, c. 243, §25 (NEW).]

K. The address to be used by the creditor for the purpose of receiving billing inquiries from the obligor. [1981, c. 243, §25 (NEW).]

[ 1981, c. 243, §25 (NEW) .]

**3. Disclosure in credit and charge card applications and solicitations shall be as follows.**

A. Direct mail applications and solicitations shall be governed by this paragraph.

(i) Any application to open a credit card account for any person under an open-end consumer credit plan, or a solicitation to open such an account without requiring an application, that is mailed to consumers, shall disclose in tabular format the following information, pursuant to subsection 5 and section 8-202, subsection 3:

(a) Annual percentage rates:

- (1) Each annual percentage rate applicable to extensions of credit under the credit plan;
- (2) When an extension of credit is subject to a variable rate, the fact that the rate is variable, the annual percentage rate in effect at the time of the mailing and how the rate is determined; and
- (3) When more than one rate applies, the range of balances to which each rate applies;

(b) Annual and other fees:

- (1) Any annual fee, other periodic fee, or membership fee imposed for the issuance or availability of a credit card, including any account maintenance fee or other charge imposed based on activity or inactivity for the account during the billing cycle;
- (2) Any minimum finance charge imposed for each period during which any extension of credit which is subject to a finance charge is outstanding; and
- (3) Any transaction charge imposed in connection with use of the card to purchase goods or services;

(c) Grace period:

- (1) Subject to section 2-202, subsection 5, the date by which, or the period within which, any credit extended under the credit plan for purchases of goods or services must be repaid to avoid incurring a finance charge; and
- (2) If the length of the grace period varies, the card issuer may disclose the range of days, the minimum number of days or the average number of days in the grace period, if the disclosure is identified as such; and

(d) Balance calculation method:

- (1) The name of the balance calculation method used in determining the balance on which the finance charge is computed if the method used has been defined by the administrator, or a detailed explanation of the balance calculation method used if the method has not been so defined; and
- (2) In prescribing regulations to carry out this subsection, the administrator shall define and name not more than the 5 balance calculation methods determined by the administrator to be the most commonly used methods.

(ii) In addition to the information required to be disclosed under subparagraph (i), each application or solicitation to which that subparagraph applies shall disclose clearly and conspicuously the following information, subject to subsections 5 and 6:

- (a) Any cash advance fee which is any fee imposed for an extension of credit in the form of cash;
- (b) Any late fee which is any fee imposed for a late payment; and
- (c) Any over-the-limit fee which is any fee imposed in connection with an extension of credit in excess of the amount of credit authorized to be extended with respect to that account.

[ 1989, c. 472, §2 (NEW) . ]

B. Telephone solicitations shall be governed by this paragraph.

- (i) In any telephone solicitation to open a credit card account for any person under an open-end consumer credit plan, the person making the solicitation shall orally disclose the information described in paragraph A, subparagraph (i).
- (ii) Subparagraph (i) shall not apply to any telephone solicitation if:
- (a) The credit card issuer:
    - (1) Does not impose any fee described in subsection 3, paragraph A, subparagraph (i), division (b), subdivision (1); or
    - (2) Does not impose any fee in connection with telephone solicitations unless the consumer signifies acceptance by using the card;
  - (b) The card issuer discloses clearly and conspicuously in writing the information described in paragraph A within 30 days after the consumer requests the card, but in no event later than the date of delivery of the card; and
  - (c) The card issuer discloses clearly and conspicuously that the consumer is not obligated to accept the card or account and the consumer will not be obligated to pay any of the fees or charges disclosed unless the consumer elects to accept the card or account by using the card. [1989, c. 472, §2 (NEW).]

C. Applications and solicitations by other means shall be governed by this paragraph.

- (i) Any application to open a credit card account for any person under an open-end consumer credit plan, or any solicitation to open such an account without requiring an application, that is made available to the public or contained in catalogs, magazines, or other publications, shall meet the disclosure requirements of subparagraph (ii), (iii) or (iv).
- (ii) An application or solicitation described in subparagraph (i) meets the requirement of this subparagraph if that application or solicitation contains:
- (a) The information:
    - (1) Described in paragraph A, subparagraph (i) in the form required under section 8-202, subsection 3, subject to subsection 5 of this section; and
    - (2) Described in paragraph A, subparagraph (ii) in a clear and conspicuous form, subject to subsections 5 and 6;
  - (b) A statement, in a conspicuous and prominent location on the application or solicitation, that:
    - (1) The information is accurate as of the date the application or solicitation was printed;
    - (2) The information contained in the application or solicitation is subject to change after that date; and
    - (3) The applicant should contact the creditor for information on any change in the information contained in the application or solicitation since it was printed;
  - (c) A clear and conspicuous disclosure of the date the application or solicitation was printed; and
  - (d) A disclosure, in a conspicuous and prominent location on the application or solicitation, of a toll-free telephone number or a mailing address at which the applicant may contact the creditor to obtain any change in the information provided in the application or solicitation since it was printed.
- (iii) An application or solicitation described in subparagraph (i) meets the requirement of this subparagraph if that application or solicitation:
- (a) Contains a statement, in a conspicuous and prominent location on the application or solicitation, that:

- (1) There are costs associated with the use of credit cards; and
- (2) The applicant may contact the creditor to request disclosure of specific information of those costs by calling a toll-free telephone number or by writing to an address, specified in the application;
- (b) Contains a disclosure, in a conspicuous and prominent location on the application or solicitation, of a toll-free telephone number and a mailing address at which the applicant may contact the creditor to obtain that information; and
- (c) Does not contain any of the items described in paragraph A.
- (iv) An application or solicitation meets the requirements of this subparagraph if it contains, or is accompanied by:
  - (a) The disclosures required by subsection 1, paragraphs A through F;
  - (b) The disclosures required by paragraph A, subparagraphs (i) and (ii), included clearly and conspicuously, except that the provisions of section 8-202, subsection 3, shall not apply; and
  - (c) A toll-free telephone number or a mailing address at which the applicant may contact the creditor to obtain any change in the information provided.
- (v) Upon receipt of a request for any information referred to in subparagraph (ii), (iii) or (iv), the card issuer or the agent of that issuer shall promptly disclose all other information described in paragraph A. [1989, c. 472, §2 (NEW).]

D. Charge card applications and solicitation shall be governed by this paragraph.

- (i) Any application or solicitation to open a charge card account shall disclose clearly and conspicuously the following information in the form required by section 8-202, subsection 3, subject to subsection 5:
  - (a) Any annual fee, other periodic fee or membership fee imposed for the issuance or availability of the charge card, including any account maintenance fee or other charge imposed based on activity or inactivity for the account during the billing cycle;
  - (b) Any transaction charge imposed in connection with use of the card to purchase goods or services; and
  - (c) A statement that charges incurred by use of the charge card are due and payable upon receipt of a periodic statement rendered for that charge card account.
- (ii) In addition to the information required to be disclosed under subparagraph (i), each written application or solicitation to which that subparagraph applies shall disclose clearly and conspicuously the following information, subject to subsections 5 and 6, provided those fees or charges are not prohibited under section 2-501 or 2-502:
  - (a) Any cash advance fee which is any fee imposed for an extension of credit in the form of cash;
  - (b) Any late fee which is any fee imposed for a late payment; and
  - (c) Any over-the-limit fee which is any fee imposed in connection with an extension of credit in excess of the amount of credit authorized to be extended with respect to that account.
- (iii) Any application to open a charge card account, or any solicitation to open such an account without requiring an application, that is made available to the public or contained in catalogs, magazines, or other publications, shall contain:
  - (a) The information:
    - (1) Described in subparagraph (i) in the form required under section 8-202, subsection 3, subject to subsection 5; and

(2) Described in subparagraph (ii) in a clear and conspicuous form, subject to subsections 5 and 6;

(b) A statement, in a conspicuous and prominent location on the application or solicitation, that:

- (1) The information is accurate as of the date the application or solicitation was printed;
- (2) The information contained in the application or solicitation is subject to change after that date; and
- (3) The applicant should contact the creditor for information on any change in the information contained in the application or solicitation since it was printed;

(c) A clear and conspicuous disclosure of the date the application or solicitation was printed; and

(d) A disclosure, in a conspicuous and prominent location on the application or solicitation, of a toll-free telephone number or a mailing address at which the applicant may contact the creditor to obtain any change in the information provided in the application or solicitation since it was printed.

(iv) If a charge card permits the card holder to receive an extension of credit under an open-end consumer credit plan, which is not maintained by the charge card issuer, the charge card issuer may provide the information described in subparagraphs (i) and (ii) in the form required by those subparagraphs in lieu of the information required under paragraph A, B or C with respect to any credit extended under that plan, if the charge card issuer discloses clearly and conspicuously to the consumer in the application or solicitation that:

- (a) The charge card issuer will make an independent decision as to whether to issue the card;
- (b) The charge card may arrive before the decision is made with respect to an extension of credit under an open-end consumer credit plan; and
- (c) Approval by the charge card issuer does not constitute approval by the issuer of the extension of credit.

The information required to be disclosed under paragraph A shall be provided to the charge card holder by the creditor which maintains the open-end consumer credit plan before the first extension of credit under that plan.

(v) For the purposes of this subsection, the term "charge card" means a card, plate or other single credit device that may be used from time to time to obtain credit which is not subject to a finance charge. [1989, c. 472, §2 (NEW) .]

E. The administrator may, by regulation, require the disclosure of information in addition to that required by this subsection or subsection 4, and modify any disclosure of information required by those subsections, in any application to open a credit card account for any person under an open-end consumer credit plan or any application to open a charge card account for any person, or a solicitation to open any such account without requiring an application, if the administrator determines that the action is necessary to carry out the purposes of, or prevent evasions of, this subsection. [1989, c. 472, §2 (NEW) .]

[ 1989, c. 472, §2 (NEW) .]

**4.** Disclosure prior to renewal shall be as follows:

A. Except as provided in paragraph B, a card issuer that imposes any fee described in subsection 3, paragraph A, subparagraph (i), division (b), subdivision (1) or subsection 3, paragraph D, subparagraph (i), division (a), shall transmit to the consumer at least 30 days prior to the scheduled renewal date of the consumer's credit or charge card account a clear and conspicuous disclosure of:

- (i) The date, the month, or the billing period at the close of which the account will expire if not renewed;
- (ii) The information described in subsection 3, paragraph A, subparagraph (i), or subsection 3, paragraph D, subparagraph (i), that would apply if the account were renewed, subject to subsection 5; and
- (iii) The method by which the consumer may terminate continued credit availability under the account. [1989, c. 472, §2 (NEW).]

**B. Special rule for certain disclosures shall be governed by this paragraph.**

- (i) The disclosures required by this subsection may be provided:
  - (a) Prior to posting a fee described in subsection 3, paragraph A, subparagraph (i), division (b), subdivision (1) or subsection 3, paragraph D, subparagraph (i), division (a), to the account; or
  - (b) With the first periodic billing statement that reflects the posting of the fee to the account.
- (ii) Disclosures may be provided under subparagraph (i) only if:
  - (a) The consumer is given a 30-day period to avoid payment of the fee or to have the fee recredited to the account in any case when the consumer does not wish to continue the availability of the credit; and
  - (b) The consumer is permitted to use the card during that period without incurring an obligation to pay the fee. [1989, c. 472, §2 (NEW).]

**C. The administrator may, by regulation, provide for fewer disclosures than are required by paragraph A in the case of an account which is renewable for a period of less than 6 months. [1989, c. 472, §2 (NEW).]**

[ 1989, c. 472, §2 (NEW) . ]

**5. Other rules for disclosures under subsections 3 and 4 shall be as follows.**

**A. If the amount of any fee required to be disclosed under subsection 3 or 4 is determined on the basis of a percentage of another amount, the percentage used in making that determination and the identification of the amount against which that percentage is applied shall be disclosed in lieu of the amount of that fee. [1989, c. 472, §2 (NEW).]**

**B. If a credit or charge card issuer does not impose any fee required to be disclosed under any provision of subsection 3 or 4, this provision shall not apply with respect to that issuer. [1989, c. 472, §2 (NEW).]**

[ 1989, c. 472, §2 (NEW) . ]

**6. If the amount of any fee required to be disclosed by a credit or charge card issuer under subsection 3, paragraph A, subparagraph (ii); subsection 3, paragraph C, subparagraph (ii), division (a), subdivision (2); subsection 3, paragraph D, subparagraph (ii); or subsection 3, paragraph D, subparagraph (iii), division (a), subdivision (2), varies from state to state, the card issuer may disclose the range of those fees for purposes of subsection 3 in lieu of the amount for each applicable state, if that disclosure includes a statement that the amount of the fee varies from state to state.**

[ 1989, c. 472, §2 (NEW) . ]

**7. Insurance in connection with certain open-end credit card plans shall be as follows:**

**A. Whenever a card issuer that offers any guarantee or insurance for repayment of all or part of the outstanding balance of an open-end credit card plan proposes to change the provider of that guarantee or insurance, the card issuer shall send each insured consumer written notice of the proposed change not less than 30 days prior to the change, including notice of any increase in the rate or substantial decrease**

in coverage or service which will result from that change. The notice may be included on or with the monthly statement provided to the consumer prior to the month in which the proposed change would take effect. [1989, c. 472, §2 (NEW).]

B. In any case in which a proposed change described in paragraph A occurs, the insured consumer shall be given the name and address of the new guarantor or insurer and a copy of the policy or group certificate containing the basic terms and conditions, including the premium rate to be charged. [1989, c. 472, §2 (NEW).]

C. The notices required under paragraphs A and B shall each include a statement that the consumer has the option to discontinue the insurance or guarantee. [1989, c. 472, §2 (NEW).]

D. The administrator shall define in regulations what constitutes a "substantial decrease in coverage or service" for purposes of paragraph A. [1989, c. 472, §2 (NEW).]

[ 1989, c. 472, §2 (NEW) .]

#### SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 1989, c. 472, §2 (AMD).

### **9-A §8-206. CONSUMER CREDIT NOT UNDER OPEN-END CREDIT PLANS**

1. For each consumer credit transaction other than under an open-end credit plan, the creditor shall disclose each of the following items, to the extent applicable:

A. The identity of the creditor required to make disclosure; [1981, c. 243, §25 (NEW).]

B. The "amount financed," using that term, which shall be the amount of credit of which the consumer has actual use. This amount shall be computed as follows, but the computations need not be disclosed and shall not be disclosed with the disclosures conspicuously segregated in accordance with subsection 2:

(i) Take the principal amount of the loan or the case price less down payment and trade-in;

(ii) Add any charges which are not part of the finance charge or of the principal amount of the loan and which are financed by the consumer, including the cost of any items excluded from the finance charge pursuant to section 8-105; and

(iii) Subtract any charges which are part of the finance charge but which will be paid by the consumer before or at the time of the consummation of the transaction, or have been withheld from the proceeds of the credit; [1981, c. 243, §25 (NEW).]

C. In conjunction with the disclosure of the amount financed, a creditor shall provide a statement of the consumer's right to obtain, upon a written request, a written itemization of the amount financed. The statement shall include spaces for a "yes" and "no" indication to be initialed by the consumer to indicate whether the consumer wants a written itemization of the amount financed. Upon receiving an affirmative indication, the creditor shall provide, at the time other disclosures are required to be furnished, a written itemization of the amount financed. For the purposes of this paragraph, "itemization of the amount financed" means a disclosure of the following items, to the extent applicable:

(i) The amount that is or will be paid directly to the consumer;

(ii) The amount that is or will be credited to the consumer's account to discharge obligations owed to the creditor;

(iii) Each amount that is or will be paid to 3rd persons by the creditor on the consumer's behalf, together with an identification of or reference to the 3rd person; and

(iv) The total amount of any charges described in paragraph B, subparagraph (iii); [1981, c. 243, §25 (NEW).]

- D. The "finance charge," not itemized, using that term; [1981, c. 243, §25 (NEW).]
- E. The finance charge expressed as an "annual percentage rate," using that term. This is not required if the amount financed does not exceed \$75 and the finance charge does not exceed \$5, or if the amount financed exceeds \$75 and the finance charge does not exceed \$7.50; [1981, c. 243, §25 (NEW).]
- F. The sum of the amount financed and the finance charge, which shall be termed the "total of payments;" [1981, c. 243, §25 (NEW).]
- G. The number, amount and due dates or period of payments scheduled to repay the total of payments; [1981, c. 243, §25 (NEW).]
- H. In a sale of property or services in which the seller is the creditor required to disclose pursuant to section 8-201, subsection 2, the "total sale price," using that term, which shall be the total of the cash price of the property or services, additional charges and the finance charge; [1981, c. 243, §25 (NEW).]
- I. Descriptive explanations of the terms "amount financed," "finance charge," "annual percentage rate," "total of payments" and "total sale price" as specified by the administrator. The descriptive explanation of "total sale price" shall include reference to the amount of the down payment; [1981, c. 243, §25 (NEW).]
- J. Where the credit is secured, a statement that a security interest has been taken in:
- (i) The property which is purchased as part of the credit transaction; or
  - (ii) Property not purchased as part of the credit transaction identified by item or type; [1981, c. 243, §25 (NEW).]
- K. Any dollar charge or percentage amount which may be imposed by a creditor solely on account of a late payment, other than a deferral or extension charge; [1981, c. 243, §25 (NEW).]
- L. A statement indicating whether or not the consumer is entitled to a rebate of any finance charge upon refinancing or prepayment in full pursuant to acceleration or otherwise, if the obligation involves a precomputed finance charge. A statement indicating whether or not a penalty will be imposed in those same circumstances if the obligation involves a finance charge computed from time to time by application of a rate to the unpaid principal balance; [1981, c. 243, §25 (NEW).]
- M. A statement that the consumer should refer to the appropriate contract document for any information such document provides about nonpayment, default, the right to accelerate the maturity of the debt and prepayment rebates and penalties; [1997, c. 155, Pt. C, §4 (AMD).]
- N. In any residential mortgage transaction, a statement indicating whether a subsequent purchaser or assignee of the consumer may assume the debt obligation on its original terms and conditions; and [1997, c. 155, Pt. C, §4 (AMD).]
- O. In the case of a variable interest rate residential mortgage transaction, in disclosures provided at application as prescribed by the administrator for a variable rate transaction secured by the consumer's principal dwelling, at the option of the creditor, a statement that the periodic payments may increase or decrease substantially, and the maximum interest rate and payment for a \$10,000 loan originated at a recent interest rate, as determined by the administrator, assuming the maximum periodic increases in rates and payments under the program, or a historical example illustrating the effects of interest rates changes implemented according to the loan program. [1997, c. 155, Pt. C, §5 (NEW).]

[ 1997, c. 155, Pt. C, §§4, 5 (AMD) .]

2. Except as otherwise provided in this Article, the disclosures required under subsection 1 shall be made before the credit is extended. Except for the identity of the creditor, all disclosures required under subsection 1 and any disclosure provided for in section 8-105, subsection 2, 3 or 4 shall be conspicuously segregated from all other terms, data or information provided in connection with a transaction, including any computations or itemization.

[ 1981, c. 243, §25 (NEW) . ]

3. The following provisions apply to an extension of credit secured by the consumer's dwelling, other than an open-end credit plan:

A. Except as provided in paragraph G, in the case of any extension of credit that is secured by the dwelling of a consumer, which is also subject to the Real Estate Settlement Procedures Act of 1974, 12 United States Code, Section 2601 et seq., good faith estimates of the disclosures required under subsection 1 must be made in accordance with rules of the administrator under section 8-201, subsection 3 and must be delivered or placed in the mail not later than 3 business days after the creditor receives the consumer's bona fide application, which must be at least 7 business days before consummation of the transaction. [2009, c. 362, Pt. A, §8 (NEW); 2009, c. 362, Pt. A, §16 (AFF) . ]

B. If the disclosure statement furnished within 3 days of the bona fide application indicates that the consumer will not be assessed a prepayment penalty, and if that statement is subsequently rendered inaccurate, the creditor shall notify the consumer of that change as soon as practicable and shall also furnish a corrected statement prior to the time of settlement or consummation. [2009, c. 362, Pt. A, §8 (NEW); 2009, c. 362, Pt. A, §16 (AFF) . ]

C. In the case of an extension of credit that is secured by the dwelling of a consumer, the disclosures provided under paragraph A are in addition to the other disclosures required by subsection 1, and must:

(1) Include in conspicuous type size and format, the following statement: "You are not required to complete this agreement merely because you have received these disclosures or signed a loan application."; and

(2) Be provided in the form of final disclosures at the time of consummation of the transaction, in the form and manner prescribed by this section. [2009, c. 362, Pt. A, §8 (NEW); 2009, c. 362, Pt. A, §16 (AFF) . ]

D. Beginning December 30, 2010, in the case of an extension of credit that is secured by the dwelling of a consumer, under which the annual rate of interest is variable or with respect to which the regular payments may otherwise be variable, in addition to the other disclosures required by subsection 1, the disclosures provided under this subsection must:

(1) Label the payment schedule as follows: "Payment Schedule: Payments Will Vary Based on Interest Rate Changes."; and

(2) State in conspicuous type size and format examples of adjustments to the regular required payment on the extension of credit based on the change in the interest rates specified by the contract for such extension of credit. Among the examples required to be provided under this subparagraph is an example that reflects the maximum payment amount of the regular required payments on the extension of credit, based on the maximum interest rate allowed under the contract, in accordance with the rules of the administrator. Prior to issuing any rules pursuant to this subparagraph, the administrator shall review consumer testing conducted by the Board of Governors of the Federal Reserve System to determine the appropriate format for providing the disclosures required under this subparagraph to consumers so that such disclosures can be easily understood, including the fact that the initial regular payments are for a specific time period that will end on a certain date, that payments will adjust afterwards potentially to a higher amount and that there is no guarantee that the borrower will be able to refinance to a lower amount. [2009, c. 362, Pt. A, §8 (NEW); 2009, c. 362, Pt. A, §16 (AFF) . ]

E. In any case in which the disclosure statement under paragraph A contains an annual percentage rate of interest that is no longer accurate, as determined under section 8-106, subsection 3, the creditor shall furnish an additional, corrected statement to the borrower, not later than 3 business days before the date of consummation of the transaction. [2009, c. 362, Pt. A, §8 (NEW); 2009, c. 362, Pt. A, §16 (AFF).]

F. The consumer must receive the disclosures required under this subsection before paying any fee to the creditor or other person in connection with the consumer's application for an extension of credit that is secured by the dwelling of a consumer. If the disclosures are mailed to the consumer, the consumer is considered to have received them 3 business days after they are mailed. A creditor or other person may impose a fee for obtaining the consumer's credit report before the consumer has received the disclosures under this subsection, provided the fee is bona fide and reasonable in amount. [2009, c. 362, Pt. A, §8 (NEW); 2009, c. 362, Pt. A, §16 (AFF).]

G. To expedite consummation of a transaction, if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency, the consumer may waive or modify the timing requirements for disclosures under paragraph A, as long as:

- (1) The term "bona fide personal emergency" may be further defined in rules issued by the administrator;
- (2) The consumer provides to the creditor a dated, written statement describing the emergency and specifically waiving or modifying those timing requirements, which statement must bear the signature of all consumers entitled to receive the disclosures required by this subsection; and
- (3) The creditor provides to the consumer at or before the time of such waiver or modification the final disclosures required by subsection 1. [2009, c. 362, Pt. A, §8 (NEW); 2009, c. 362, Pt. A, §16 (AFF).]

H. The requirements of paragraphs C to G do not apply to extensions of credit relating to time-share estates as described in Title 33, section 591, subsection 7, or time-share plans as described in 11 United States Code, Section 101(53D). [2009, c. 362, Pt. A, §8 (NEW); 2009, c. 362, Pt. A, §16 (AFF).]

[ 2009, c. 362, Pt. A, §16 (AFF); 2009, c. 362, Pt. A, §8 (RPR) .]

4. If a creditor receives a purchase order by mail or telephone without personal solicitation, and the cash price and the total sale price and the terms of financing, including the annual percentage rate, are set forth in the creditor's catalog or other printed material distributed to the public, then the disclosures required under subsection 1 may be made at any time not later than the date the first payment is due.

[ 1981, c. 243, §25 (NEW) .]

5. If a creditor receives a request for a loan by mail or telephone without personal solicitation and the terms of financing, including the annual percentage rate for representative amounts of credit, are set forth in the creditor's printed material distributed to the public or in the contract of loan or other printed material delivered to the obligor then the disclosures required under subsection 1 may be made at any time not later than the date the first payment is due.

[ 1981, c. 243, §25 (NEW) .]

6. If a consumer credit sale is one of a series of consumer credit sales transactions made pursuant to an agreement providing for the addition of the total sale price of that sale to an existing outstanding balance, and the person to whom the credit is extended has approved in writing both the annual percentage rate or rates and the method of computing the finance charge or charges, and the creditor retains no security interest in any property as to which he has received payments aggregating the amount of the sales price including any finance charges attributable thereto, then the disclosure required under subsection 1 for the particular sale

may be made at any time not later than the date the first payment for that sale is due. For the purposes of this subsection, in the case of items purchased on different dates, the first purchased shall be deemed first paid for, and in the case of items purchased on the same date, the lowest priced shall be deemed first paid for.

[ 1981, c. 243, §25 (NEW) .]

#### SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 1997, c. 155, §§4, 5 (AMD). 2009, c. 362, Pt. A, §8 (AMD). 2009, c. 362, Pt. A, §16 (AFF).

### 9-A §8-206-A. HIGH-RATE, HIGH-FEE MORTGAGES

1. In addition to other disclosures required under this article, for each high-rate, high-fee mortgage the creditor shall provide to the consumer the following disclosures in conspicuous type size.

A. "You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application." [1995, c. 326, §5 (NEW).]

B. "If you obtain this loan, the lender will have a mortgage on your home. You could lose your home and any money you have put into it if you do not meet your obligations under the loan." [1995, c. 326, §5 (NEW).]

[ 1995, c. 326, §5 (NEW) .]

2. In addition to the disclosures required under subsection 1, the creditor shall disclose:

A. For a credit transaction with a fixed rate of interest, the annual percentage rate and the amount of the regular monthly payment; or [1995, c. 326, §5 (NEW).]

B. For any other credit transaction, the annual percentage rate of the loan, the amount of the regular monthly payment, a statement that the interest rate and monthly payment may increase and the amount of the maximum monthly payment based on the maximum interest rate allowed pursuant to the federal Competitive Equality Banking Act of 1987, Public Law No. 100-86, Section 1204, 101 Stat. 552, 662 (1987). [1995, c. 326, §5 (NEW).]

[ 1995, c. 326, §5 (NEW) .]

3. The disclosures required by this section must be given to the consumer at least 3 business days prior to the consummation of the transaction.

[ 1995, c. 326, §5 (NEW) .]

4. After providing the disclosures required by this section, a creditor may not change the terms of the extension of credit if the changes make the disclosures inaccurate, unless new disclosures are provided that meet the requirements of this section.

A. A creditor may provide new disclosures by telephone under the following terms:

(1) The change is initiated by the consumer; and

(2) At the consummation of the transaction under which the credit is extended, the creditor provides to the consumer the new disclosures in writing and the creditor and the consumer certify in writing that those new disclosures were provided by telephone at least 3 days prior to the date of consummation of the transaction. [1995, c. 326, §5 (NEW).]

[ 1995, c. 326, §5 (NEW) .]

**5.** Upon determining that a modification of the disclosure process is necessary to permit consumers to meet bona fide personal financial emergencies, the administrator may adopt rules authorizing the modification or waiver of the rights of disclosure created under subsections 3 and 4 to the extent allowed under the regulations.

[ 1995, c. 326, §5 (NEW) .]

**6.**

[ 2007, c. 273, Pt. A, §§37, 41 (AFF); 2007, c. 273, Pt. A, §6 (RP) .]

**7.**

[ 2007, c. 273, Pt. A, §§37, 41 (AFF); 2007, c. 273, Pt. A, §7 (RP) .]

**8.**

[ 2007, c. 273, Pt. A, §§37, 41 (AFF); 2007, c. 273, Pt. A, §8 (RP) .]

**9.**

[ 2007, c. 273, Pt. A, §§37, 41 (AFF); 2007, c. 273, Pt. A, §9 (RP) .]

**10.** A high-rate, high-fee mortgage may not include terms under which the outstanding principal balance will increase at any time over the course of the loan because the regular periodic payments do not cover the full amount of interest due.

[ 1995, c. 326, §5 (NEW) .]

**11.**

[ 2007, c. 273, Pt. A, §§37,41 (AFF); 2007, c. 273, Pt. A, §10 (RP) .]

**11-A.** A creditor who makes a high-rate, high-fee mortgage shall report both the favorable and unfavorable payment history of the consumer to a nationally recognized consumer credit reporting agency at least annually during the period the creditor holds or services the loan.

[ 2003, c. 49, §3 (NEW) .]

**12.**

[ 2007, c. 273, Pt. A, §§37, 41 (AFF); 2007, c. 273, Pt. A, §11 (RP) .]

**12-A.**

[ 2007, c. 273, Pt. A, §§37, 41 (AFF); 2007, c. 273, Pt. A, §12 (RP) .]

**13.**

[ 2007, c. 273, Pt. A, §§37, 41 (AFF); 2007, c. 273, Pt. A, §13 (RP) .]

**13-A.** A creditor may not advertise that refinancing preexisting debt with a high-rate, high-fee mortgage will reduce a consumer's aggregate monthly debt payment without also disclosing that the high-rate, high-fee mortgage may increase both the consumer's aggregate number of monthly debt payments and the aggregate amount paid by the consumer over the term of the high-rate, high-fee mortgage.

[ 2003, c. 49, §5 (NEW) .]

**13-B.**

[ 2007, c. 273, Pt. A, §§37,41 (AFF); 2007, c. 273, Pt. A, §14 (RP) .]

**13-C.**

[ 2007, c. 273, Pt. A, §§37,41 (AFF); 2007, c. 273, Pt. A, §15 (RP) .]

**14.** A mortgage that contains a provision prohibited by this section is deemed a failure to deliver the material disclosures required under this article for the purpose of section 8-204.

[ 1995, c. 326, §5 (NEW) .]

**15.** The administrator may, by rule or order, exempt specific mortgage products or categories of mortgages from any of the prohibitions specified in subsections 10 and 11-A if the administrator finds that the exemption:

A. Is in the interest of the borrowing public; and [1995, c. 326, §5 (NEW).]

B. Applies only to products that maintain and strengthen home ownership and equity protection.  
[1995, c. 326, §5 (NEW).]

[ 2007, c. 273, Pt. C, §7 (AMD) .]

**16.** The administrator, by regulation or order, shall prohibit acts or practices in connection with:

A. Mortgage loans that the administrator finds unfair, deceptive or designed to evade the provisions of this section; and [1995, c. 326, §5 (NEW).]

B. Refinancing of mortgage loans that the administrator finds are associated with abusive lending practices or that are otherwise not in the interest of the borrowing public. [1995, c. 326, §5 (NEW).]

[ 1995, c. 326, §5 (NEW) .]

**16-A.**

[ 2007, c. 273, Pt. A, §§37, 41 (AFF); 2007, c. 273, Pt. A, §16 (RP) .]

**16-B.**

[ 2007, c. 273, Pt. A, §§37, 41 (AFF); 2007, c. 273, Pt. A, §17 (RP) .]

**17.**

[ 2007, c. 273, Pt. A, §§37,41 (AFF); 2007, c. 273, Pt. A, §18 (RP) .]

**18.** A political subdivision of this State is prohibited from enacting, issuing and enforcing ordinances, resolutions, rules, regulations, orders, requests for proposals or requests for bids pertaining to the making of a high-rate, high-fee mortgage by a person who:

A. Is subject to the jurisdiction of the Bureau of Consumer Credit Protection or the Bureau of Financial Institutions, including activities subject to this article; [2003, c. 49, §6 (NEW); 2007, c. 695, Pt. A, §47 (AFF); 2007, c. 273, Pt. B, §5 (REV).]

B. Is subject to the jurisdiction or regulatory supervision of the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, the Federal Deposit Insurance Corporation, the Federal Trade Commission or the United States Department of Housing and Urban Development; [2003, c. 49, §6 (NEW).]

C. Is subject to the jurisdiction or regulatory supervision of a department or agency of another state; or [2003, c. 49, §6 (NEW).]

D. Originates, purchases, sells, assigns, securitizes or services property interests or obligations created by financial transactions or loans made, executed or originated by a person referred to in paragraph A, B or C or assist or facilitate such transactions. [2003, c. 49, §6 (NEW).]

This subsection applies to all ordinances, resolutions, rules, regulations, orders, requests for proposals and requests for bids pertaining to financial or lending activities, including any ordinances, resolutions, rules, regulations, orders, requests for proposals and requests for bids disqualifying persons from doing business with a political subdivision based upon the making of a high-rate, high-fee mortgage or imposing reporting requirements or any other obligations upon persons regarding the making of a high-rate, high-fee mortgage.

This subsection applies retroactively to all ordinances, resolutions, rules, regulations, orders, requests for proposals and requests for bids in existence on the effective date of this subsection.

[ 2003, c. 49, §6 (NEW); 2007, c. 695, Pt. A, §47 (AFF); 2007, c. 273, Pt. B, §5 (REV) .]

#### SECTION HISTORY

1995, c. 326, §5 (NEW). 2003, c. 49, §§2-6 (AMD). 2007, c. 273, Pt. A, §§6-18 (AMD). 2007, c. 273, Pt. C, §7 (AMD). 2007, c. 273, Pt. A, §§37, 41 (AFF). 2007, c. 273, Pt. B, §7 (AFF). 2007, c. 695, Pt. A, §47 (AFF). 2007, c. 273, Pt. B, §5 (REV).

### **9-A §8-206-B. REVERSE MORTGAGES**

**1.** In addition to the disclosures required under this article, for each reverse mortgage the creditor shall provide to the consumer, at least 3 days prior to the consummation of the transaction, a disclosure in conspicuous type of a good faith estimate of the projected total cost of the mortgage to the consumer expressed as a table of annual interest rates. Each annual interest rate must be based on a projected total future credit extension balance under a projected appreciation rate for the dwelling and a term for the mortgage. The disclosure must include:

A. Statements of the annual interest rates for at least 3 projected appreciation rates and at least 3 credit transaction periods, as determined by the administrator, including:

- (1) A short-term reverse mortgage;
- (2) A term equaling the actuarial life expectancy of the consumer; and
- (3) Any longer term the administrator determines appropriate; and [1995, c. 326, §5 (NEW) .]

B. A statement that the consumer is not obligated to complete the reverse mortgage transaction merely because the consumer has received the disclosure required under this section or has signed an application for the reverse mortgage. [1995, c. 326, §5 (NEW).]

[ 1995, c. 326, §5 (NEW) .]

2. In determining the projected total cost of the mortgage to be disclosed to the consumer under subsection 1, the creditor shall take into account:

- A. Any shared appreciation or equity that the lender is, by contract, entitled to receive; [1995, c. 326, §5 (NEW).]
- B. All costs and charges to the consumer, including the costs of any associated annuity that the consumer elects or is required to purchase as part of the reverse mortgage transaction; [1995, c. 326, §5 (NEW).]
- C. All payments to and for the benefit of the consumer including, when an associated annuity is purchased and whether or not that purchase is required by the lender as a condition of making the reverse mortgage, the annuity payments received by the consumer and financed from the proceeds of the loan, instead of the proceeds used to finance the annuity; and [1995, c. 326, §5 (NEW).]
- D. Any limitation on the liability of the consumer under reverse mortgage transactions such as nonrecourse limits and equity conservation agreements. [1995, c. 326, §5 (NEW).]

[ 1995, c. 326, §5 (NEW) .]

SECTION HISTORY

1995, c. 326, §5 (NEW).

## **9-A §8-206-C. HIGH-RATE, HIGH-FEE MORTGAGES; ADDITIONAL REQUIREMENTS**

*(REPEALED)*

SECTION HISTORY

2009, c. 362, Pt. A, §9 (RP).

## **9-A §8-206-D. RESIDENTIAL MORTGAGE LOAN REQUIREMENTS**

*(REPEALED)*

SECTION HISTORY

2009, c. 362, Pt. A, §10 (RP).

## **9-A §8-206-E. SPECIAL LIABILITY FOR VIOLATIONS OF RESIDENTIAL MORTGAGE LOAN, HIGHER-PRICED MORTGAGE LOAN AND HIGH-RATE, HIGH-FEE MORTGAGE LOAN REQUIREMENTS**

1. This section applies to any violation of section 8-206-A, 8-206-H, 8-206-I or 8-206-J in connection with the origination, brokering or servicing of a residential mortgage loan. This section does not apply to a purchaser or assignee of a residential mortgage loan except as permitted in section 8-206-H, subsection 2.

[ 2009, c. 362, Pt. A, §11 (AMD) .]

2. Any person who has been found in violation of section 8-206-A, 8-206-H, 8-206-I or 8-206-J by a court may be liable to the borrower for the following:

- A. Actual damages, including consequential and incidental damages. The borrower may not be required to demonstrate reliance in order to receive actual damages; [2007, c. 273, Pt. A, §21 (NEW); 2007, c. 273, Pt. A, §§37, 41 (AFF).]
- B. Statutory damages as follows:

(1) For violations described in section 8-206-H, statutory damages equal to 2 times the finance charge paid under the loan and forfeiture of the remaining interest under the loan; and

(2) For violations described in section 8-206-J, statutory damages in the amount of \$5,000 per violation; [2009, c. 362, Pt. A, §11 (AMD).]

C. Punitive damages for violations of section 8-206-H or section 8-206-I, subsection 1, paragraph D when the violation was malicious or reckless; and [2009, c. 362, Pt. A, §11 (AMD).]

D. Costs, including reasonable attorney's fees. [2007, c. 273, Pt. A, §21 (NEW); 2007, c. 273, Pt. A, §§37, 41 (AFF).]

[ 2009, c. 362, Pt. A, §11 (AMD) .]

**3.** A borrower may be granted injunctive, declaratory and other equitable relief the court determines appropriate in an action to enforce compliance with this section and sections 8-206-A, 8-206-H, 8-206-I and 8-206-J.

[ 2009, c. 362, Pt. A, §11 (AMD) .]

**4.** The right of rescission granted under 15 United States Code, Chapter 41, Subchapter I, Part A for a violation of that law is available to a borrower acting only in an individual capacity by way of recoupment as a defense against a party foreclosing on a residential mortgage loan at any time during the term of the loan. Any recoupment claim asserted pursuant to this provision is limited to amounts required to reduce or extinguish the borrower's liability under the residential mortgage loan plus amounts required to recover costs, including reasonable attorney's fees. This section may not be construed to limit recoupment rights available to the borrower under any other law.

[ 2007, c. 273, Pt. A, §21 (NEW); 2007, c. 273, Pt. A, §§37, 41 (AFF) .]

**5.** The remedies provided in this section are not intended to be the exclusive remedies available to a borrower, nor must the borrower exhaust any administrative remedies provided under this section or any other applicable law before proceeding under this section.

[ 2007, c. 273, Pt. A, §21 (NEW); 2007, c. 273, Pt. A, §§37, 41 (AFF) .]

**6.** Any person who knowingly violates section 8-206-A or 8-206-H is guilty of a Class E crime.

[ 2009, c. 362, Pt. A, §11 (AMD) .]

**7.** A creditor in a residential mortgage loan who, when acting in good faith, fails to comply with the provisions of section 8-206-A, 8-206-H, 8-206-I or 8-206-J is deemed not to have violated those sections if the creditor establishes that either:

A. Within 30 days of the loan closing and prior to receiving any notice of the compliance failure, the creditor has made appropriate restitution to the borrower and appropriate adjustments have been made to the loan; or [2007, c. 273, Pt. A, §21 (NEW); 2007, c. 273, Pt. A, §§37, 41 (AFF).]

B. Within 60 days of the loan closing and prior to receiving any notice of the compliance failure, when the compliance failure was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid such errors, the borrower is notified of the compliance failure, appropriate restitution is made to the borrower and appropriate adjustments are made to the loan. Examples of a bona fide error include clerical, calculation, computer malfunction and

programming and printing errors. An error of legal judgment with respect to a person's obligations under this section is not a bona fide error. [2007, c. 273, Pt. A, §21 (NEW); 2007, c. 273, Pt. A, §§37, 41 (AFF).]

[ 2009, c. 362, Pt. A, §11 (AMD) .]

**8.** The remedies provided in this section are cumulative.

[ 2007, c. 273, Pt. A, §21 (NEW); 2007, c. 273, Pt. A, §§37, 41 (AFF) .]

**9.** Notwithstanding any other provision of law, a residential mortgage loan agreement may not include any provision that waives any borrower's remedies available at law or equity, whether acting individually or on behalf of others similarly situated, or the borrower's rights to civil discovery or appeal. Any such provision is unenforceable and void as a matter of law.

[ 2007, c. 273, Pt. A, §21 (NEW); 2007, c. 273, Pt. A, §§37, 41 (AFF) .]

**10.** Without regard to whether a borrower is acting individually or on behalf of others similarly situated, any provision of a residential mortgage loan agreement that allows a person to require a 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 borrower may otherwise properly bring a claim or defense or that limits in any way any claim or defense the borrower may have is unconscionable and void as a matter of law.

[ 2007, c. 273, Pt. A, §21 (NEW); 2007, c. 273, Pt. A, §§37, 41 (AFF) .]

**11.** It is a violation of section 8-206-A, 8-206-H, 8-206-I or 8-206-J for any person to attempt in bad faith to avoid the application of those sections by dividing any loan transaction into separate parts or structuring a residential mortgage loan transaction as an open-end loan for the purpose of evading the provisions of those sections when the loan would have been a high-rate, high-fee mortgage if the loan had been structured as a closed-end loan or by engaging in any other subterfuge with the intent of evading any provision of this section.

[ 2009, c. 362, Pt. A, §11 (AMD) .]

#### SECTION HISTORY

2009, c. 362, Pt. A, §11 (AMD).

### **9-A §8-206-F. INVESTIGATIVE AND LEGAL COMPLIANCE PERSONNEL**

**1.** The Superintendent of Consumer Credit Protection shall establish the following positions:

A. A position with the responsibility for promoting compliance with, and investigating alleged violations of, the provisions of this section by entities or individuals subject to the jurisdiction of the Bureau of Consumer Credit Protection; and [2007, c. 273, Pt. A, §22 (NEW); 2007, c. 273, Pt. A, §41 (AFF).]

B. A staff attorney position with the responsibility for compliance with, and enforcement of the provisions of, this section by entities or individuals subject to the jurisdiction of the Bureau of Consumer Credit Protection. [2007, c. 273, Pt. A, §22 (NEW); 2007, c. 273, Pt. A, §41 (AFF).]

[ 2007, c. 273, Pt. A, §22 (NEW); 2007, c. 273, Pt. A, §41 (AFF) .]

2. Notwithstanding section 6-203, subsection 3-C, the Superintendent of Consumer Credit Protection may by rule adjust the fees paid with respect to creditors that are not supervised financial organizations making residential mortgage loans to support the costs of the positions established in subsection 1. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2007, c. 273, Pt. A, §22 (NEW); 2007, c. 273, Pt. A, §41 (AFF) .]

#### SECTION HISTORY

2007, c. 273, Pt. A, §22 (NEW). 2007, c. 273, Pt. A, §41 (AFF).

### **9-A §8-206-G. ANNUAL REPORT TO LEGISLATURE**

The Superintendent of Consumer Credit Protection shall report to the Legislature by January 15th of each year regarding the status of mortgage lending in this State and any unfair, deceptive or abusive mortgage lending practices that affect consumers. The report must include, but is not limited to, information on consumer complaints relating to mortgage lending, any enforcement actions, the number of foreclosures in the State, and support for financial literacy and consumer education and counseling. In preparing the report, the superintendent shall consult with the Bureau of Financial Institutions and the Attorney General. [ 2007, c. 273, Pt. A, §23 (NEW); 2007, c. 273, Pt. A, §41 (AFF) .]

#### SECTION HISTORY

2007, c. 273, Pt. A, §23 (NEW). 2007, c. 273, Pt. A, §41 (AFF).

### **9-A §8-206-H. HIGH-RATE, HIGH-FEE MORTGAGES**

1. The making of a high-rate, high-fee mortgage is subject to the following prohibitions, except that, notwithstanding any other provision of law, a residential mortgage loan made by the Maine State Housing Authority pursuant to Title 30-A, chapter 201 is not subject to the following prohibitions.

A. High-rate, high-fee mortgages are subject to the following restrictions.

- (1) A high-rate, high-fee mortgage may not 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.
- (2) A high-rate, high-fee mortgage may not contain a provision that increases the interest rate after default. This subparagraph does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents, as long as the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.
- (3) If the date of maturity of a high-rate, high-fee mortgage is accelerated due to default and the consumer is entitled to a rebate of interest, that rebate must be computed by a method that is not less favorable than the actuarial method, as that term is defined in the federal Housing and Community Development Act of 1992, Public Law No. 102-550, Section 933(d)106 Stat. 3672, 3892 (1992) and 15 United States Code, Section 1615.
- (4) A high-rate, high-fee mortgage may not 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.
- (5) A creditor may not make a payment to a contractor under a home improvement contract from amounts extended as credit under a high-rate, high-fee mortgage except:
  - (a) In the form of an instrument that is payable to the consumer or jointly to the consumer and the contractor; or

(b) At the election of the consumer, by a 3rd-party escrow agent in accordance with terms established in a written agreement signed by the consumer, the creditor and the contractor before the date of payment.

(6) All high-rate, high-fee mortgage documents that create a debt or pledge property as collateral must contain the following notice on the first page in a conspicuous manner: "Notice: This is a mortgage subject to special rules under the federal Truth in Lending Act. Purchasers or assignees of this mortgage could be liable for all claims and defenses with respect to the mortgage that the borrower could assert against the creditor. Maine law also provides for the liability of purchasers or assignees of this high-rate, high-fee loan."

(7) For a high-rate, high-fee mortgage loan with a term of less than 5 years, the payment schedule may not include regular payments that when aggregated do not fully amortize the outstanding principal balance.

(8) A high-rate, high-fee mortgage loan may not include a demand feature that permits the creditor to terminate the loan in advance of the original maturity date and to demand repayment of the entire outstanding balance except in the following circumstances:

- (a) There is fraud or material misrepresentation by the consumer in connection with the loan;
- (b) The consumer fails to meet the repayment terms of the agreement for any outstanding balance; or
- (c) There is any action or inaction by the consumer that adversely affects the creditor's security for the loan or any right of the creditor in such security.

(9) A creditor may not extend a high-rate, high-fee mortgage to a consumer based on the value of the consumer's collateral without regard to the consumer's ability to pay as described in section 8-206-I, subsection 1, paragraph A.

(10) High-rate, high-fee mortgages are subject to rules relating to escrows as described in section 8-206-I, subsection 1, paragraph C. [2009, c. 362, Pt. A, §12 (NEW).]

**B. High-rate, high-fee mortgages are subject to the following enhanced restrictions.**

(1) In connection with a high-rate, high-fee mortgage, a creditor may not directly or indirectly finance any points or fees.

(2) In addition to the limitation found in paragraph A, subparagraph (7), a high-rate, high-fee mortgage may not contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This subparagraph does not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower.

(3) A creditor may not make a high-rate, high-fee mortgage without first receiving certification from a counselor with a 3rd-party, nonprofit organization approved by the United States Department of Housing and Urban Development, a housing financing agency of this State or the Bureau of Consumer Credit Protection that the borrower has received counseling on the advisability of the loan transaction.

(4) A prepayment fee or penalty may not be included in the loan documents or charged under the terms of a high-rate, high-fee mortgage. [2009, c. 362, Pt. A, §12 (NEW).]

[ 2009, c. 362, Pt. A, §12 (NEW) .]

**2. The following provisions apply to a claim made by a borrower against a purchaser or assignee of a high-rate, high-fee mortgage.**

A. Any person who purchases or is otherwise assigned a high-rate, high-fee mortgage is subject to all affirmative claims and any defenses with respect to the loan that the borrower could assert against a creditor of the loan, except that this paragraph does not apply if the purchaser or assignee demonstrates by a preponderance of the evidence that it:

- (1) Has in place, at the time of the purchase or assignment of the subject loan, policies that expressly prohibit its purchase or acceptance of assignment of any high-rate, high-fee mortgages;
- (2) Requires by contract that a seller or assignor of residential mortgage loans to the purchaser or assignee represent and warrant to the purchaser or assignee that either the seller or assignor will not sell or assign any high-rate, high-fee mortgages to the purchaser or assignee, or the seller or assignor is a beneficiary of a representation and warranty from a previous seller or assignor to that effect; and
- (3) Exercises reasonable due diligence, at the time of purchase or assignment of residential mortgage loans or within a reasonable period of time after the purchase or assignment of such residential mortgage loans, intended by the purchaser or assignee to prevent the purchaser or assignee from purchasing or taking assignment of any high-rate, high-fee mortgages. For purposes of this subparagraph, reasonable due diligence must provide for sampling and may not require loan-by-loan review.

Notwithstanding this paragraph, liability pursuant to this subsection may not accrue to a purchaser or assignee of a high-rate, high-fee mortgage as a result of an alleged violation by a creditor of section 8-206-I, subsection 1, paragraph D. [2009, c. 362, Pt. A, §12 (NEW).]

B. A borrower acting only in an individual capacity may assert claims that the borrower could assert against a creditor of the high-rate, high-fee mortgage against any subsequent holder or assignee of the high-rate, high-fee mortgage as follows:

- (1) Within 5 years of the closing of a high-rate, high-fee mortgage, the borrower may assert a violation of this section in connection with the loan as an original action; and
- (2) Within 10 years of the closing of a high-rate, high-fee mortgage, after an action to collect on the residential mortgage loan or foreclose on the collateral securing the residential mortgage loan has been initiated or the debt arising from the residential mortgage loan has been accelerated or the residential mortgage loan has become 60 days in default, the borrower may assert any defense, claim or counterclaim or action to enjoin foreclosure or preserve or obtain possession of the property that secures the loan.

A claim asserted by a borrower under this paragraph is limited to amounts required to reduce or extinguish the borrower's liability under the high-rate, high-fee mortgage, plus amounts required to recover costs, including reasonable attorney's fees. [2009, c. 362, Pt. A, §12 (NEW).]

[ 2009, c. 362, Pt. A, §12 (NEW) .]

3. This section applies notwithstanding any other provision of law, except that nothing in this section may be construed to limit the substantive rights, remedies or procedural rights available to a borrower against any creditor, assignee or holder of a high-rate, high-fee mortgage under any other law. The rights conferred on borrowers in subsection 2, paragraphs A and B are independent of each other and do not limit each other.

[ 2009, c. 362, Pt. A, §12 (NEW) .]

#### SECTION HISTORY

2009, c. 362, Pt. A, §12 (NEW).

### **9-A §8-206-I. HIGHER-PRICED MORTGAGE LOANS**

1. Higher-priced mortgage loans are subject to the following restrictions:

A. A creditor may not extend a higher-priced mortgage to a consumer based on the value of the consumer's collateral without regard to the consumer's repayment ability as of consummation, including the consumer's current and reasonably expected income, employment, assets other than the collateral, credit history, debt-to-income ratio, current obligations and mortgage-related obligations.

- (1) For purposes of this paragraph, mortgage-related obligations are expected property taxes, premiums for mortgage-related insurance required by the creditor as set forth in paragraph C and similar expenses.
- (2) Under this paragraph, a creditor must verify the consumer's repayment ability as follows.
- (a) A creditor must verify amounts of income or assets that it relies on to determine repayment ability, including expected income or assets, by the consumer's federal Internal Revenue Service Form W-2, tax returns, payroll receipts, financial institution records or other 3rd-party documents that provide reasonably reliable evidence of the consumer's income or assets. For the purposes of this division, "reasonably reliable evidence of the consumer's income or assets" includes, but is not limited to, statements from investment advisors, broker-dealers and others in a fiduciary relationship with the consumer as long as the statements reflect the consumer's actual income and not estimated, projected or anticipated income or a range of earnings for a consumer's type or class of employment.
- (b) A creditor must verify the consumer's current obligations.
- (3) A creditor is presumed to have complied with this paragraph with respect to a transaction if the creditor:
- (a) Verifies the consumer's repayment ability as provided in subparagraphs (1) and (2);
- (b) Determines the consumer's repayment ability using the largest payment of principal and interest scheduled in the first 7 years following consummation and taking into account current obligations and mortgage-related obligations; and
- (c) Assesses the consumer's repayment ability taking into account at least one of the following:
- (i) The ratio of total debt obligations to income; and
- (ii) The income the consumer will have after paying debt obligations.
- (4) Notwithstanding subparagraph (3), no presumption of compliance is available for a transaction for which:
- (a) The regular periodic payments for the first 7 years would cause the principal balance to increase; or
- (b) The term of the loan is less than 7 years and the regular periodic payments when aggregated do not fully amortize the outstanding principal balance.
- (5) This paragraph does not apply to a temporary or so-called "bridge" loan with a term of 12 months or less, such as a loan to purchase a new dwelling when the consumer plans to sell a current dwelling within 12 months. [2009, c. 362, Pt. A, §13 (NEW).]

B. Beginning October 1, 2009, a higher-priced mortgage loan may not include a penalty for paying all or part of the principal before the date on which the principal is due except as allowed under subparagraph (1). The exception under subparagraph (1) does not apply to high-rate, high-fee mortgages, which are subject to section 8-206-H, subsection 1, paragraph B, subparagraph (4), and alternative mortgage transactions, which are subject to section 9-308.

- (1) A higher-priced mortgage loan may provide for a prepayment penalty, including a refund calculated according to the sum of the balances method, as defined in section 2-503, subsection 7, under the terms of the loan if:
- (a) The penalty will not apply after the 2-year period following consummation;
- (b) The penalty will not apply if the source of the prepayment funds is a refinancing by the creditor or an affiliate of the creditor; and
- (c) The amount of the periodic payment of principal or interest or both may not change during the 4-year period following consummation. [2009, c. 362, Pt. A, §13 (NEW).]

C. Beginning April 1, 2010, higher-priced loans are subject to the following requirements relating to escrow accounts:

- (1) A creditor may not extend a loan secured by a first lien on a principal dwelling unless an escrow account is established before consummation for payment of property taxes and premiums for mortgage-related insurance required by the creditor, such as insurance against loss of or damage to property, or against liability arising out of the ownership or use of the property or insurance protecting the creditor against the consumer's default or other credit loss.
- (2) Notwithstanding the requirements set forth in subparagraph (1):
  - (a) Escrow accounts need not be established for loans secured by shares in a cooperative; and
  - (b) Insurance premiums described in subparagraph (1) need not be included in escrow accounts for loans secured by condominium units when the condominium association has an obligation to the condominium unit owners to maintain a master policy insuring condominium units.
- (3) A creditor or servicer may permit a consumer to cancel the escrow account required in subparagraph (1) only in response to a consumer's dated written request to cancel the escrow account that is received no earlier than 365 days after consummation.
- (4) For purposes of this paragraph, "escrow account" has the same meaning set forth in 24 Code of Federal Regulations, Section 3500.17(b). [2009, c. 362, Pt. A, §13 (NEW).]

D. A creditor may not knowingly or intentionally engage in the act or practice of flipping a residential mortgage loan when making a higher-priced mortgage loan. The administrator is authorized to adopt rules defining with reasonable specificity the requirements for compliance with this paragraph. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [2009, c. 362, Pt. A, §13 (NEW).]

[ 2009, c. 362, Pt. A, §13 (NEW) .]

#### SECTION HISTORY

2009, c. 362, Pt. A, §13 (NEW).

## 9-A §8-206-J. RESIDENTIAL MORTGAGE LOAN REQUIREMENTS

1. Beginning October 1, 2009, residential mortgage loans are subject to the following restrictions.

A. In connection with a consumer credit transaction secured by a consumer's principal dwelling, no creditor or mortgage broker, and no affiliate of a creditor or mortgage broker, shall directly or indirectly coerce, influence or otherwise encourage an appraiser to misstate or misrepresent the value of such dwelling.

- (1) In connection with a consumer credit transaction secured by a consumer's principal dwelling, a creditor who knows, at or before loan consummation, of a violation of this paragraph in connection with an appraisal may not extend credit based on such appraisal unless the creditor documents that it has acted with reasonable diligence to determine that the appraisal does not materially misstate or misrepresent the value of such dwelling.
- (2) For purposes of this paragraph, "mortgage broker" means a person, other than an employee of a lender, who for compensation or other monetary gain, or in expectation of compensation or other monetary gain, arranges, negotiates or otherwise obtains an extension of consumer credit for another person. "Mortgage broker" includes a person meeting this definition, even if the consumer credit obligation is initially payable to such person, unless the person provides the funds for the transaction at consummation out of the person's own resources, out of deposits held by the person or by drawing on a bona fide warehouse line of credit.

(3) For the purposes of this paragraph, "appraiser" means a person who engages in the business of providing assessments of the value of dwellings. "Appraiser" includes a person that employs, refers or manages appraisers and affiliates of such persons. [2009, c. 362, Pt. A, §14 (NEW).]

B. In connection with a consumer credit transaction secured by a consumer's principal dwelling, a servicer may not:

- (1) Fail to credit a payment to the consumer's loan account as of the date of receipt, except when a delay in crediting does not result in any charge to the consumer or in the reporting of negative information to a consumer reporting agency or except as provided in subparagraph (4);
- (2) Impose on the consumer any late fee or delinquency charge in connection with a payment, when the only delinquency is attributable to late fees or delinquency charges assessed on an earlier payment and the payment is otherwise a full payment for the applicable period and is paid on its due date or within any applicable grace period;
- (3) Fail to provide, within a reasonable time after receiving a request from the consumer or any person acting on behalf of the consumer, an accurate statement of the total outstanding balance that would be required to satisfy the consumer's obligation in full as of a specified date; or
- (4) Fail to credit a payment as of 5 days after receipt if a servicer specifies in writing requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements.

For purposes of this paragraph, "servicer" and "servicing" have the same meanings as provided in 24 Code of Federal Regulations, Section 3500.2(b). [2009, c. 362, Pt. A, §14 (NEW).]

C. This subsection does not apply to a home equity line of credit subject to section 8-205. [2009, c. 362, Pt. A, §14 (NEW).]

[2009, c. 362, Pt. A, §14 (NEW).]

2. Residential mortgage loans are subject to the following enhanced restrictions.

A. A creditor may not recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a residential mortgage loan that refinances all or a portion of the existing loan or debt. [2009, c. 362, Pt. A, §14 (NEW).]

B. A borrower may not be charged for a late payment unless the loan documents specifically authorize the charge, the charge is not imposed unless the payment is past due for 10 days or more and the charge does not exceed 5% of the amount of the late payment. A late payment charge may not be imposed more than once with respect to a particular late payment. If a late payment charge is deducted from a payment made on the residential mortgage loan and that deduction results in a subsequent default on a subsequent payment, a late payment charge may not be imposed for that default. A creditor or servicer may apply any payment made in the order of maturity to a prior period's payment due even if the result is late payment charges accruing on subsequent payments due. [2009, c. 362, Pt. A, §14 (NEW).]

C. A residential mortgage loan may not contain a provision that permits the creditor, in its sole discretion, to accelerate the indebtedness. This paragraph does not prohibit the acceleration of the loan in good faith due to the borrower's failure to abide by the material terms of the loan. [2009, c. 362, Pt. A, §14 (NEW).]

D. A creditor making a residential mortgage loan may not finance directly or indirectly any credit life insurance, credit disability insurance, credit unemployment insurance or credit property insurance or any other life or health insurance or any payments 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 on a monthly basis or through regularly scheduled periodic payments may not be considered financed by the creditor. [2009, c. 362, Pt. A, §14 (NEW).]

E. A borrower may not be charged a fee in addition to the actual public discharge fee to provide a release upon prepayment. Payoff balances must be provided in accordance with section 9-305-B. [ 2009, c. 362, Pt. A, §14 (NEW). ]

F. The following provisions apply with respect to a right to cure default of a residential mortgage loan.

(1) If all defaults in connection with a residential mortgage loan are cured after the initiation of any action to foreclose, the creditor or the servicer shall take steps as necessary to terminate the foreclosure proceeding or other action. The borrower shall pay any reasonable costs incurred by the creditor or servicer before the cure of default. Cure of default reinstates the borrower to the same position as if the default had not occurred and nullifies, as of the date of the cure, any acceleration of any obligation under the security instrument or note arising from the default.

(2) A borrower has the right to cure a default once in a 12-month period. [ 2009, c. 362, Pt. A, §14 (NEW). ]

[ 2009, c. 362, Pt. A, §14 (NEW) . ]

3. The administrator, by rule or order, shall prohibit acts or practices in connection with:

A. Residential mortgage loans that the administrator finds unfair, deceptive or designed to evade the provisions of this section; and [ 2009, c. 362, Pt. A, §14 (NEW). ]

B. Refinancing of residential mortgage loans that the administrator finds are associated with abusive lending practices or that are otherwise not in the interest of the borrowing public. [ 2009, c. 362, Pt. A, §14 (NEW). ]

[ 2009, c. 362, Pt. A, §14 (NEW) . ]

4. The Attorney General has jurisdiction to enforce this section against loan brokers and supervised lenders who are not supervised financial organizations through their general regulatory powers and through civil process. The administrator, through the Attorney General, may bring a civil action to restrain any person from violating this section.

[ 2009, c. 362, Pt. A, §14 (NEW) . ]

5. The rights conferred by this section are independent of and in addition to any other rights under this Title and other state and federal laws.

[ 2009, c. 362, Pt. A, §14 (NEW) . ]

#### SECTION HISTORY

2009, c. 362, Pt. A, §14 (NEW).

### 9-A §8-207. CONSUMER LEASE DISCLOSURES

Each creditor shall give a consumer prior to the consummation of the lease a dated written statement on which the creditor and consumer are identified setting out accurately and in a clear and conspicuous manner, as prescribed by rules adopted by the administrator, the following information with respect to that lease, as applicable: [ 1987, c. 321, §1 (AMD). ]

1. A brief description or identification of the leased property, including its capitalized cost;

[ 1987, c. 321, §2 (AMD) . ]

2. The amount of any payment by the consumer required at the inception of the lease;

[ 1981, c. 243, §25 (NEW) . ]

**3.** The amount paid or payable by the consumer for official fees, registration, certificate of title or license fees or taxes;

[ 1981, c. 243, §25 (NEW) . ]

**4.** The amount of other charges payable by the consumer not included in the periodic payments, a description of the charges and that the consumer shall be liable for the differential, if any, between the anticipated fair market value of the leased property and its appraised actual value at the termination of the lease, if the consumer has such liability;

[ 1981, c. 243, §25 (NEW) . ]

**5.** A statement of the amount or method of determining the amount of any liabilities the lease imposes upon the consumer at the end of the term and whether or not the consumer has the option to purchase the leased property and at what price and time;

[ 1981, c. 243, §25 (NEW) . ]

**6.** A statement identifying all express warranties and guarantees made by the manufacturer or creditor with respect to the leased property, and identifying the party responsible for maintaining or servicing the leased property together with a description of the responsibility;

[ 1981, c. 243, §25 (NEW) . ]

**7.** A brief description of insurance provided or paid for by the creditor or required of the consumer, including the types and amounts of the coverages and costs;

[ 1981, c. 243, §25 (NEW) . ]

**8.** A description of any security interest held or to be retained by the creditor in connection with the lease and a clear identification of the property to which the security interest relates, subject to the restriction of section 3-301;

[ 1981, c. 243, §25 (NEW) . ]

**9.** The number, amount and due dates or periods of payments under the lease and the total amount of such periodic payments;

[ 1981, c. 243, §25 (NEW) . ]

**10.** Where the lease provides that the consumer shall be liable for the anticipated fair market value of the property on expiration of the lease, the fair market value of the property at the inception of the lease, the aggregate cost of the lease on expiration and the differential between them; and

[ 1981, c. 243, §25 (NEW) . ]

**11.** A statement of the conditions under which the consumer or creditor may terminate the lease prior to the end of the term and the amount or method of determining any penalty or other charge for delinquency, default, late payments or early termination, subject to the restrictions of Article II.

[ 1981, c. 243, §25 (NEW) . ]

The disclosures required under this section shall be made in accordance with rules adopted by the administrator and shall be signed by the consumer. The administrator may provide by regulation that any portion of the information required to be disclosed under this section may be given in the form of estimates where the creditor is not in a position to know exact information. [1987, c. 321, §3 (AMD).]

#### SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 1987, c. 321, §§1-3 (AMD).

### 9-A §8-208. CIVIL LIABILITY

1. Except as otherwise provided in this section, and except for transactions subject to section 8-206-E, any creditor who fails to comply with any requirement imposed under this Article, including any requirement under section 8-204, with respect to any person is liable to that person in an amount equal to the sum of:

A. Any actual damage sustained by such person as a result of the failure; [1983, c. 720, §23 (AMD).]

B. In an individual action:

(i) Twice the amount of any finance charge in connection with the transaction; or

(ii) In the case of a consumer lease, 25% of the total amount of monthly payments under the lease.

Liability under this paragraph may not be less than \$100 nor greater than \$1,000; except that in the case of a credit transaction not under an open-end credit plan that is secured by real property or a dwelling, liability under this paragraph may not be less than \$400 nor greater than \$4,000; [2009, c. 362, Pt. A, §15 (AMD); 2009, c. 362, Pt. A, §16 (AFF).]

C. In the case of any successful action to enforce the foregoing liability or in any action in which a person is determined to have a right of rescission under section 8-204, the costs of the action, together with a reasonable attorney's fee as determined by the court; and [1981, c. 698, §21 (AMD).]

D. In the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery is applicable, and the total recovery for any class action or series of class actions arising out of the same failure to comply by the same creditor shall not be more than the lesser of \$500,000 or 1% of the net worth of the creditor. In determining the amount of award in any class action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected and the extent to which the creditor's failure of compliance was intentional. [1981, c. 698, §22 (NEW).]

[ 2009, c. 362, Pt. A, §15 (AMD); 2009, c. 362, Pt. A, §16 (AFF) .]

2. A creditor or assignee has no liability under this section, section 8-108 or section 8-109 for any failure to comply with any requirement imposed under this Article, if within 60 days after discovering an error, whether pursuant to a final written examination report or notice issued under section 8-108, subsection 3, or through the creditor's or assignee's own procedures and prior to the institution of an action under this section or the receipt of written notice of the error from the obligor, the creditor or assignee notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to assure that the person will not be required to pay an amount in excess of the charge actually disclosed, or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower.

[ 1981, c. 243, §25 (NEW) .]

3. A creditor or assignee may not be held liable in any action brought under this section or section 8-204 for a violation of this Article if the creditor or assignee shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of

procedures reasonably adapted to avoid any such error. Examples of a bona fide error include, but are not limited to, clerical, calculation, computer malfunction and programming and printing errors, except that an error of legal judgment with respect to a person's obligations under this Article is not a bona fide error.

[ 1981, c. 243, §25 (NEW) . ]

**4.** When there are multiple obligors in a consumer credit transaction, there shall be not more than one recovery of damages under subsection 1, paragraph B, for a violation of this Article.

[ 1981, c. 243, §25 (NEW) . ]

**5.** Any action under this section may be brought in any court of competent jurisdiction, within one year from the date of the occurrence of the violation. This subsection does not bar a person from asserting a violation of this Article in an action to collect the debt which was brought more than one year from the date of the occurrence of the violation as a matter of defense by recoupment or set-off in such action.

[ 1981, c. 243, §25 (NEW) . ]

**6.** The multiple failure to disclose to any person any information required under this Article to be disclosed in connection with a single account under an open-end consumer credit plan, other single consumer credit sale, consumer loan, consumer lease or other extension of consumer credit shall entitle the person to a single recovery under this section, but continued failure to disclose after a recovery has been granted shall give rise to rights to additional recoveries. This subsection does not bar any remedy permitted by section 8-204.

[ 1981, c. 243, §25 (NEW) . ]

**7.** A person may not take any action to offset any amount for which a creditor or assignee is potentially liable to such person under subsection 1, paragraph B, against any amount owed by that person, unless the amount of the creditor's or assignee's liability under this Article has been determined by judgment of a court of competent jurisdiction in an action of which that person was a party. This subsection does not bar a consumer then in default on the obligation from asserting a violation of this Article as an original action, or as a defense or counterclaim to an action to collect amounts owed by the consumer brought by a person liable under this Article.

[ 1981, c. 243, §25 (NEW) . ]

**8.** With respect to disclosure under sections 8-205 and 8-206, a creditor is liable under subsection 1, paragraphs B or D, only for the failure to comply with certain disclosure requirements.

A. In connection with the disclosures of section 8-205, subsections 1 and 2 of a creditor's only liability under subsection 1, paragraphs B or D, is for failing to comply with the requirements of section 8-204, section 8-205, subsection 1 or subsection 2, paragraph D, E, F, G, H, I or J. [1989, c. 472, §3 (AMD) . ]

B. In connection with the disclosures of section 8-206, a creditor's only liability determined under subsection 1, paragraph B or D is for failing to comply with the requirements of section 8-204 or section 8-206, subsection 1, paragraph B, D, E, F, G or J. [1995, c. 614, Pt. C, §1 (AMD) . ]

C. With respect to any failure to make disclosures required by this Article, liability shall be imposed only upon the creditor required to make disclosures, except as provided in section 8-209. [1981, c. 243, §25 (NEW) . ]

D. [1981, c. 698, §23 (RP) . ]

[ 1995, c. 614, Pt. C, §1 (AMD) . ]

9. In connection with the disclosures referred to in section 8-205, subsections 3 or 4, a card issuer shall have a liability under this section only to a card holder who uses a credit or charge card or pays a fee described in section 8-205, subsection 3, paragraph A, subparagraph (i), division (b), subdivision (1) or section 8-205, subsection 3, paragraph D, subparagraph (i), division (a).

[ 1989, c. 472, §4 (NEW) .]

#### SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 1981, c. 698, §§21-23 (AMD). 1983, c. 720, §23 (AMD). 1989, c. 472, §§3,4 (AMD). 1995, c. 614, §§A12,C1 (AMD). RR 1995, c. 2, §18 (COR). 2007, c. 471, §13 (AMD). 2007, c. 471, §18 (AFF). 2009, c. 362, Pt. A, §15 (AMD). 2009, c. 362, Pt. A, §16 (AFF).

### 9-A §8-208-A. CERTAIN LIMITATIONS ON LIABILITY

1. For any closed-end consumer credit transaction subject to this Title that is secured by real property or a dwelling and that is consummated before September 30, 1995, a creditor or any assignee of a creditor does not have civil, administrative or criminal liability under this Title for, and a consumer does not have extended rescission rights under section 8-204, subsection 6 with respect to:

A. The creditor's treatment, for disclosure purposes, of:

- (i) Taxes described in section 8-105, subsection 4, paragraph C;
- (ii) Fees described in section 8-105, subsection 5, paragraphs B and E;
- (iii) Fees and amounts described in section 8-105, subsection 1-A; or
- (iv) Borrower-paid mortgage broker fees referred to in section 8-105, subsection 1, paragraph F; [1995, c. 614, Pt. A, §13 (NEW).]

B. The form of written notice used by the creditor to inform the obligor of the rights of the obligor under section 8-204 if the creditor provided the obligor with a properly dated form of written notice published and adopted by the administrator or a comparable written notice and otherwise complied with all the requirements of this section regarding notice; or [1995, c. 614, Pt. A, §13 (NEW).]

C. Any disclosure relating to the finance charge imposed with respect to the transaction if the amount or percentage actually disclosed:

- (i) Is deemed accurate for purposes of this Title and if the amount disclosed as the finance charge does not vary from the actual finance charge by more than \$200;
- (ii) May, under section 8-105, subsection 6, paragraph B, be deemed accurate for purposes of section 8-204; or
- (iii) Is greater than the amount or percentage required to be disclosed under this Title. [1995, c. 614, Pt. A, §13 (NEW).]

2. Subsection 1 does not apply to:

A. Any individual action or counterclaim brought under this Title that was filed before June 1, 1995; [1995, c. 614, Pt. A, §13 (NEW).]

B. Any class action brought under this Title for which a final order certifying a class was entered before January 1, 1995; [1995, c. 614, Pt. A, §13 (NEW).]

C. The named individual plaintiffs in any class action brought under this Title that was filed before June 1, 1995; or [1995, c. 614, Pt. A, §13 (NEW).]

D. Any consumer credit transaction for which a timely notice of rescission was sent to the creditor before June 1, 1995. [1995, c. 614, Pt. A, §13 (NEW).]

[ 1995, c. 614, Pt. A, §13 (NEW) .]

SECTION HISTORY

1995, c. 614, §A13 (NEW). 1995, c. 614, Pt. A, §13 (NEW). 1997, c. 155, §C6 (AMD). 1997, c. 155, Pt. C, §6 (AMD).

## 9-A §8-209. LIABILITY OF ASSIGNEES

1. Except as otherwise specifically provided in this Article, any civil action for a violation of this Article or proceeding under section 8-108 which may be brought against a creditor may be maintained against any assignee of such creditor only if the violation for which such action or proceeding is brought is apparent on the face of the disclosure statement, except where the assignment was involuntary. For the purpose of this section, a violation apparent on the face of the disclosure statement includes, but is not limited to:

A. A disclosure which can be determined to be incomplete or inaccurate from the face of the disclosure statement or other documents assigned; or [1981, c. 243, §25 (NEW).]

B. A disclosure which does not use the terms required to be used by this Article. [1981, c. 243, §25 (NEW).]

[ 1987, c. 129, §75 (AMD) .]

2. Except as provided in section 8-204, subsection 3, in any action or proceeding by or against any subsequent assignee of the original creditor without knowledge to the contrary by the assignee when he acquires the obligation, written acknowledgement of receipt by a person to whom a statement is required to be given pursuant to this Article is conclusive proof of the delivery thereof and, except as provided in subsection 1, of compliance with this Article. This section does not affect the rights of the obligor in any action against the original creditor.

[ 1981, c. 243, §25 (NEW) .]

3. Any consumer who has the right to rescind a transaction under section 8-204 may rescind the transaction as against any assignee of the obligation.

[ 1981, c. 243, §25 (NEW) .]

4.

[ 2007, c. 471, §18 (AFF); 2007, c. 471, §14 (RP) .]

4-A. Any person who purchases or is otherwise assigned a high-rate, high-fee mortgage is subject to all claims and defenses with respect to that mortgage that the consumer may assert against the creditor of the mortgage to the extent set forth in section 8-206-H, subsection 2.

[ 2009, c. 362, Pt. C, §3 (AMD) .]

5. The liability of assignees for consumer credit transactions secured by real property is determined in accordance with the following.

A. Except as otherwise provided in this Title, any civil action against a creditor for a violation of this Title and any proceeding under section 8-108 against a creditor, with respect to a consumer credit transaction secured by real property, may be maintained against any assignee of that creditor only if:

(i) The violation for which the action or proceeding is brought is apparent on the face of the disclosure statement provided in connection with the transaction pursuant to section 8-206, subsection 1; and

(ii) The assignment to the assignee was voluntary. [2007, c. 471, §16 (AMD); 2007, c. 471, §18 (AFF).]

B. For the purposes of this subsection, a violation is apparent on the face of the disclosure statement if:

(i) The disclosure can be determined to be incomplete or inaccurate by a comparison among the disclosure statement provided pursuant to section 8-206, subsection 1, any itemization of the amount financed, the note or any other disclosure of disbursement; or

(ii) The disclosure statement provided pursuant to section 8-206, subsection 1 does not use the terms or format required under this Title. [2007, c. 471, §17 (AMD); 2007, c. 471, §18 (AFF).]

[ 2007, c. 471, §§16, 17 (AMD); 2007, c. 471, §18 (AFF) .]

**6.** The treatment of a servicer of a consumer obligation from a consumer credit transaction is determined in accordance with the following.

A. A servicer of a consumer obligation arising from a consumer credit transaction may not be treated as an assignee of such an obligation for purposes of this section unless the servicer is or was the owner of the obligation. [1995, c. 614, Pt. A, §14 (NEW).]

B. A servicer of a consumer obligation arising from a consumer credit transaction may not be treated as the owner of the obligation for purposes of this section on the basis of an assignment of the obligation from the creditor or another assignee to the servicer solely for the administrative convenience of the servicer in servicing the obligation. Upon written request by the obligor, the servicer shall provide the obligor, to the best knowledge of the servicer, with the name, address and telephone number of the owner of the obligation or the master servicer of the obligation. [1995, c. 614, Pt. A, §14 (NEW).]

C. For purposes of this subsection, the term "servicer" has the same meaning as in the federal Real Estate Settlement Procedures Act of 1974, Section 6(i)(2). [1995, c. 614, Pt. A, §14 (NEW).]

D. This subsection applies to all consumer credit transactions in existence or consummated on or after September 30, 1995. [1995, c. 614, Pt. A, §14 (NEW).]

[ 1995, c. 614, Pt. A, §14 (NEW) .]

#### SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 1987, c. 129, §75 (AMD). 1995, c. 614, §A14 (AMD). 2007, c. 471, §§14-17 (AMD). 2007, c. 471, §18 (AFF). 2009, c. 362, Pt. C, §3 (AMD).

## Part 3: CREDIT CARD RESTRICTIONS

### 9-A §8-301. ISSUANCE OF CREDIT CARDS

No credit card may be issued except in response to a request or application therefor. This prohibition does not apply to the issuance of a credit card in renewal of, or in substitution for, an accepted credit card. [1981, c. 243, §25 (NEW).]

#### SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD).

## 9-A §8-302. LIABILITY OF HOLDER OF CREDIT CARD

1. Except as provided in this section, a cardholder incurs no liability from the unauthorized use of a credit card. A cardholder shall be liable for the unauthorized use of a credit card only if:

- A. The card is an accepted credit card; [1981, c. 243, §25 (NEW).]
- B. The liability is not in excess of \$50; [1981, c. 243, §25 (NEW).]
- C. The card issuer gives adequate notice to the cardholder of the potential liability; [1981, c. 243, §25 (NEW).]
- D. The card issuer has provided the cardholder with a description of a means by which the card issuer may be notified of loss or theft of the card, which description may be provided on the face or reverse side of the statement required by section 8-205, subsection 2, or on a separate notice accompanying the statement; [1981, c. 243, §25 (NEW).]
- E. The unauthorized use occurs before the card issuer has been notified that an unauthorized use of the credit card has occurred or may occur as the result of loss, theft or otherwise; and [1981, c. 243, §25 (NEW).]
- F. The card issuer has provided a method whereby the user of the card can be identified as the person authorized to use it. [1981, c. 243, §25 (NEW).]

[ 1981, c. 243, §25 (NEW) .]

2. For purposes of this section, a card issuer has been notified when such steps as may be reasonably required in the ordinary course of business to provide the card issuer with the pertinent information have been taken, whether or not any particular officer, employee or agent of the card issuer does in fact receive such information.

[ 1981, c. 243, §25 (NEW) .]

3. In any action by a card issuer to enforce liability for the use of a credit card, the burden of proof is upon the card issuer to show that the use was authorized or, if the use was unauthorized then the burden of proof is upon the card issuer to show that the conditions of liability for the unauthorized use of a credit card, as set forth in subsection 1, have been met.

[ 1981, c. 243, §25 (NEW) .]

4. Nothing in this section imposes liability upon a cardholder for the unauthorized use of a credit card in excess of his liability for such use under other applicable law or under any agreement with the card issuer.

[ 1981, c. 243, §25 (NEW) .]

### SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD).

## 9-A §8-303. CREDIT CARD RESTRICTIONS

1. With respect to a credit card which may be used for extensions of credit in sales transactions in which the seller is a person other than the card issuer, the card issuer may not, by contract or otherwise, prohibit any such seller from offering a discount to a cardholder to induce the cardholder to pay by cash, check or similar means rather than use a credit card.

[ 1981, c. 243, §25 (NEW) .]

2. No seller in any sales transaction may impose a surcharge on a cardholder who elects to use a credit card in lieu of payment by cash, check or similar means.

[ 1981, c. 243, §25 (NEW) . ]

**2-A.** Notwithstanding subsection 2, a governmental entity may impose a surcharge for payments made with a credit card or debit card for taxes, fines, charges, utility fees, regulatory fees, license or permit fees or the provision of a specific service provided by that governmental entity if the surcharge:

A. Is disclosed clearly to the consumer prior to payment; and [2009, c. 113, §1 (NEW).]

B. Does not exceed the costs associated with providing the credit card or debit card service that are directly incurred by the governmental entity or assessed by an authorized 3rd-party payment service provider for a credit card or debit card transaction. If there is not a cost assessed by an authorized 3rd-party payment service provider for a debit card transaction, the governmental entity may not impose a surcharge associated with a debit card transaction. [2009, c. 113, §1 (NEW).]

A governmental entity shall disclose to the consumer that the surcharge may be avoided if the consumer makes payments by cash, check or other means not a credit card or debit card. A governmental entity is not subject to any liability to the issuer of a credit card or an authorized 3rd-party payment service provider for nonpayment of credit card charges by the consumer. As used in this subsection, "governmental entity" means a county established or governed by Title 30-A, Part 1, a municipality as defined in Title 30-A, section 2001, subsection 8, a quasi-municipal corporation as defined in Title 30-A, section 2604, subsection 3 or the Judicial Department as described in Title 4.

[ 2009, c. 113, §1 (NEW) . ]

3. With respect to any sales transaction, any discount offered by the seller for the purpose of inducing payment by cash, check or other means not involving the use of a credit card does not constitute a finance charge as determined under section 8-105, if that discount is offered to all prospective buyers and its availability is disclosed to all prospective buyers clearly and conspicuously.

[ 1981, c. 243, §25 (NEW) . ]

4. Notwithstanding any agreement to the contrary, a card issuer may not require a seller, as a condition to participating in a credit card plan, to open an account with or procure any other service from the card issuer or its subsidiary or agent.

[ 1981, c. 243, §25 (NEW) . ]

5. A card issuer may not take any action to offset a cardholder's indebtedness arising in connection with a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer unless:

A. This action was previously authorized in writing by the cardholder in accordance with a credit plan whereby the cardholder agrees periodically to pay debts incurred in his open-end credit account by permitting the card issuer periodically to deduct all or a portion of such debt from the cardholder's deposit account; and [1981, c. 243, §25 (NEW).]

B. This action with respect to any outstanding disputed amount may not be taken by the card issuer upon request of the cardholder. [1995, c. 614, Pt. A, §15 (AMD).]

[ 1995, c. 614, Pt. A, §15 (AMD) . ]

6. Rights of credit card customers are as follows.

A. Subject to the limitation contained in paragraph B, a card issuer who has issued a credit card to a cardholder pursuant to an open-end consumer credit plan is subject to all claims, other than tort claims, and defenses arising out of any transaction in which the credit card is used as a method of payment or extension of credit if:

- (i) The obligor has made a good faith attempt to obtain satisfactory resolution of a disagreement or problem relative to the transaction from the person honoring the credit card;
- (ii) The amount of the initial transaction exceeds \$50; and
- (iii) The place where the initial transaction occurred was in the same state as the mailing address previously provided by the cardholder or was within 100 miles from such address. [1981, c. 243, §25 (NEW).]

B. The limitations set forth in paragraph A, subparagraphs (ii) and (iii), with respect to an obligor's right to assert claims and defenses against a card issuer are not applicable to any transaction in which the person honoring the credit card:

- (i) Is the same person as the card issuer;
- (ii) Is controlled by the card issuer;
- (iii) Is under direct or indirect common control with the card issuer;
- (iv) Is a franchised dealer in the card issuer's products or services; or
- (v) Has obtained the order for such transaction through a mail solicitation made by or participated in by the card issuer in which the cardholder is solicited to enter into the transaction by using the credit card issued by the card issuer. [1981, c. 243, §25 (NEW).]

C. The amount of claims or defenses asserted by the cardholder may not exceed the amount of credit outstanding with respect to the transaction at the time the cardholder first notifies the card issuer or the person honoring the credit card of that claim or defense. For the purpose of determining the amount of credit outstanding in the preceding sentence, payments and credits to the cardholder's account are deemed to have been applied, in the order indicated, to the payment of:

- (i) Late charges in the order of their entry to the account;
- (ii) Finance charges in order of their entry to the account; and
- (iii) Debits to the account other than those set forth above, in the order in which each debit entry to the account was made. [1981, c. 243, §25 (NEW).]

[ 1981, c. 243, §25 (NEW) .]

7. With respect to an open-end credit plan involving a credit card offered in connection with a seller located in this State using cards displaying the name of the seller:

A. The terms of the credit card contract must comply with the laws that would apply if the seller were the creditor; or [1991, c. 212, (NEW).]

B. The name and state of the financial institution underwriting the debt must appear on the credit card. [1997, c. 660, Pt. D, §1 (AMD).]

This subsection applies to any new credit card programs implemented after November 1, 1991 and takes effect on December 31, 1992 for all other credit card accounts and programs. A violation of this section constitutes a violation of Title 5, chapter 10, Unfair Trade Practices Act.

[ 1997, c. 660, Pt. D, §1 (AMD) .]

SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 1991, c. 212, (AMD). 1991, c. 755, §1 (AMD). 1995, c. 614, §A15 (AMD). 1997, c. 660, §D1 (AMD). 2009, c. 113, §1 (AMD).

**9-A §8-304. DISCLOSURE OF LISTS OF THE NAMES, ADDRESSES AND ACCOUNT NUMBERS OF CREDIT CARD HOLDERS**

1. Except as provided in subsection 2, it is unlawful for a person, business, corporation, partnership, agency, financial institution, credit card registration service or other entity to rent, sell, exchange or otherwise disclose or make available to another person or entity a list containing the names, addresses and account numbers of credit card holders without the express, written permission of the credit card holders.

[ 1993, c. 86, §1 (NEW) . ]

2. The following disclosures of lists containing the names, addresses and account numbers of credit card holders are not prohibited:

A. Disclosure to or from a consumer reporting agency, as defined in Title 10, section 1312, subsection 4, provided the transfer is for purposes of compliance with and in a manner consistent with the terms of the Fair Credit Reporting Act; [1993, c. 86, §1 (NEW) . ]

B. Disclosure between a parent corporation and a subsidiary or affiliate of that corporation or between subsidiaries or affiliates of a parent corporation; [1993, c. 86, §1 (NEW) . ]

C. Disclosure in connection with the sale or pledge, or negotiation of the sale or pledge, of any portion of a business or the assets of a business, provided that the party to whom disclosure is made shall maintain the confidentiality of the information disclosed; [1993, c. 86, §1 (NEW) . ]

D. Disclosure in connection with the authorization, processing, billing, collection, charge-back, fraud prevention or credit card recovery; and [1993, c. 86, §1 (NEW) . ]

E. Disclosure pursuant to state or federal law or at the direction of a governmental entity pursuant to law or in response to a court order. [1993, c. 86, §1 (NEW) . ]

[ 1993, c. 86, §1 (NEW) . ]

3. A violation of this section constitutes a violation of the Maine Consumer Credit Code and the Maine Unfair Trade Practices Act.

[ 1993, c. 86, §1 (NEW) . ]

SECTION HISTORY

1993, c. 86, §1 (NEW). 1993, c. 135, §1 (NEW). RR 1993, c. 1, §22 (COR).

**9-A §8-305. RECURRING CHARGES TO CREDIT OR CHARGE CARDS**

If a sale of goods, services or insurance is charged to a credit card or charge card account on an annual basis without substantially contemporaneous authorizations by the consumer, the seller shall inform the consumer of the voluntary nature of the charge to the credit or charge card account and of the steps necessary to prevent this charge at least 30 days prior to the annual charge. The card issuer may provide the notice on behalf of the seller. This section does not apply to insurance subject to notice and cancellation rights pursuant to section 4-204. [1993, c. 135, §1 (NEW) . ]

SECTION HISTORY

1993, c. 135, §1 (NEW). RR 1993, c. 1, §22 (RNU).

## Part 4: FAIR CREDIT BILLING

### 9-A §8-401. CORRECTION OF BILLING ERRORS

1. If a creditor, within 60 days after having transmitted to an obligor a statement of the obligor's account in connection with an extension of consumer credit, receives at the address disclosed under section 8-205, subsection 2, paragraph K, a written notice, other than notice on a payment stub or other payment medium supplied by the creditor if the creditor so stipulates with the disclosure required under section 8-205, subsection 1, paragraph G, from the obligor in which the obligor complies with paragraphs A, B, and C, the creditor shall, unless the obligor has, after giving such written notice and before the expiration of the time limits herein specified, agreed that the statement was correct, comply with subsection 2.

A. The obligor sets forth or otherwise enables the creditor to identify the name and account number, if any, of the obligor. [1981, c. 243, §25 (NEW).]

B. The obligor indicates the obligor's belief that the statement contains a billing error and the amount of that billing error. [1981, c. 243, §25 (NEW).]

C. The obligor sets forth the reasons for the obligor's belief, to the extent applicable, that the statement contains a billing error. [1981, c. 243, §25 (NEW).]

[ 1981, c. 243, §25 (NEW) .]

2. Not later than 30 days after the receipt of the notice described in subsection 1, the creditor shall:

A. Send a written acknowledgment thereof to the obligor, unless the action required in paragraph B is taken within that 30-day period; and [1981, c. 243, §25 (NEW).]

B. Not later than 2 complete billing cycles of the creditor, in no event later than 90 days, after the receipt of the notice and prior to taking any action to collect the amount, or any part thereof, indicated by the obligor under subsection 1, paragraph B, either:

(i) Make appropriate corrections in the account of the obligor, including the crediting of any finance charges on amounts erroneously billed, and transmit to the obligor a notification of such corrections and the creditor's explanation of any change in the amount indicated by the obligor under subsection 1, paragraph B, and if any such change is made and the obligor so requests, copies of documentary evidence of the obligor's indebtedness; or

(ii) Send a written explanation or clarification to the obligor, after having conducted an investigation, setting forth to the extent applicable the reasons why the creditor believes that account of the obligor was correctly shown in the statement and, upon request of the obligor, provide copies of documentary evidence of the obligor's indebtedness. In the case of a billing error where the obligor alleges that the creditor's billing statement reflects goods not delivered to the obligor or his designee in accordance with the agreement made at the time of the transaction, a creditor may not construe that amount to be correctly shown unless he determines that the goods were actually delivered, mailed or otherwise sent to the obligor and provides the obligor with a statement of that determination. [1981, c. 243, §25 (NEW).]

After complying with the provisions of subsections 1 and 2 with respect to an alleged billing error, a creditor has no further responsibility under this section if the obligor continues to make substantially the same allegation with respect to that error.

[ 1981, c. 243, §25 (NEW) .]

3. For the purposes of this section, a "billing error" consists of any of the following:

A. A reflection on a statement of an extension of credit which was not made to the obligor or, if made, was not in the amount reflected on that statement; [1981, c. 243, §25 (NEW).]

B. A reflection on a statement of an extension of credit for which the obligor requests additional clarification including documentary evidence thereof; [1981, c. 243, §25 (NEW).]

C. A reflection on a statement of goods or services not accepted by the obligor or his designee or not delivered to the obligor or his designee in accordance with the agreement made at the time of a transaction; [1981, c. 243, §25 (NEW).]

D. The creditor's failure to reflect properly on a statement a payment made by the obligor or a credit issued to the obligor; [1981, c. 243, §25 (NEW).]

E. A computation error or similar error of an accounting nature of the creditor on a statement; [1981, c. 243, §25 (NEW).]

F. Failure to transmit the statement required under section 8-205, subsection 2, to the last address of the obligor which has been disclosed to the creditor, unless that address was furnished less than 20 days before the end of the billing cycle for which the statement is required; and [1981, c. 243, §25 (NEW).]

G. Any other error described in regulations of the administrator. [1981, c. 243, §25 (NEW).]

[ 1981, c. 243, §25 (NEW) .]

**4.** For the purpose of this section, "action to collect the amount, or any part thereof, indicated by an obligor under subsection 1, paragraph B" does not include the sending of statements of account, which may include finance charges or amounts in dispute, to the obligor following written notice from the obligor as specified under subsection 1, if:

A. The obligor's account is not restricted or closed because of the failure of the obligor to pay the amount indicated under subsection 1, paragraph B; and [1981, c. 243, §25 (NEW).]

B. The creditor indicates the payment of that amount is not required pending the creditor's compliance with this section. Nothing in this section shall be construed to prohibit any action by a creditor to collect any amount which has not been indicated by the obligor to contain a billing error. [1981, c. 243, §25 (NEW).]

[ 1981, c. 243, §25 (NEW) .]

**5.** Pursuant to regulations of the administrator, a creditor operating an open-end consumer credit plan may not, prior to the sending of the written explanation or clarification required under subsection 2, paragraph B, subparagraph (ii), restrict or close an account with respect to which the obligor has indicated pursuant to subsection 1 that he believes such account to contain a billing error solely because of the obligor's failure to pay the amount indicated to be in error. Nothing in this subsection prohibits a creditor from applying against the credit limit on the obligor's account the amount indicated to be in error.

[ 1981, c. 243, §25 (NEW) .]

**6.** Any creditor who fails to comply with the requirements of this section or section 8-402 forfeits any right to collect from the obligor the amount indicated by the obligor under subsection 1, paragraph B, and any finance charges thereon, except that the amount required to be forfeited under this subsection may not exceed \$50.

[ 1981, c. 243, §25 (NEW) .]

#### SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD).

## 9-A §8-402. REGULATION OF CREDIT REPORTS

1. After receiving a notice from an obligor as provided in section 8-401, subsection 1, a creditor or his agent may not directly or indirectly threaten to report to any person adversely on the obligor's credit rating or credit standing because of the obligor's failure to pay the amount indicated by the obligor under section 8-401, subsection 1, paragraph B, and that amount may not be reported as delinquent to any 3rd party until the creditor has met the requirements of section 8-401 and has allowed the obligor the same number of days, not less than 10, thereafter to make payment as is provided under the credit agreement with the obligor for the payment of undisputed amounts.

[ 1981, c. 243, §25 (NEW) . ]

2. If a creditor receives a further written notice from an obligor that an amount is still in dispute within the time allowed for payment under subsection 1, a creditor may not report to any 3rd party that the amount of the obligor is delinquent because the obligor has failed to pay an amount which he has indicated under section 8-401, subsection 1, paragraph B, unless the creditor also reports that the amount is in dispute and, at the same time, notifies the obligor of the name and address of each party to whom the creditor is reporting information concerning the delinquency.

[ 1981, c. 243, §25 (NEW) . ]

3. A creditor shall report any subsequent resolution of any delinquencies reported pursuant to subsection 2 to the parties to whom such delinquencies were initially reported.

[ 1981, c. 243, §25 (NEW) . ]

### SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD).

## 9-A §8-403. TREATMENT OF CREDIT BALANCES; RETURNS

1. Whenever a credit balance in excess of \$1 is created in connection with a consumer credit transaction through transmittal of funds to a creditor in excess of the total balance due on an account, rebates of unearned finance charges or insurance premiums or amounts otherwise owed to or held for the benefit of an obligor, the creditor shall:

A. Credit the amount of the credit balance to the consumer's account; [1981, c. 243, §25 (NEW) . ]

B. Refund any part of the amount of the remaining credit balance, upon request of the consumer; and [1981, c. 243, §25 (NEW) . ]

C. Make a good faith effort to refund to the consumer by cash, check or money order any part of the amount of the credit balance remaining in the account for more than 6 months, except that no further action is required in any case in which the consumer's current location is not known by the creditor and cannot be traced through the consumer's last known address or telephone number. [1981, c. 243, §25 (NEW) . ]

[ 1981, c. 243, §25 (NEW) . ]

2. With respect to any sales transactions where a credit card has been used to obtain credit, where the seller is a person other than the card issuer, and where the seller accepts or allows a return of the goods or forgiveness of a debt for services which were the subject of such sale, the seller shall promptly transmit to the credit card issuer, a credit statement with respect thereto and the credit card issuer shall credit the account of the obligor for the amount of the transaction.

[ 1981, c. 243, §25 (NEW) . ]

SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD).

**9-A §8-404. PROMPT CREDITING OF PAYMENTS**

Payments received from an obligor under an open-end consumer credit plan by the creditor shall be posted promptly to the obligor's account as specified in regulations of the administrator. The regulations shall prevent a finance charge from being imposed on any obligor if the creditor has received the obligor's payment in readily identifiable form in the amount, manner, location and time indicated by the creditor to avoid the imposition of a finance charge. [ 1981, c. 243, §25 (NEW) . ]

SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD).

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