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HOUSE BILL 1311

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State of Washington

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By Representatives Kirby, Bailey, Morrell, Sullivan, Kenney, Simpson, and Nelson; by request of Department of Financial Institutions

Read first time 01/19/09. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to reverse mortgage lending; amending RCW 31.04.015  
2 and 31.04.115; and adding new sections to chapter 31.04 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The definitions in this section apply  
5 throughout this chapter unless the context clearly requires otherwise.

6 (1) "FHA-approved reverse mortgage" means a "home equity conversion  
7 mortgage" or other reverse mortgage product guaranteed or insured by  
8 the federal department of housing and urban development.

9 (2) "Owner-occupied residence" is the borrower's residence and  
10 includes a life estate property the legal title for which is held in  
11 the name of the borrower in a reverse mortgage transaction or in the  
12 name of a trust, provided the occupant of the property is the  
13 beneficiary of that trust.

14 (3) "Proprietary reverse mortgage loan" is any reverse mortgage  
15 loan product that is not a home equity conversion mortgage loan or  
16 other federally guaranteed or insured loan.

17 (4) "Reverse mortgage broker or lender" means a licensee under the  
18 Washington state consumer loan act, chapter 31.04 RCW, or a person  
19 exempt from licensing pursuant to federal law.

1 (5) "Reverse mortgage loan" means a nonrecourse consumer credit  
2 obligation in which:

3 (a) A mortgage, deed of trust, or equivalent consensual security  
4 interest securing one or more advances is created in the borrower's  
5 dwelling;

6 (b) Any principal, interest, or shared appreciation or equity is  
7 due and payable, other than in the case of default, only after:

8 (i) The consumer dies;

9 (ii) The dwelling is transferred; or

10 (iii) The consumer ceases to occupy the dwelling as a dwelling; and

11 (c) The broker or lender is licensed under Washington state law or  
12 exempt from licensing under federal law.

13 NEW SECTION. **Sec. 2.** (1) For purposes of sections 1 through 8 of  
14 this act, in addition to any other requirements, licensees must comply  
15 with the following requirements before offering proprietary reverse  
16 mortgage loans:

17 (a) Maintain an irrevocable standby letter of credit approved by  
18 the director from a financial institution approved by the director in  
19 favor of the licensee in an amount necessary to fund all reverse  
20 mortgage loan requirements anticipated over the next twelve months for  
21 loans then on the licensee's books and those expected to be made over  
22 the next twelve months or three million dollars, whichever is greater.  
23 The initial term of the letter of credit must be at least two years.

24 (b) The financial institution that provides the letter of credit as  
25 required in (a) of this subsection may not be affiliated with the  
26 licensee.

27 (c) A licensee with a rating of either 4A1 or 5A1 from Dun &  
28 Bradstreet credit services for three consecutive years is exempt from  
29 the requirements set forth in (a) of this subsection.

30 (2) The licensee shall maintain a minimum capital of ten million  
31 dollars.

32 (3) A licensee may rely on the capital of its parent to satisfy the  
33 requirement of subsection (2) of this section. However, for any year  
34 in which a licensee seeks to so rely, it shall provide to the director  
35 a certified financial statement of the parent showing a net worth of at  
36 least one hundred million dollars as of the close of its most recent  
37 fiscal year and a binding written commitment from the parent to the

1 licensee to make a minimum of ten million dollars available to the  
2 licensee as a capital contribution in connection with its reverse  
3 mortgage lending program.

4 (4) Subsections (2) and (3) of this section do not apply to a  
5 licensee that:

6 (a) Only originates proprietary reverse mortgage loans the proceeds  
7 of which are fully disbursed at the loan closing; or

8 (b) Only originates proprietary reverse mortgage loans that are  
9 sold into the secondary market to an investor with either a 4A1 or 5A1  
10 rating from Dun & Bradstreet credit services. A licensee that makes  
11 such a sale shall obtain a written commitment to purchase the loans  
12 from the investor prior to closing and shall arrange for the delivery  
13 of the loans to the investor within ten days of the loan closing.

14 NEW SECTION. **Sec. 3.** The department of financial institutions has  
15 specific authority to develop rules regarding the interpretation and  
16 implementation of this section. A proprietary reverse mortgage loan  
17 must comply with all of the following requirements:

18 (1) For the purposes of this section prepayment, in whole or in  
19 part, or the refinancing of a reverse mortgage loan, is permitted  
20 without penalty at any time during the term of the reverse mortgage  
21 loan. For the purposes of this section, penalty does not include any  
22 fees, payments, or other charges, not including interest, that would  
23 have otherwise been due upon the reverse mortgage being due and  
24 payable. However, when a reverse mortgage lender has paid or waived  
25 all of the usual fees or costs associated with a reverse mortgage loan,  
26 a prepayment penalty may be imposed, provided the penalty does not  
27 exceed the total amount of the usual fees or costs that were initially  
28 absorbed or waived by the reverse mortgage lender. A mortgagee may not  
29 impose a prepayment penalty under this subsection if the prepayment is  
30 caused by the occurrence of the death of the borrowers. A borrower  
31 must be provided prior written notice of any permissible prepayment  
32 penalty under this section;

33 (2) A reverse mortgage loan may provide for a fixed or adjustable  
34 interest rate or combination thereof, including compound interest, and  
35 may also provide for interest that is contingent on the value of the  
36 property upon execution of the loan or at maturity, or on changes in  
37 value between closing and maturity;

1 (3) The lender shall pay a late charge to the borrower for any late  
2 advance. If the lender does not mail or electronically transfer a  
3 scheduled monthly advance to the borrower on the first business day of  
4 the month, or within five business days of the date the lender receives  
5 the request, or such other regularly scheduled contractual date, the  
6 late charge is ten percent of the entire amount that should have been  
7 paid to the borrower for that month or as a result of that request.  
8 For each additional day that the lender fails to make the advance, the  
9 lender shall pay interest on the late advance at the interest rate  
10 stated in the loan documents. If the loan documents provide for an  
11 adjustable interest rate, the rate in effect when the late charge first  
12 accrues is used. Any late charge is paid from the lender's funds and  
13 may not be added to the unpaid principal balance. Additionally, the  
14 lender forfeits the right to interest and a monthly servicing fee for  
15 any months in which the advance has not been timely made. This section  
16 does not affect the department of financial institution's ability to  
17 impose other sanctions to protect consumers of reverse mortgage loans;

18 (4) The reverse mortgage loan may become due and payable upon the  
19 occurrence of any one of the following events:

20 (a) The home securing the loan is sold or title to the home is  
21 otherwise transferred;

22 (b) All borrowers cease occupying the home as a principal  
23 residence, except as provided in subsection (5) of this section; or

24 (c) A defaulting event occurs which is specified in the loan  
25 documents;

26 (5) Repayment of the reverse mortgage loan is subject to the  
27 following additional conditions:

28 (a) Temporary absences from the home not exceeding one hundred  
29 eighty consecutive days do not cause the mortgage to become due and  
30 payable;

31 (b) Extended absences from the home exceeding one hundred eighty  
32 consecutive days, but less than one year, do not cause the mortgage to  
33 become due and payable if the borrower has taken prior action that  
34 secures and protects the home in a manner satisfactory to the lender,  
35 as specified in the loan documents;

36 (c) The lender's right to collect reverse mortgage loan proceeds is  
37 subject to the applicable statute of limitations for written loan

1 contracts. Notwithstanding any other provision of law, the statute of  
2 limitations shall commence on the date that the reverse mortgage loan  
3 becomes due and payable as provided in the loan agreement; and

4 (d) Using conspicuous, bold sixteen-point or larger type, the  
5 lender shall disclose in the loan agreement any interest rate or other  
6 fees to be charged during the period that commences on the date that  
7 the reverse mortgage loan becomes due and payable, and that ends when  
8 repayment in full is made;

9 (6) The first page of any deed of trust securing a reverse mortgage  
10 loan must contain the following statement in sixteen-point boldface  
11 type: "This deed of trust secures a reverse mortgage loan;"

12 (7) A lender shall not require an applicant for a reverse mortgage  
13 to purchase an annuity as a condition of obtaining a reverse mortgage  
14 loan. A reverse mortgage lender or a broker arranging a reverse  
15 mortgage loan shall not:

16 (a) Offer an annuity to the borrower prior to the closing of the  
17 reverse mortgage or before the expiration of the right of the borrower  
18 to rescind the reverse mortgage agreement;

19 (b) Refer the borrower to anyone for the purchase of an annuity  
20 prior to the closing of the reverse mortgage or before the expiration  
21 of the right of the borrower to rescind the reverse mortgage agreement;  
22 or

23 (c) Provide marketing information or annuity sales leads to anyone  
24 regarding the borrower, or receive any compensation for such an annuity  
25 sale or referral;

26 (8) Prior to accepting a final and complete application for a  
27 reverse mortgage loan or assessing any fees, a lender shall refer the  
28 prospective borrower to an independent housing counseling agency  
29 approved by the federal department of housing and urban development for  
30 counseling. The counseling must meet the standards and requirements  
31 established by the federal department of housing and urban development  
32 for reverse mortgage counseling. The lender shall provide the borrower  
33 with a list of at least five independent housing counseling agencies  
34 approved by the federal department of housing and urban development,  
35 including at least two agencies that can provide counseling by  
36 telephone. Telephone counseling is only available at the borrower's  
37 request;

1 (9) A lender shall not accept a final and complete application for  
2 a reverse mortgage loan from a prospective applicant or assess any fees  
3 upon a prospective applicant without first receiving a certification  
4 from the applicant or the applicant's authorized representative that  
5 the applicant has received counseling from an agency as described in  
6 subsection (8) of this section. The certification must be signed by  
7 the borrower and the agency counselor, and must include the date of the  
8 counseling and the names, addresses, and telephone numbers of both the  
9 counselor and the borrower. Electronic facsimile copy of the housing  
10 counseling certification satisfies the requirements of this subsection.  
11 The lender shall maintain the certification in an accurate,  
12 reproducible, and accessible format for the term of the reverse  
13 mortgage;

14 (10) A reverse mortgage loan may not be made for a Washington state  
15 resident unless that resident is a minimum of sixty years of age as of  
16 the date of execution of the loan; and

17 (11) Except for the initial disbursement of moneys to the closing  
18 agent, advances by the lender to the borrower must be issued directly  
19 to the borrower, or his or her legal representative, and not to an  
20 intermediary or third party.

21 NEW SECTION. **Sec. 4.** (1) This section does not apply to a home  
22 equity conversion mortgage or other federally administered reverse  
23 mortgage product. A proprietary reverse mortgage loan product may not  
24 be offered without preapproval by the department of financial  
25 institutions.

26 (2) The director may make rules regarding the preapproval process,  
27 and may require any documentation, information, standards, or data  
28 deemed necessary by the director. The director may disapprove any  
29 proprietary reverse mortgage loan products that contain or incorporate  
30 by reference any inconsistent, ambiguous, or misleading provisions or  
31 terms, or exceptions and conditions which unreasonably or deceptively  
32 affect the reverse mortgage contract. Additional grounds for  
33 disapproval may include, without limitation, the existence in the  
34 proprietary product of any benefits provided to the borrower that are  
35 contrary to public policy.

1        NEW SECTION.    **Sec. 5.**    (1) A proprietary reverse mortgage loan  
2 application may not be taken by a lender unless the loan applicant has  
3 received from the lender the following plain language statement in  
4 conspicuous bold sixteen-point type or larger, advising the prospective  
5 borrower about counseling prior to obtaining the reverse mortgage loan  
6 within three business days of receipt of the completed loan  
7 application:

8                    **"Important notice to reverse mortgage loan applicant**

9            **A reverse mortgage is a complex financial transaction that provides**  
10 **a means of using the equity you have built up in your home, or the**  
11 **value of your home, as a way to access home equity.**

12           **If you decide to obtain a reverse mortgage loan, you will sign**  
13 **binding legal documents that will have important legal, tax, and**  
14 **financial implications for you and your estate.**

15           **It is very important for you to understand the terms of the reverse**  
16 **mortgage and its effect. Before entering into this transaction, you**  
17 **are required by law to consult with an independent loan counselor. A**  
18 **list of approved counselors will be provided to you by the lender or**  
19 **broker. You may also want to discuss your decision with family members**  
20 **or others on whom you rely for financial advice."**

21           (2) As part of the disclosure required under this section, the  
22 lender or servicer shall provide an annual, or more frequent,  
23 disclosure statement to the borrower, providing details of the loan  
24 advances, balance, and other terms.

25           (3) In addition to any other loan documentation or disclosure,  
26 prior to execution of the loan and at the end of the loan term, the  
27 lender may either obtain an independent appraisal of the property value  
28 or use the current year's tax assessment valuation of the property.  
29 Copies of these appraisals must be timely provided to the borrower  
30 within five days of the borrower's written request, provided the  
31 borrower has paid for the appraisal.

32        NEW SECTION.    **Sec. 6.**    (1) In addition to any other remedies, if a  
33 lender defaults on any of the reverse mortgage loan terms and fails to  
34 cure an actual default after notice as specified in the loan documents,  
35 the borrower, or the borrower's estate, is entitled to treble damages.

36           (2) An arrangement, transfer, or lien subject to this chapter is  
37 not invalidated solely because of the failure of a lender to comply

1 with any provision of this chapter. However, this section does not  
2 preclude the application of any other existing civil remedies provided  
3 by law.

4 (3) A violation of federal legal requirements for an FHA-approved  
5 reverse mortgage as defined in section 1(1) of this act constitutes a  
6 violation of this chapter.

7 NEW SECTION. **Sec. 7.** (1) To the extent that implementation of  
8 this section does not conflict with federal law resulting in the loss  
9 of federal funding, proprietary reverse mortgage loan advances made to  
10 a borrower must be treated as proceeds from a loan and not as income  
11 for the purpose of determining eligibility and benefits under means-  
12 tested programs of aid to individuals.

13 (2) Undisbursed reverse mortgage funds must be treated as equity in  
14 the borrower's home and not as proceeds from a loan, resources, or  
15 assets for the purpose of determining eligibility and benefits under  
16 means-tested programs of aid to individuals.

17 (3) This section applies to any law or program relating to  
18 payments, allowances, benefits, or services provided on a means-tested  
19 basis by this state including, but not limited to, optional state  
20 supplements to the federal supplemental security income program, low-  
21 income energy assistance, property tax relief, general assistance, and  
22 medical assistance only to the extent this section does not conflict  
23 with Title 19 of the federal social security act.

24 NEW SECTION. **Sec. 8.** The director of the department of financial  
25 institutions may take the necessary steps to ensure that this act is  
26 implemented on its effective date.

27 NEW SECTION. **Sec. 9.** Sections 1 through 8 of this act may be  
28 known and cited as the Washington state reverse mortgage act.

29 NEW SECTION. **Sec. 10.** Sections 1 through 9 of this act are each  
30 added to chapter 31.04 RCW and codified with the subchapter heading of  
31 "reverse mortgage lending."

32 **Sec. 11.** RCW 31.04.015 and 2001 c 81 s 1 are each amended to read  
33 as follows:



1           The definitions set forth in this section apply throughout this  
2 chapter unless the context clearly requires a different meaning.

3           (1) "Person" includes individuals, partnerships, associations,  
4 limited liability companies, limited liability partnerships, trusts,  
5 corporations, and all other legal entities.

6           (2) "License" means a single license issued under the authority of  
7 this chapter with respect to a single place of business.

8           (3) "Licensee" means a person to whom one or more licenses have  
9 been issued.

10          (4) "Director" means the director of financial institutions.

11          (5) "Insurance" means life insurance, disability insurance,  
12 property insurance, involuntary unemployment insurance, and such other  
13 insurance as may be authorized by the insurance commissioner.

14          (6) "Add-on method" means the method of precomputing interest  
15 payable on a loan whereby the interest to be earned is added to the  
16 principal balance and the total plus any charges allowed under this  
17 chapter is stated as the loan amount, without further provision for the  
18 payment of interest except for failure to pay according to loan terms.  
19 The director may adopt by rule a more detailed explanation of the  
20 meaning and use of this method.

21          (7) "Simple interest method" means the method of computing interest  
22 payable on a loan by applying the annual percentage interest rate or  
23 its periodic equivalent to the unpaid balances of the principal of the  
24 loan outstanding for the time outstanding with each payment applied  
25 first to any unpaid penalties, fees, or charges, then to accumulated  
26 interest, and the remainder of the payment applied to the unpaid  
27 balance of the principal until paid in full. In using such method,  
28 interest shall not be payable in advance nor compounded, except that on  
29 a loan secured by real estate, a licensee may collect at the time of  
30 the loan closing up to but not exceeding forty-five days of prepaid  
31 interest. The prohibition on compounding interest does not apply to  
32 reverse mortgage loans made in accordance with the Washington state  
33 reverse mortgage act. The director may adopt by rule a more detailed  
34 explanation of the meaning and use of this method.

35          (8) "Applicant" means a person applying for a license under this  
36 chapter.

37          (9) "Borrower" means any person who consults with or retains a

1 licensee or person subject to this chapter in an effort to obtain or  
2 seek information about obtaining a loan, regardless of whether that  
3 person actually obtains such a loan.

4 (10) "Loan" means a sum of money lent at interest or for a fee or  
5 other charge and includes both open-end and closed-end loan  
6 transactions.

7 (11) "Loan originator" means a person employed, either directly or  
8 indirectly, or retained as an independent contractor by a licensee, to  
9 make or assist a person in applying to obtain a loan.

10 (12) "Making a loan" means closing a loan in a person's name, or  
11 advancing, offering to advance, or making a commitment to advance funds  
12 to a borrower for a loan.

13 (13) "Mortgage broker" means the same as defined in RCW 19.146.010,  
14 except that for purposes of this chapter, a licensee or person subject  
15 to this chapter cannot receive compensation as both a consumer loan  
16 licensee making the loan and as a mortgage broker in the same loan  
17 transaction.

18 (14) "Officer" means an official appointed by the company for the  
19 purpose of making business decisions or corporate decisions.

20 (15) "Principal" means any person who controls, directly or  
21 indirectly through one or more intermediaries, alone or in concert with  
22 others, a ten percent or greater interest in a partnership; company;  
23 association or corporation; or a limited liability company, and the  
24 owner of a sole proprietorship.

25 (16) "Senior officer" means an officer of a licensee at the vice  
26 president level or above.

27 (17) "Third party service provider" means any person other than the  
28 licensee or a mortgage broker who provides goods or services to the  
29 licensee or borrower in connection with the preparation of the  
30 borrower's loan and includes, but is not limited to, credit reporting  
31 agencies, real estate brokers or salespersons, title insurance  
32 companies and agents, appraisers, structural and pest inspectors, or  
33 escrow companies.

34 **Sec. 12.** RCW 31.04.115 and 1994 c 92 s 168 are each amended to  
35 read as follows:

36 (1) As used in this section, "open-end loan" means an agreement

1 between a licensee and a borrower that expressly states that the loan  
2 is made in accordance with this chapter and that provides that:

3 (a) A licensee may permit the borrower to obtain advances of money  
4 from the licensee from time to time, or the licensee may advance money  
5 on behalf of the borrower from time to time as directed by the  
6 borrower;

7 (b) The amount of each advance and permitted charges and costs are  
8 debited to the borrower's account, and payments and other credits are  
9 credited to the same account;

10 (c) The charges are computed on the unpaid principal balance, or  
11 balances, of the account from time to time; and

12 (d) The borrower has the privilege of paying the account in full at  
13 any time without prepayment penalty or, if the account is not in  
14 default, in monthly installments of fixed or determinable amounts as  
15 provided in the agreement.

16 (2)(a) Interest charges on an open-end loan shall not exceed  
17 twenty-five percent per annum computed in each billing cycle by any of  
18 the following methods:

19 ((+a)) (i) By converting the annual rate to a daily rate, and  
20 multiplying the daily rate by the daily unpaid principal balance of the  
21 account, in which case each daily rate is determined by dividing the  
22 annual rate by three hundred sixty-five;

23 ((+b)) (ii) By multiplying a monthly rate by the average daily  
24 unpaid principal balance of the account in the billing cycle, in which  
25 case the monthly rate is one-twelfth of the annual rate, and the  
26 average daily unpaid principal balance is the sum of the amount unpaid  
27 each day during the cycle divided by the number of days in the cycle;  
28 or

29 ((+c)) (iii) By converting the annual rate to a daily rate, and  
30 multiplying the daily rate by the average daily unpaid principal  
31 balance of the account in the billing cycle, in which case the daily  
32 rate is determined by dividing the annual rate by three hundred sixty-  
33 five, and the average daily unpaid principal balance is the sum of the  
34 amount unpaid each day during the cycle divided by the number of days  
35 in the cycle.

36 For all of the methods of computation specified in this subsection  
37 (2)(a), the billing cycle shall be monthly, and the unpaid principal  
38 balance on any day shall be determined by adding to the balance unpaid,

1 as of the beginning of that day, all advances and other permissible  
2 amounts charged to the borrower, and deducting all payments and other  
3 credits made or received that day. A billing cycle is considered  
4 monthly if the closing date of the cycle is on the same date each  
5 month, or does not vary by more than four days from that date.

6 (b) Reverse mortgage loans made in accordance with the Washington  
7 state reverse mortgage act are not subject to the interest charge  
8 computation restrictions or billing cycle requirements in this section.

9 (3) In addition to the charges permitted under subsection (2) of  
10 this section, the licensee may contract for and receive an annual fee,  
11 payable each year in advance, for the privilege of opening and  
12 maintaining an open-end loan account. Except as prohibited or limited  
13 by this section, the licensee may also contract for and receive on an  
14 open-end loan any additional charge permitted by this chapter on other  
15 loans, subject to the conditions and restrictions otherwise pertaining  
16 to those charges.

17 (4)(a) If credit life or credit disability insurance is provided,  
18 the additional charge for credit life insurance or credit disability  
19 insurance shall be calculated in each billing cycle by applying the  
20 current monthly premium rate for the insurance, at the rate approved by  
21 the insurance commissioner to the entire outstanding balances in the  
22 borrower's open-end loan account, or so much thereof as the insurance  
23 covers using any of the methods specified in subsection (2)(a) of this  
24 section for the calculation of interest charges; and

25 (b) The licensee shall not cancel credit life or disability  
26 insurance written in connection with an open-end loan because of  
27 delinquency of the borrower in the making of the required minimum  
28 payments on the loan, unless one or more of the payments is past due  
29 for a period of ninety days or more; and the licensee shall advance to  
30 the insurer the amounts required to keep the insurance in force during  
31 that period, which amounts may be debited to the borrower's account.

32 (5) A security interest in real or personal property may be taken  
33 to secure an open-end loan. Any such security interest may be retained  
34 until the open-end account is terminated. The security interest shall  
35 be promptly released if (a) there has been no outstanding balance in  
36 the account for twelve months and the borrower either does not have or  
37 surrenders the unilateral right to create a new outstanding balance; or

1 (b) the account is terminated at the borrower's request and paid in  
2 full.

3 (6) The licensee may from time to time increase the rate of  
4 interest being charged on the unpaid principal balance of the  
5 borrower's open-end loans if the licensee mails or delivers written  
6 notice of the change to the borrower at least thirty days before the  
7 effective date of the increase unless the increase has been earlier  
8 agreed to by the borrower. However, the borrower may choose to  
9 terminate the open-end account and the licensee shall allow the  
10 borrower to repay the unpaid balance incurred before the effective date  
11 of the rate increase upon the existing open-end loan account terms and  
12 interest rate unless the borrower incurs additional debt on or after  
13 the effective date of the rate increase or otherwise agrees to the new  
14 rate.

15 (7) The licensee shall deliver a copy of the open-end loan  
16 agreement to the borrower at the time the open-end account is created.  
17 The agreement must contain the name and address of the licensee and of  
18 the principal borrower, and must contain such specific disclosures as  
19 may be required by rule of the director. In adopting the rules the  
20 director shall consider Regulation Z promulgated by the board of  
21 governors of the federal reserve system under the federal consumer  
22 credit protection act.

23 (8) Except in the case of an account that the licensee deems to be  
24 uncollectible, or with respect to which delinquency collection  
25 procedures have been instituted, the licensee shall deliver to the  
26 borrower at the end of each billing cycle in which there is an  
27 outstanding balance of more than one dollar in the account, or with  
28 respect to which interest is imposed, a periodic statement in the form  
29 required by the director. In specifying such form the director shall  
30 consider Regulation Z promulgated by the board of governors of the  
31 federal reserve system under the federal consumer credit protection  
32 act.

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