

FINANCIAL METHODS APPLICABLE TO ENERGY-CONSERVING  
RETROFITS FOR SINGLE-FAMILY RESIDENCES

June 1977

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National Savings & Loan League  
Washington, D.C.

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## Executive Summary

In the course of its research, the NSLL has developed and tested twelve leading financial techniques that will support energy conservation efforts in residential structures. The twelve techniques include:

- Future advances clause under open-end mortgages
- Borrowing against existing savings accounts
- Home improvement loans
- Variable Rate Mortgages
- Second Trusts or second mortgages
- Variable payment mortgages
- Balloon payment mortgages
- Deferred monthly payments for periods of excessive energy use (Bubble Mortgage)
- The renegotiation of terms at set intervals
- Lower interest rates offered on mortgages in return for the lender sharing in equity appreciation of the property
- Graduated payments
- Deferred interest loans

The testing took place in the context of the pilot feasibility part of the contract research. Pittsburgh, Pennsylvania, the pilot site, has as a direct result of the NSLL's work, developed their own energy conservation program for single-family residences. Part of this program already includes financial methods being offered by local financial institutions designed specifically to

encourage energy conservation efforts in single-family residences. An example of these financial offerings can be seen in Attachment D of the final report.

The results embodied in this final report were the product of a carefully designed research effort. The Scope of Work was broken into eight specific tasks, including several directed at different financial innovations for the financing of retrofits. After researching all tasks in depth, the material was divided into five sections for presentation in the final report.

A brief summary of these sections include:

1. Findings

Initially, various practical retrofits for single-family residences were examined for ease of understanding by lender and home owner. They were outlined and categorized as, (a) those conservation measures which could be undertaken by the home owner at no cost; (b) those retrofits that could be accomplished for less than \$500, and (c) those retrofits costing more than \$500.

2. Legal Research

The NSLL provided a unique document listing the permissive lending authority available to federal and state-chartered savings and loan associations throughout the fifty states and regulations implementing such legislation for nine states. A matrix chart was developed for ready reference to six of the major techniques which savings and loan associations will use to finance energy conservation measures.

In addition to the lending techniques referenced in the chart, all savings and loan institutions may exercise their authority to lend funds at very low interest, using their depositor's savings accounts as collateral. This comprehensive document, which is the only one of its kind in the industry, is included in the final report.

**3. Relationship of Utilities to Installation of Retrofits**

A general review of what utility companies can and cannot do with respect to the installation of retrofits was done in order to look at all of the various aspects of retrofitting single-family residences. Some sections of the country have successful programs underway while others have lacked general consumer acceptance. There have been no examples to our knowledge where utility companies have offered to finance and monitor programs that included more than attic insulation and clock thermostats.

**4. Financing Techniques Applicable to Retrofits**

The twelve lending techniques covered in the report offer a wide range of lending authority. Some of these techniques exist today and are directly applicable to retrofits. Other techniques have been in use for other purposes, but can be used to finance retrofits. Some are innovative in the sense that they are presently unused in certain states. Some merely require implementation by regulation. Others are untried, but could be readily applied. Variations of these techniques can be expected to develop as energy conservation programs proceed and lenders adapt their procedures to current needs.

## 5. Demonstration of Financing Techniques and Implications for National Application

The NSLL, has evidenced by its contract with ERDA, that a test can be conducted in a demonstration site to determine the utility of offering innovative financing techniques through members of the financial community to encourage energy efficiency in single-family residences.

ERDA and NSLL mutually selected Pittsburgh as one of the more typical metropolitan areas for a case study whose findings could be translated into a national energy program.

Three specific financial techniques were identified and developed for use in Pittsburgh. These same three may have limited or no utility in any other demonstration site. What is important is that the selection of the three techniques was the result of a process that is applicable nationwide. Based on extensive research into the legislation, regulation, and practice of a variety of financing techniques, the NSLL developed a list of twelve that have merit for use in financing energy conservation materials for single-family home owners.

It is entirely possible to carry on a program aimed at residential energy efficiency through the efforts of the financial community. However, in order to provide the best and most thorough test, a large number of residences encompassing many types of structures and income levels of home owners should be included. To accomplish this, the widest participation by the leadership structure of any community must be encouraged to

participate. The inclusion of a diversified leadership base should not obscure the fact that the core of any such program rests with the financial community and its ability to finance conservation measures in the home.

The experience to be gained from the single pilot study in Pittsburgh is invaluable in the formulation of a national energy conservation plan. Differences in climatic conditions, lending practices, utility supervision, and political structure, do however, point up the need for other pilot studies for the development of a broadly based truly "National" energy plan. The basic concept developed for Pittsburgh will have validity in other communities, but the modifications anticipated for other metropolitan areas should be studied before a comprehensive all inclusive national energy conservation plan for single-family residences is offered nationwide.

## ERDA FINAL REPORT

### Preface:

The National Savings and Loan League was established in 1943 as a not-for-profit corporation dedicated to the promotion of thrift and home ownership. It is an international trade association representing the U.S. savings and loan system and serving affiliates in fourteen foreign countries.

The trade association activities of the League involve sponsoring new legislation, keeping its members informed of economic, financial, and regulatory matters, and conducting research on the economic effects of legislation and regulation on the savings and loan industry. The League also sponsors periodic national and international conferences, including the Inter-American Savings and Loan Conference, to foster the dissemination of improved management techniques, to make its members aware of opportunities for profit and service to the community which might not be widely known otherwise, and to provide a forum for the exchange of ideas among savings and loan association managers and government officials.

In addition to its direct representational activities, the League has entered into various government contracts in areas where the particular expertise of our staff or our network of member savings and loan associations can make a meaningful contribution. These areas have included

over fifteen years of service to the State Department (AID) in the establishment of savings and loan systems overseas; technical and financial monitoring of AID, Housing Investment Guaranty Program; establishment of the first Indian operated savings and loan association in the United States; working with the Office of Minority Business Enterprise in bringing together the financial leadership of a community with that of the minority leadership to expand business opportunities for minority groups; assisting minority savings and loans in their management and operational problems; provision of advisory services to HUD with respect to mortgage servicing; and most recently, working with the Energy Research and Development Administration to identify financial innovations and techniques that can be used by homeowners to finance at lowest cost various energy conservation measures in single-family residences.

To supplement the work of its staff, the League has formed an Energy Committee composed of members selected on a geographical basis to review the staff findings and to provide a broad industry input to the reports submitted to ERDA.

## INTRODUCTION

For the past several months, the National Savings and Loan League has been researching financial techniques which our network of member associations may use to finance energy conservation measures in the nation's seventy million housing units. Since only two million or less new housing units come on the market annually, we believe that the area of existing housing units is where the greatest impact may be made.

Our efforts have been financed under a short-term contract by the U.S. Energy Research and Development Administration which provided for field testing in one selected metropolitan area. Our findings in this first phase will form a segment of a national energy plan. The importance of research in this area cannot be overemphasized in terms of personal hardship and in terms of the economic concepts we have come to accept and live by. Energy costs in some areas of the nation are already exceeding the level of mortgage repayments; thus, invalidating original credit analyses and leading to the increased possibility of delinquencies in mortgage repayments. Increased unemployment forced upon us by the severe winter is creating chaos with the home owner's budget.

The major objective of phase one of this contract study has been to develop innovative financing techniques to stimulate and encourage

home owners to participate in energy conservation programs. The Energy Research and Development Administration is actively promoting the need for the nation to conserve energy. However, this contract study goes beyond the mere recognition of the need to conserve energy and addressed the ways in which existing technology can be "taken off the shelf" and installed in single-family residences. The methods and techniques necessary to facilitate the transfer of technology from the shelf to the home are important because mere exhortation about the need to conserve energy as a national goal will not suffice. The economic self-interest of consumers as well as the financial institutions providing funds to the consumer must be recognized. A substantial demand for technologies that conserve energy will be generated when the home owner understands that the installation of such technical retrofits will mean a savings in the amount spent for energy each month.

The lender will respond to economic self-interest as well as the consumer. A lender will readily make a loan if it is profitable. In the case of single-family residences the interest of the financial community is more complex. A home with a mortgage represents an investment to the mortgage holder. The reality of rising energy costs could place such investments in jeopardy. There are already instances of monthly utility bills exceeding monthly mortgage payments. In some areas, the rate of bad collections on mortgage payments has taken a sharp rise during the past few months. In each case, the cause was identified as high utility bills. While

there have been no massive defaults on mortgages due to rising energy costs the mortgage holding community, and the savings and loan industry in particular is very conscious of the impact of rising energy costs and the potential that energy conservation holds for protecting the security of home ownership. As the holder of some 60% of the mortgages in the United States, the savings and loan industry has a real stake in facilitating energy conservation in the home.

Relatively inexpensive energy conservation measures taken by home owners can substantially reduce energy consumption. Merely "waving the flag" will not produce the desired results over the long term. Identification of dollars and cents savings are necessary to convince the home owner to carry out energy conservation measures. The savings and loan industry is prepared to finance energy conservation measures as are many banks, credit unions and other financial institutions. Our job is to make home owners aware of the need to conserve energy and to provide the financial means for them to do so.

In order to fully develop innovative financing techniques necessary to assist the home owner in participating in energy conservation programs, the contract was broken into sections, or tasks.

Task One involved the determination of economic reference levels against which individual technologies were set. Three levels are stipulated in the report: Level One - no cost; Level Two - low

cost or below \$500; and Moderate Cost or above \$500. Tasks Two through Five called for a thorough examination of funding techniques. These techniques range from the uniform mortgage instrument which generally provides for an open-ended mortgage, home improvement loans, second trusts, variable rate mortgages, variable payment mortgage and pass-through techniques.

In support of this effort, the National Savings and Loan League researched the legislation and regulations covering federally-chartered savings and loan associations and legislation for all fifty states for state-chartered savings and loans. Regulations for selected states were also researched.

Task Six covers the relationship of utility companies to the installation of energy conserving retrofits in the home including the possibility of the utility financing such retrofits.

Task Seven involves the investigating of the feasibility of applying innovative financing techniques in a demonstration test area.

Pittsburgh, Pennsylvania was chosen as the pilot area. Pittsburgh contained the proper mix of criteria that the National League felt was essential. The pilot site was best identified as a metropolitan area, containing a good mix of industry, commerce, and residential sectors, tied together in a cohesive fashion.

In the sense of having to work with only one pilot during phase one, the National felt that Pittsburgh experienced a variety of temperature conditions in terms of degree days of heating and cooling. The

regulations governing financial and utility activities plus the practices of those elements provided the basis for a feasibility examination.

Task Eight calls for the development of a national program plan for implementing the innovative financial techniques for the pilot site. The program will then include a larger look for the possibility of applying what was learned in the pilot project to the nation as a whole. The major point that the League already recognizes in terms of devising a national plan is the need to recognize the variations in conditions, climate, lending, utility activities, and consumer responses that exist. The factors to be considered in an energy conservation program are basically the same around the country, but the variation in those factors and the way they interact necessitates a plan flexible enough to address itself to any given site.

## FINDINGS

### Economic Reference Levels

A review of existing technology indicates three general categories in which home owners can undertake energy conservation measures in their homes. The first category covers those measures which may be undertaken at no cost; the second category covers those measures that may be undertaken at a cost of \$500 or less; the third category lists those measures where an expenditure of \$500 or more is required. Groupings of those measures in the second category may force total expenditures above \$500, and the decision to have work performed by a contractor rather than on a "do it yourself" basis will likewise have a tendency to boost costs above \$500. All retrofits in the third category assume contractor installation.

Assuming a national program is undertaken or even a major effort in selected metropolitan areas, a simple pamphlet should be prepared for lenders, utility companies, real estate brokers and others to pass out to consumers who wish to reduce their energy costs. All three categories of residential retrofits can be easily computed for a particular residence together with a fairly accurate projection of pay-back time. Generalizations would be misleading and are not included in this report.

#### Category I - Energy Saving at no Cost

- Turn down thermostat to 65 degrees in the day time and 55 degrees at night

during heating season. Turn thermostat to 78 degrees or higher in summer when thermostat controls air conditioning.

- Seal fireplace damper when not in use, or close off fireplace with glass door as noted in Category II.
- Close heating/cooling vents, windows and doors of unused rooms summer and winter. Keep drapes closed.
- Reduce hot water thermostat to 140 degrees with dishwasher or 120 degrees without dishwasher.
- Clean furnace/air conditioner filter on a quarterly basis.

Category II - Energy Saving at Low Cost

- Install time clock thermostat; automatically control temperatures noted in Category I.
- Caulk window and door frames where they abut siding or walls; siding where it contacts masonry; seal other apparent cracks or openings from the outside.
- Install storm doors and storm windows; plastic sheets may be used to cover windows where costs are a deterrent.
- Insulate attic to the maximum recommended for your region.
- Insulate beneath exposed floor areas when house is raised above ground level or living space is situated above unheated space.
- Consider wall insulation. Three inches or more are recommended, but

cost of installation on a retrofit basis may not be warranted.

- Weatherstrip doors and windows.
- Close off fireplace openings with glass doors.
- Replace furnace/air conditioning filters at least annually and have furnace cleaned and adjusted each fall.
- Insulate heating and air conditioning ducts with at least 1 1/2" insulation where they run through unheated areas of the residence.
- Consider reflective window coatings in areas of high air conditioning loads with southern and western exposure.
- Insure that leaking hot-water faucets are repaired and maintained.

#### Category III - Energy Savings at Moderate Cost

- When circumstances warrant (age and inefficiency) replacement of heating/air conditioning units should be considered. Gas remains the cheapest source of space heating fuel in most sections of the country, but may be unavailable for a new installation or conversion. Oil is generally the second least expensive fuel source with electric resistance heating the most expensive. Installation of a heat pump becomes a logical, although somewhat more expensive, alternative to gas or oil.
- Solar hot water heating systems are available and should be considered viable alternatives for new or replacement hot water systems.

## LEGAL RESEARCH

An examination of Federal and state savings and loan association legislation and regulation was undertaken in order to determine possible loan mechanisms to finance home energy conservation measures. The findings state what is currently permissible in terms of specified lending techniques.

Seven specific mechanisms were examined in order to determine their efficacy for financing home energy conservation measures. The seven techniques are: Open-end mortgages or future advances; Home Improvement Loans; Second Mortgages; Borrowing against savings; Balloon Payment; Variable Rate Mortgages; Variable Payment Mortgages. These techniques are used with varying degrees of frequency, home improvement loans and future advances being the most widely used.

The legal research document is to be used as a guide to assess what funding techniques are permissible under existing legislation. To ascertain what is common in actual practice will require a review of all state regulations and a more detailed study of the extent to which existing regulations are implemented.

The matrix provides a quick reference regarding the legal permissibility of six specific loan mechanisms for both Federally-chartered and state-chartered savings and loan associations. The matrix

does not reflect any degree of the use of these mechanisms or any details that are found in the regulations pertaining to Federal or state-chartered savings and loans.

**Matrix Reference on Federal and State Savings and Loan Association Legislation -- Possible Loan  
Mechanisms to Finance Home Energy Conservation Measures**

	<u>Future Advances</u>	<u>Home Improvement</u>	<u>Balloon Payment</u>	<u>Second Mortgage</u>	<u>Variable Rate Mortgage</u>	<u>Flexible Payment</u>	<u>Other</u>
<b>Federal</b>	+	+	?	+	-	+	
<b>Alabama</b>	+	?	+	+	?	+	
<b>Alaska</b>	+	+	?	-	?	?	
<b>Arizona</b>	+	+	+	+	?	+	
<b>Arkansas</b>	?	?	?	+	?	?	
<b>California</b>	-	+	?	?	+	-	
<b>Colorado</b>	+	+	+	?	?	?	
<b>Connecticut</b>	+	+	+	+ (V.A.)	?	+	
<b>Delaware</b>	+	?	?	+	+	?	
<b>Florida</b>	+	+	?	-	?	?	
<b>Georgia</b>	?	?	+	+	?	?	
<b>Hawaii</b>	+	+	-	+	?	-	
<b>Idaho</b>	+	+	+	?	?	?	
<b>Illinois</b>	+	+	+	+	+	+	
<b>Indiana</b>	?	?	+	?	?	?	
<b>Iowa</b>	+	+	+	-	?	-	

**KEY**

	<u>Future Advances</u>	<u>Home Improvement</u>	<u>Balloon Payment</u>	<u>Second Mortgage</u>	<u>Variable Rate Mortgage</u>	<u>Flexible Payment</u>	<u>Other</u> ----
Kansas	+	+	+	-	?	+	Line of Credit
Kentucky	+	+	-	-	?	-	
Louisiana	+	+	?	+	?	?	
Maine	+	+	+	+	?	?	
Maryland	?	+	+	+	?	-	
Massachusetts	+	+	+	+	?	-	Note \$5,000
Michigan	?	+	?	?	?	?	
Minnesota	+	+	+	?	-	?	
Mississippi	?	+	?	+	?	?	
Missouri	+	+	?	+	?	?	
Montana	+	?	?	-	?	?	
Nebraska	+	+	?	+	?	?	
Nevada	?	+	+	+	?	-	
New Hampshire	?	+	+	+	?	+	Note
New Jersey	+	+	?	+	?	?	
New Mexico	?	+	?	+	?	?	
New York	?	+	?	+	?	?	Line of Credit
North Carolina	+	+	?	+	?	?	
North Dakota	+	?	+	+	?	-	
Ohio	+	+	+	+	?	?	

	<u>Future Advances</u>	<u>Home Improvement</u>	<u>Balloon Payment</u>	<u>Second Mortgage</u>	<u>Variable Rate Mortgage</u>	<u>Flexible Payment</u>	<u>Other</u>
Oklahoma	?	+	?	+	?	?	
Oregon	+	+	+	+	?	-	
Pennsylvania	?	+	+	+	-	+	
Rhode Island	+	?	-	+	?	-	
South Carolina	+	+	-	?	?	-	
South Dakota	?	+	?	+	?	?	
Tennessee	?	+	?	?	?	?	
Texas	?	+	+	+	+	?	
Utah	?	+	-	+	?	-	
Vermont	+	+	-	+	-	-	
Virginia	+	+	?	?	-	?	
Washington	?	+	+	+	?	+	
West Virginia	?	-	-	-	?	-	
Wisconsin	+	+	+	+	+	-	
Wyoming	?	?	?	?	?	?	

## RELATIONSHIP OF UTILITIES TO INSTALLATION OF RETROFITS

Utilities are normally supervised by the Public Utility Commission of the state in which they sell their services. Thus, gas and electric companies operate under a variety of different regulations. Oil, coal or other fuels are supplied by private distributor networks and are not subject to a Public Utility Commission.

Residential units in urban areas of the United States where winter heating is a normal requirement are generally not large heating customers for electric utilities. Heat pumps have only become popular since about 1967 and these of course generally require electric resistance heating as back-up. Still the load is minimal. The electric power demand load for residential units is primarily for air conditioning units as far north in the east as southern Pennsylvania, and more broadly nationwide for electric residences throughout the United States cannot be expected to reduce electric power consumption for heating to any great degree, although much can be accomplished to reduce air conditioning loads.

Our test city, Pittsburgh, for example, has only 12,000 units heated by electricity of which 10,000 units are apartments. Gas heat is supplied to almost 500,000 customers with oil heat making up the balance. Accordingly, if we are to gain a major retrofit impact through the cooperation of a utility in Pittsburgh at least we will be endeavoring to conserve gas heat.

Some gas companies such as Northern States Power Company in Minneapolis make ceiling insulation loans to customers for \$50 to \$500, with no down payment at 12% interest. Terms vary, but the program has financed over 14,000 loans.

Brooklyn (New York) Union Gas company makes similar loans at 12.75%. Washington Gas Company (District of Columbia, Maryland, and Virginia) makes insulation loans for customers at 8% as an add-on to monthly bills with a local company performing the installation.

Winters National Bank of Dayton, Ohio, is making insulation loans as a community service at 7.5%, stating they will lose money on every loan. The bank also offers to pay 30% of the insulation cost to their employees who add extra insulation to their homes. Seattle Trust and Savings Bank offers a number of energy conservation-type loans at 1/2 to 3/4% below standard rates although a checking account with Seattle Trust is a prerequisite.

Consolidated Edison of New York City received permission from the Public Service Commission of New York to offer a home insulation program which has met with varying success to date. Loans may range from \$150 to \$800 at 12% interest and term to three years. In Pennsylvania, the "Rosenberg proposal", which suggests that three conservation methods, namely home insulation, furnace retrofit and automatic thermostats be developed into a conservation program included in customer

rates has received widespread attention. The Pennsylvania Utility Commission has asked their lawyers to review the legal aspects of the proposal with a view to authorize the Public Utilities under their jurisdiction to enter into such a program for their customers. The proposal is now receiving National attention and may be adapted by many states.

The drawback to the program seems to be that it does not address the many retrofit measures that the home owner may undertake, and is addressed primarily to users of natural gas. Further, it appears to contemplate a 17% return on investment which is substantially higher than other lenders would charge for home improvement loans. It certainly is a useful step in the right direction, however, and will not be objected to by the average lender because of the small size of the loan.

In summary, gas and electric utility companies are acutely aware of the need to improve their image with consumers and will, it is believed, extend their efforts to assist customers to undertake at least low-cost retrofits (primarily insulation) where permitted by their Public Utility Commissions.

## FINANCING TECHNIQUES APPLICABLE TO RETROFITS

In considering the subject of financing energy conservation measures in single family homes, the most important aspects are the availability of financing and the costs. Obviously, different areas of the country have different problems - e.g. weather, financial customs, and a variety of local conditions which may be unique to the area. For the present, we have considered in some depth the metropolitan Pittsburgh, Pennsylvania area and our comments concerning various financing techniques will have special reference to financing in that area.

The laws, and to a degree, the existing practices common in other states were reviewed to determine additional financial innovations which conceivably could be readily introduced to the Pittsburgh scene. Twelve techniques were carefully studied. Some techniques exist today and are directly applicable to retrofits. Others were studied specifically for their potential use in financing energy retrofits in single family residences. Regardless of the technique, a key in using the mortgage instrument is whether the original instrument has to be renegotiated or not. The renegotiation of the first mortgage involves a cost which must be weighed in relation to the transaction. Some of the following techniques involve renegotiating the first mortgage and some do not. These financial techniques are:

Open-end mortgages frequently provide a future advances clause that offers funds at a rate substantially below prevailing rates for home improvement loans. The mortgage is renegotiated with the rate on the unpaid balance possibly increased. The new monthly payment thus enabling the borrower to pay off the mortgage and the loan simultaneously at an attractive rate.

Future advances is a technique of long standing in different areas of the country. In simple terms, that expression describes a practice under the terms of the mortgage for making an additional loan or loans to the borrower during the life of the mortgage. Many such provisions such as in Pittsburgh, Pennsylvania, limit additional loans to an amount which will not exceed the original amount of the mortgage. Consequently, the greater the equity of the borrower, the greater the amount of the loan available to the borrower. In the case of a substantial retrofit program for a particular home, financing under this technique offers one of the most economic and easily carried financing plans presently available. This is so because, one, the interest rate is considerably less than the rates for most other financing schemes, and since it is spread over the balance of the term of the mortgage, it is less of a burden than shorter term financing. As practiced in the Metropolitan Pittsburgh area, an adjustment in the rate of interest in the original loan is increased by approximately 1/2 of 1%, and the rate of interest for the newly added loan is fixed at the going rate of interest charged

on new real estate mortgage loans. Then for simplicity's sake, a weighted average is worked out which includes the adjusted rate of the original loan and the rate charged for the additional loan.

An important aspect of future advance financing is its ready availability. This is particularly true in Pennsylvania where the practice has been described by well informed officials as "a way of life". Here is a ready-made tool which, in appropriate circumstances, gives the home owner a ready source of economical financing for improving his home while at the same time incorporating energy conservation features of special importance and significance.

One aspect to financing energy conservation through the use of the future advance technique bears special comment. Many savings and loan associations make use of the secondary mortgage market through the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC). Under existing regulations of both of these organizations, once a savings and loan has sold its mortgage to either of them the principal of the mortgage cannot be increased. Believing that it is inconsistent for quasi-governmental agencies to inhibit the practice of future advances for energy conservation, contacts have been made with these agencies in the hope that their positions will be modified. Such a modification would be helpful in encouraging savings and loans which remain as servicing agents for both FHMA and FHLMC to process such advances, following the sale of the mortgage

to these entities.

Borrowing Against Existing Savings Accounts or certificates of deposit in order to secure funds at a minimum rate of interest. This technique is useful in areas where a tradition of thrift and savings exists and savings are being accumulated for long term purposes such as education. Without touching those savings, a person may pledge all or part of his savings as collateral for a loan from the association. As a general rule, a loan up to ninety percent of the collateral may be obtained. Persons having passbooks or certificate accounts physically turn over such passbooks or certificates which are held in custody by the association as collateral for repayment of the loan. The rate of interest is generally 1-1/2% above the rate paid by the association for the savings account. For instance, if a passbook is pledged and the association is paying 5-1/4% interest to the saver, he will pay interest at the rate of 6-3/4% on the loan. Such rates, considerably below those for home improvement loans, makes this technique very attractive for financing energy conserving retrofits.

Home Improvement Loans are available in practically all states. These loans can be for short terms or up to 15 years, and for varying amounts up to \$10,000. They are particularly appropriate for financing retrofits and could be offered at less than their generally prevailing rate should the institution desire to emphasize energy conservation loans. FHA insured home improvement loans insure the lender up to 90% of any loss. A conventional home

improvement loan may be made without FHA or other government insurance.

The interest rates, on all home improvement loans are higher than mortgage loans because lenders are permitted to discount in advance the interest to be paid, or add on to the principal loan the amount of interest over the life of the loan. By either method, the true interest rate may be almost double the rate specified in the note. For example, a 6% rate, with either the discount or add-on technique, could be an effective rate of 10 to 11%. In the case of small loans, there is a reluctance by lenders to go through the refinancing technique of future advances. As a result, in the case of loans of \$500 to \$1,000, the availability of home improvement loans is advantageous to the home owner even if he has to pay a higher interest rate.

The practice of discounting or add-on to the face amount of the loan is not unusual. Automobile loans operate in this manner, and installment purchases through reputable department stores, Sears-Roebuck, Montgomery Ward and others, often involve an annual rate of interest from 12 to 18%. Accordingly, for storm windows, insulation, and other minor retrofits involving amounts under \$1,000, the home improvement loan would be the most practical.

The Variable Rate Mortgage is another financing method gaining importance in single family residential financing. Under its terms, the borrower and lender agree to raise or lower the interest rate of the mortgage loan in accordance with some fixed index at specified intervals, but with a limit as to the maximum increase, which is generally in the 2% to 2-1/2% range. Thus, a 7% rate could

could not in any event exceed 9-1/2%. The initial advantage to the borrower is that the interest rate he will pay at the outset of the mortgage will be lower, as much as 1/2% to 1% lower, than the prevailing rate. The advantage to the lender is that the yield will approximate the going rate of interest over the life of the mortgage. As a result, applicants for additional loans find it much less expensive to obtain funds for energy retrofits or for other purposes using their residence as collateral.

Second Trusts or Second Mortgages are useful where the amount to be borrowed is sizeable, and the borrower does not wish to refinance under his first trust. While Federal savings and loan associations are required to lend their funds on the security of first mortgage liens, they may make second mortgages if they hold the first lien. State-chartered savings and loans, in some states, are permitted to make second mortgage loans. Such loans generally have a higher rate of interest than first mortgages and also shorter maturity periods. Consequently, they are less favorable than first mortgage loans under which additional loans, (future advances) may be made. If the cost of a retrofit program is substantial, a second mortgage loan may be more desirable than a home improvement loan, as they are usually less expensive and have longer maturities.

Variable Payment Mortgage is an instrument which uses the concept of reduced monthly payments during the early years of the mortgage term, gradually increasing over the life of the mortgage at predetermined periods by which time

the mortgage is repaid as though it had had equal monthly payments. If the early payments are established at less than the accrued interest charges, it is known as negative amortization and causes the outstanding principal to increase during the early years of the term. Care must be taken to insure that the loan principal does not exceed the appraised value of the property in terms of the mortgage to value relationship.

A variation of this concept employs a recalculation of the principal balance after each payment to account for inflation with the mortgage reamortized over the remainder of the term.

Variable payment mortgages may also be adjusted so that lower monthly payments occur toward the end of the mortgage term. This could be used to accomodate reduced income during retirement years.

The variable payment technique might be used to make energy conserving purchases attractive by lessening the immediate impact of increased debt service.

A Balloon Payment Mortgage provides for lesser payments during the life of the loan with the balance of the loan due and payable at the end of the period. This may be an excellent type of financing if one knows he will have sufficient savings to pay off the balloon payment at the end of the mortgage term, since monthly payments are substantially lower. Federal savings and loans may participate in this type of lending so long as the monthly payments include partial amortization.

Deferred Monthly Payments (Bubble Payment Mortgage) for periods of excessive energy costs with the amount of the deferred payments being paid off over a set period. This technique has the disadvantage of disrupting the lender's cash-flow, making it less popular with lenders. Nonetheless, lenders are accustomed to providing forbearance to borrowers in times of high area unemployment, serious family illness or other short term financial disasters affecting the home owner. Thus, partial deferment of monthly mortgage payments during short term excessive energy costs are possible.

For example, average monthly degree days are well known in all areas. In Pittsburgh, degree days for January are 1,144 and for February 1,000. June July and August are under 100 degree days. Assuming that degree heating days in Pittsburgh exceed the norm by more than 10%, the lender could automatically reduce the monthly mortgage payment by the amount in excess of 10% as determined by degree days. The unpaid excess could be repaid the lender in June, July, and August when energy costs for heating is not a factor.

The Renegotiation of Terms at Set Intervals (Canadian Rollover) is an instrument that has some of the same advantages of variable rates but is fairly uncommon in the United States. The renegotiation period is usually at five year intervals. Lower Interest Rates can be offered on mortgages in return for the lender sharing in equity appreciation of the property. The return for the lender would be in a portion of the capital gain realized when the property was sold.

Graduated Payments which would increase periodically on a predetermined basis while the interest rate remained fixed.

Deferred Interest Loans with a fixed interest rate and payments for a set initial period that would be below prevailing rates. After the initial period the payments would increase to fully amortize the loan over the remaining term. This has disadvantages for the lender as it disrupts his cash-flow.

## TESTING INNOVATIVE FINANCIAL TECHNIQUES IN A DEMONSTRATION SITE

In its initial research, the NSLL conducted a broad investigation of financial instruments throughout the country to determine whether there are financing techniques, requiring no public subsidies that could be used to retrofit homes at lower costs to the consumer than generally available. After work was completed, the NSLL developed a list of twelve innovative financial techniques (See Exhibit I) that were introduced and accepted by financial institutions and are now particularly applicable to the financing of energy conserving retrofits. These techniques may not prove equally beneficial and probably could not be applied uniformly under all circumstances. Their utility varies around the country depending on local conditions as determined by regulation and financing practices.

In accordance with the program planned under its R & D contract with ERDA, the NSLL then considered the prospect of testing these innovative financing techniques by means of demonstration in a geographic area that is representative of regions with particularly difficult problems in this energy crisis.

### Selection

NSLL selected Pittsburgh as its site for the pilot feasibility effort called for under the contract for a number of reasons. It is a major metropolitan area tied together by a commonality of economic interests supported by community-minded businesses and trade unions, and has a history of accomplishments in organizing and conducting community-wide programs to advance the area's common interest.

## **FINANCIAL TECHNIQUES**

**The twelve financial techniques that will support energy conservation efforts in residential structures are:**

- Future advances clause under open-ended mortgages
- Borrowing against existing savings accounts
- Home improvement loans
- Variable rate mortgages
- Second trusts or second mortgages
- Variable payment mortgages
- Balloon payment mortgages
- Deferred monthly payments for periods of excessive energy use (Bubble Mortgage)
- The renegotiation of terms at set intervals
- Lower interest rates offered on mortgages in return for the lender sharing in equity appreciation of the property
- Graduated payments
- Deferred interest

### Financial Techniques for the Demonstration Site.

The initial step involved analyzing the current financial practices in the Pittsburgh area. This review included a feasibility analysis of the application of the recommended twelve innovative financing techniques. As a result of that work, three of the twelve financial innovations were identified as techniques which would be successful in Pittsburgh. These three financial techniques are:

Energy Saver Loans--a modification of home improvement loans, but carrying a lower rate of interest.

The Future Advance Clause in an open-ended mortgage would provide funds for retrofits at long term mortgage rates with a single mortgage payment. This is considerably lower than the home improvement loan rate.

Loans Collateralized by existing savings accounts and certificates of deposit providing low cost loans to borrowers, generally 1 1/2% above the rate being paid to depositors on their account.

### Context for Testing Financial Techniques

The NSLL concluded that the best and most comprehensive test for these financial techniques was to employ them in a community-wide energy

conservation program for single-family residences conducted by a broadly representative body of the community. The object was to increase the energy efficiency of such residences and decrease energy waste. While savings and loan institutions would provide the major focus for offering the various financial techniques, the plan would include a wider range of institutions in the community which would be dedicated to penetrating the widest possible segment of single-family residential housing.

#### Housing Stock

Pittsburgh is an older city typical of a large number of metropolitan areas in the United States. Its total housing stock exceeds 800,000 units of which 782,500 are currently occupied. Home ownership accounts for 68.7% of the total. Most of the housing in Pittsburgh (75%) is more than 15 years old. This means relatively well built housing with very minimal insulation. A survey completed in April 1977 indicates that at least 400,000 units are energy deficient. (See Exhibit II)

#### Fuel

Pittsburgh is primarily reliant on natural gas for space heating with almost 700,000 homes using gas as a primary fuel. Oil is a distant second, accounting for only 64,000 units; electricity is a minor source accounting for approximately 21,000 units; and coal and other fuel sources account for less than 17,000 units.

#### Plan

The NSLL plan for a home fuel conservation program

\*Standard Metropolitan Statistical Area

EXHIBIT II

PITTSBURGH HOUSING, 1974

<u>Type of Unit</u>	<u>Occupied Housing Units</u>
Owner Occupied	537,700 (68.7%)
Renter Occupied	<u>244,800</u>
Total Occupied	<u>782,500</u>

<u>Structure Age</u>	<u>(Owner) Occupied Housing Units</u>
Constructed after 1970	28,600
Constructed 1960 - 1970	84,500
Constructed prior to 1960	424,600

Almost 75% of all owner occupied units are  
15 or more years old.

<u>Home Heating Fuel</u>	<u>(All) Occupied Housing Units</u>
Utility Gas	678,500
Bottled Gas	1,200
Fuel Oil	63,900
Electricity	21,300
Coal	16,700

<u>Air Conditioning</u>	<u>(All) Occupied Housing Units</u>
Central System	82,200
Room Units	172,000

involved not only an assessment of the problem, but a careful study of the various leadership elements in Pittsburgh and the role each could most beneficially undertake. It carefully considers the political forces required to stimulate, coordinate and implement the program. The private financial community will supply the necessary funds for normal consumer retrofit loans and to support the moderate income level in those instances where subsidized interest rates serve to leverage community development funds; the corporate community would be willing to contribute technical assistance and where possible would support the low income group through donations of materials; the utilities would assist in energy audits and retrofit inspection as well as providing a monitoring service to assess energy savings; and the private non-profit organizations such as labor unions, neighborhood assistance groups, minority and ethnic organizations, and major organizations such as the Chamber of Commerce and in Pittsburgh, the Allegheny Conference, would carry out key roles. The major needs, namely, consumer stimulus, financial availability and a trained and equipped delivery system will work together to carry out the planned community-wide conservation program.

The work of the NSLL has brought together the essential elements in Pittsburgh to produce an effective action program. The manner in which NSLL structured the Pittsburgh Plan lends itself to a chronological presentation.

JANUARY 1977

#### Financial Community

NSLL research team met with lenders of the financial community. First Federal Savings and Loan Association of Pittsburgh, with

assets in excess of one-half billion dollars has been a leader in community action programs for many years and willingly assisted the team in their effort to stimulate a broad segment of Pittsburgh's leadership as to what the NSLL plan could do for the Greater Pittsburgh area.

#### Public Sector

Starting with the political leadership, the plan was explained to: the Assistant to the Mayor; the Director of the Urban Redevelopment Authority; Director, City Planning Department; and Director, City Manpower Commission. Similarly, details of the plan were discussed with Congressman Moorhead who expressed great personal interest and provided guidance to the team.

#### Utilities

Two major utilities were contacted on the first Pittsburgh trip: People's Natural Gas Company, where the proposed plan was discussed with the Vice President for Marketing; the General Manager for Marketing and the Director, Industrial Marketing. Representing Duquesne Light were the Vice President, Marketing and Customer Service and the Manager for Residential Marketing.

#### Corporations

A number of corporate entities were informed of the League's Plan, among them were Westinghouse, Pittsburgh Plate Glass, U.S. Steel, and Alcoa Building Products Company. Next, the plan was explained to several private non-profit groups such as the Allegheny Conference, the

Neighborhood Housing Services, Action Housing, and the Carnegie-Mellon  
Institute.

FEBRUARY 1977

Research on the specific problems of Pittsburgh continued.

Degree days of heating and cooling, and mean temperatures were plotted. (See Exhibit IIIa, IIIb, & IIIc) Mean temperature peaks at 75° in midsummer. It therefore becomes obvious that any additional home retrofits beyond those warranted for heating become superfluous and would not provide a cost effective savings.

A second visit provided the opportunity to brief an additional group of the Pittsburgh leadership including officials on the plan.

Supportive Elements

The Chamber of Commerce indicated its support of the plan and agreed to host organizational meetings. Additional elements of the financial community were contacted leading to the support of the Western Pennsylvania League and a consortium of twenty-three financial institutions which had previously joined in a community-wide effort to eliminate the stigma of "red-lining" in Pittsburgh. The Allegheny County Commissioners voted to support the plan and directed the County Planning Office to devote manpower and resources to its implementation.

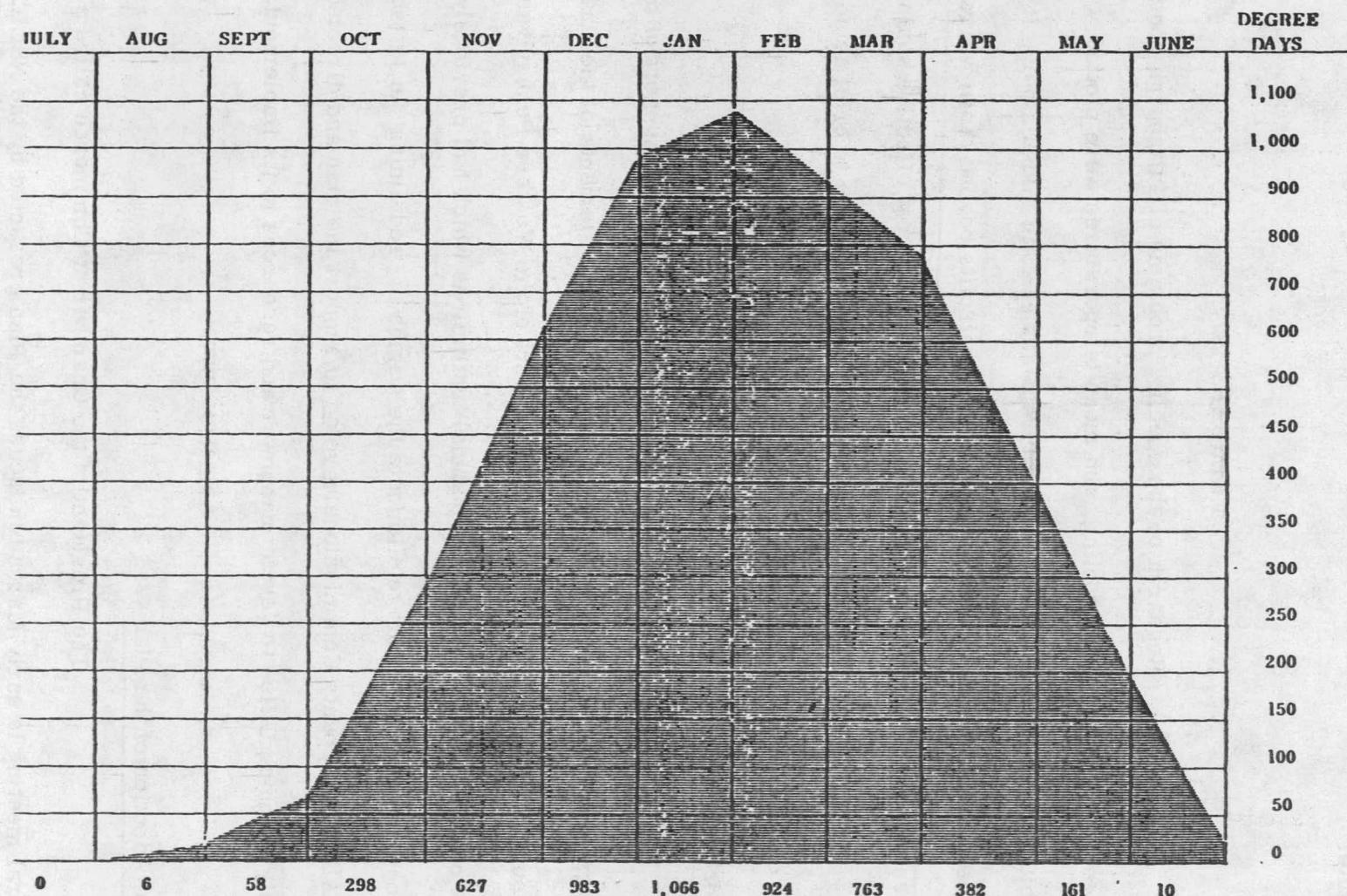
MARCH 1977

Local Adoption of the Plan

The President of the Chamber of Commerce called a general meeting in early March to discuss the Plan presented by the NSLL. Special attention was given to the NSLL's concern that specific functions be

Monthly and Annual Heating Degree Day Normals  
for the City of Pittsburgh

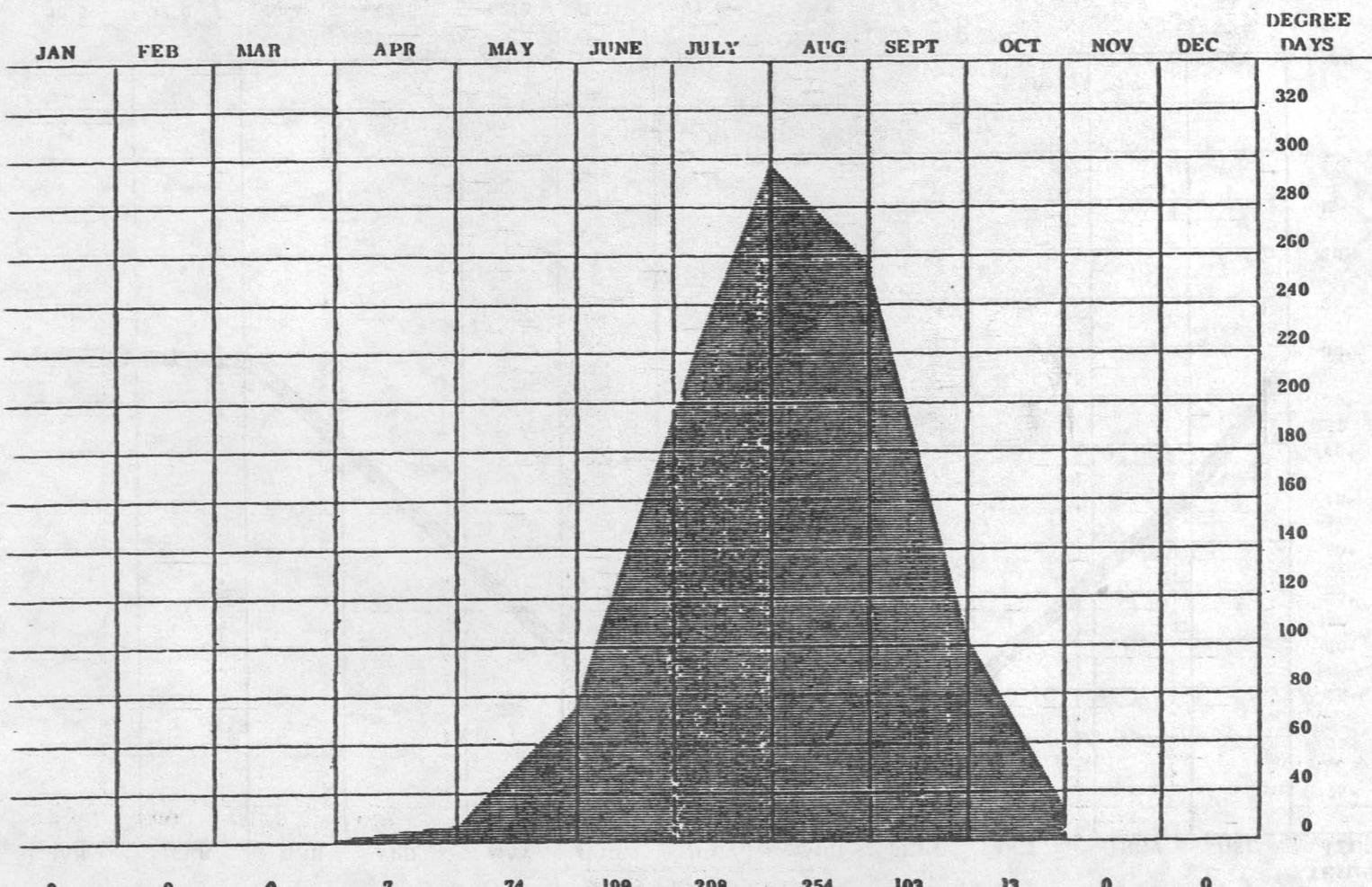
EXHIBIT IIIa



Annual Number of Heating Degree Days -- 5,278

Monthly and Annual Cooling Degree Day Normals  
for the City of Pittsburgh

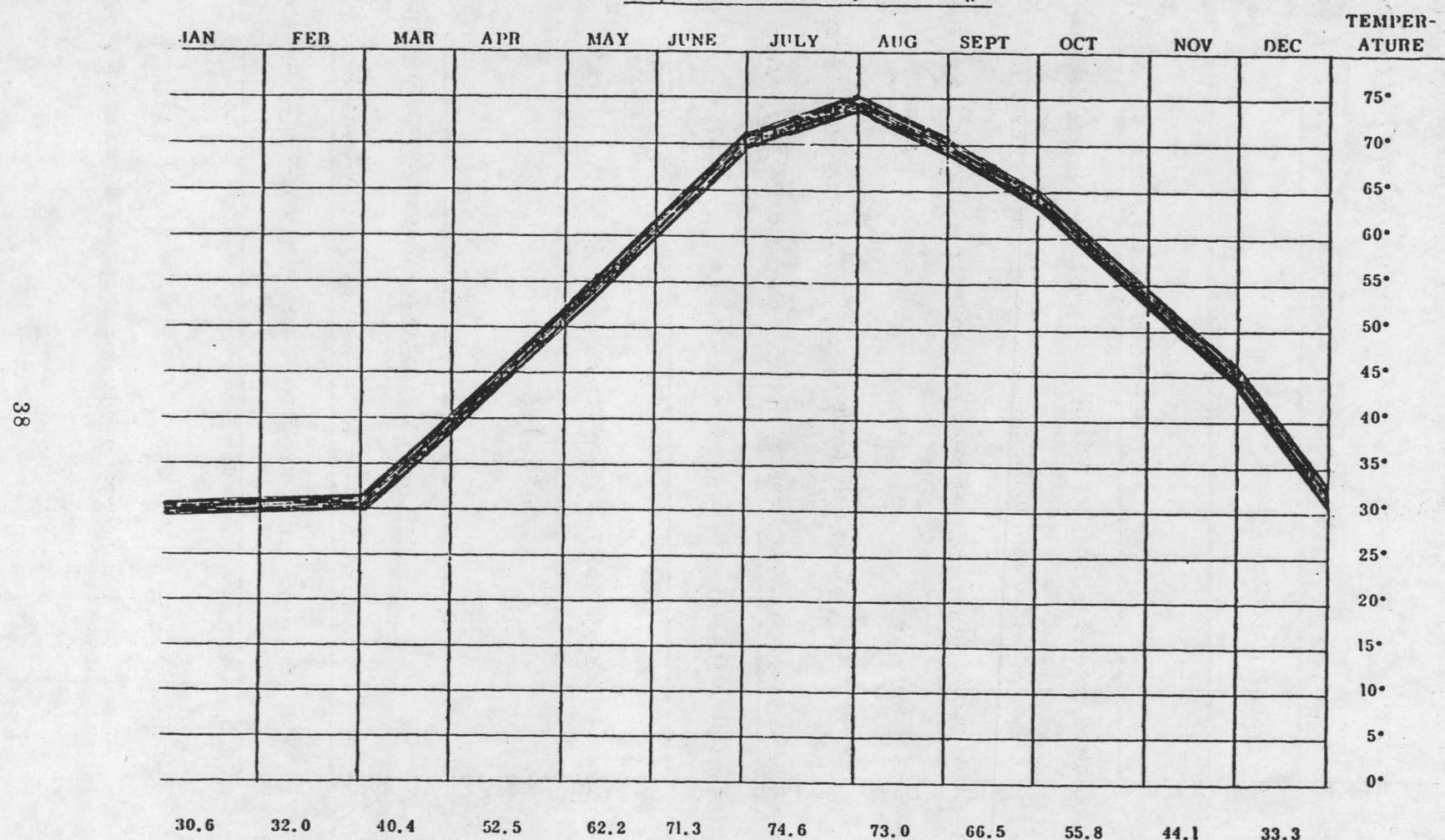
EXHIBIT IIIb



Annual Number of Cooling Degree Days -- 948

Average Mean Temperature Taken From a 30-Year  
Sample Record for the City of Pittsburgh

EXHIBIT IIIc



The monthly mean temperatures are based on a weighted average of maximum and minimum temperature ratio.

The annual average mean temperature -- 52.0°

assigned to specific institutions or individuals. At this time, Allegheny County officials formally accepted the role of coordinator with the Chamber of Commerce continuing in a supporting role. Basic decisions were made to define the parameters of the program to be undertaken.

#### Energy Committee Formed

The group which formed the nucleus of the Pittsburgh Energy Committee decided to limit its activities to single-family residences both owner or renter occupied with multi-family housing a second priority. Commercial and public establishments were set aside for consideration in the second phase of the program.

A privately funded group, Americans for Energy Independence were present at this meeting and stated an interest in working with the Committee in the area of consumer awareness.

Additional local meetings were held in March, culminating in a call for a broadened general meeting in April.

APRIL 1977

#### Implementation

The now formalized Energy Committee of Pittsburgh met on April 6 to review and comment on an outline prepared by the County that would lead to a detailed plan of implementation of energy conservation retrofits. All elements of the League plan had been assessed and assimilated into the County plan with modifications to reflect available resources and funding.

The several utility companies of the area were well

represented and expressed concern as to equal treatment between states and regions. What would happen if the Pittsburgh area undertook a serious program of conservation and the neighboring regions across the river in Ohio took no conservation measures? Should they await the President's energy message?

The NSLL team counseled that the effort underway need not await the President's energy message, and that efforts planned to date should go forward with dispatch. At this point, the utility representatives agreed to develop energy use data essential to a comprehensive program.

MAY 1977

At a meeting, called by the President of the Chamber of Commerce on May 11, the active participants in the Pittsburgh Energy Committee grew to over twenty-five members requiring a breakdown into smaller unit committees charged with specialized functions. (See Organization Chart, Exhibit IV)

#### Action Plan

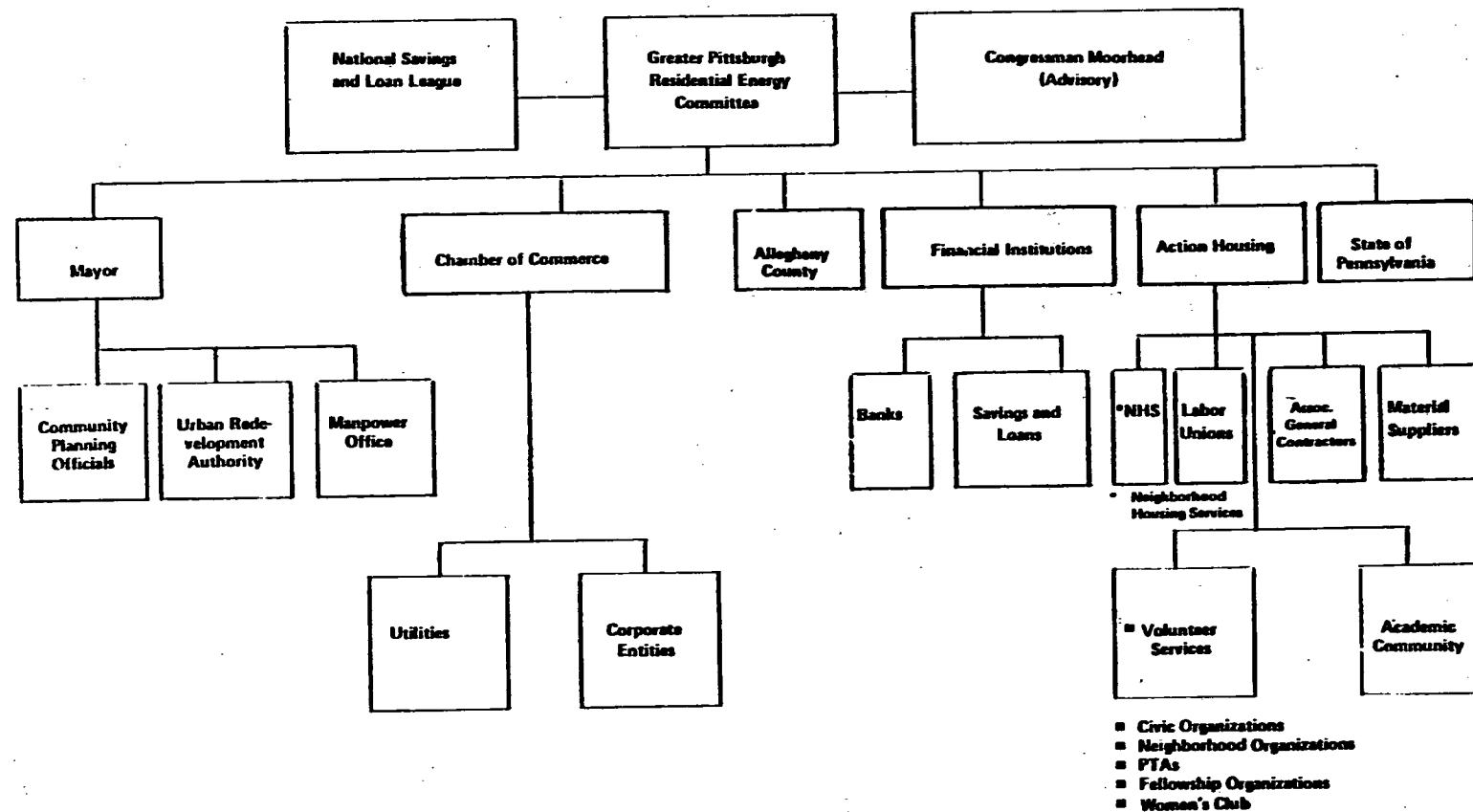
The County presented a first draft of its action plan based on the concepts fostered by NSLL. Comments on the plan and the role of the key participants are scheduled for May 23 with the next Committee meeting scheduled for early June.

#### State Participation

Representatives of the Pennsylvania Governor's Energy Council presented their program of assistance to the Counties and municipalities and states that their low-income pilot effort would take place in Allegheny County where they believed it would make the greatest impact in concert with the program fostered by NSLL.

**EXHIBIT IV**

**ORGANIZATION CHART**



### Long Range Goals

The long range goals for the Greater Pittsburgh program are impressive, yet attainable. Based on the statistics developed earlier, a five year program for Pittsburgh would require retrofitting of 80,000 units per year for five years. If the average cost per unit did not exceed \$1,000, the total program cost would amount to \$400,000. Despite the high cost, more immediate problems exist in the delivery system and secondly, in the material supply system.

### Impact Project

In an effort to create an immediate impact, the NSLL urged that a pilot implementation project be undertaken almost immediately. Accordingly, the County plans to launch its first impact project in July in neighborhoods mutually selected by the County and the City. Using data now available on census track tapes, the Carnegie-Mellon Institute will provide a critical path analysis of the housing stock and problems likely to be encountered in retrofitting all housing units in the selected area(s). One or more communities representing all income levels will be selected in order to provide a testing ground for the several financial techniques and funding sources to be used.

### Income Levels

Income levels of the home owners will identify the financial approach to be taken, namely:

1. Low Income, below \$6,000--will be financed by public funds supplied from

existing federal, state or local sources.

2. Moderate Income, between \$6,000-- and \$14,000--will be privately financed, but an interest subsidy supplied from public sources will provide an incentive along the lines of the HUD 235 interest subsidy program.

3. Income Levels above \$14,000--will be financed entirely by private financial institutions using one of the three or more techniques permissible in the Pittsburgh area.

#### Operations

The operational plan for the test neighborhood(s) will be presented to the Energy Committee in June for review and comment. In draft, the plan proposes to make use of existing neighborhood civic groups to organize a block-to-block effort. Churches, schools and other places of public assembly will be used as "Neighborhood City Halls" to acquaint home owners of the need for various retrofits; the utility companies will hold neighborhood seminars; labor unions and contractor groups will train workers to install retrofits; Public Health inspectors will make energy audits in the low income sector; messages showing the need for retrofits will be prepared by the County and sent home by school children; volunteers will be asked to serve as energy block wardens able to direct home owners to the specific guidance they need; financial institutions in the area will be prepared to provide energy saving loans, as First Federal

Savings and Loan Association of Pittsburgh has already started and to work with the County on the interest subsidy program; corporate entities will be asked to donate retrofit materials for low-income families.

JUNE 1977

Participant Roles

One of the more important features of the Pittsburgh energy plan presentation at the June meeting will be the assignment of definite roles to major participants. Incorporating the recommendations of the League, functions are being assigned to steering committees who will be responsible for specific actions. During June, these actions include:

Financial Institutions--First Federal Savings and Loan Association of Pittsburgh is working with the Western Pennsylvania Savings and Loan League to complete the implementation of programs for offering energy conservation loans by NSLL members. Membership in the Western Pennsylvania League includes all of the savings and loans in the Greater Pittsburgh area. As a result, the availability of energy conservation loans are uniform throughout the area.

Utilities--the savings and loans are holding meetings with executives of the four principal utilities (People's Gas, Equitable Gas, Columbia Gas, and the Duquesne Light Company) in order to finalize programs for the utilities to train personnel to conduct residential energy audits and inspections.

The part of the plan calling for utilities to use their computer records to monitor energy savings after the installation of retrofits is being spelled

out at this time. This action is in keeping with the agreement made by the utilities at the April meeting. The savings and loans are using these computations in discussing loans with customers and in promoting the energy loan program.

Corporate Entities--Alcoa Building Products and Pittsburgh Plate Glass with their specialized experience will provide technical assistance relating to energy conserving retrofits. This assistance will be similar to the "Summary of Potential Savings" prepared specifically as part of the NSLL's program by Alcoa Building Products. (See Attachment E) The actual savings that specific retrofits account for and the estimated payback periods involved will be emphasized. (See Exhibit V)

Later, this information will be given to other participants in the program, particularly the savings and loans. The savings and loans will in turn use this information in marketing energy conservation loans.

Public Sector Organizations--during June, the planning departments of the Office of the Mayor and Allegheny County are meeting with the Chamber of Commerce to coordinate roles and responsibilities for operating in the initial designated neighborhoods.

Members of the Pittsburgh University community are providing technical assistance on program planning incorporating the results of completed studies on retrofit cost/savings conducted in the Greater Pittsburgh area. Specifically, Carnegie-Mellon Institute is providing a critical path data analysis for the first designated program areas.

Members of the Advanced Building Studies Program at

Savings Analysis - Pittsburgh

<u>Fuel</u>	<u>Costs</u>	<u>Heating Efficiency</u>
Natural Gas	\$2.37 MCF	65%
Fuel Oil	.48 gal.	65%
Electricity	.54 KWH	95%

Installation of R-19 Insulation to an Uninsulated Attic  
would produce the following savings:

Natural Gas	\$ .20/year/sq.ft.
Fuel Oil	.30/year/sq.ft.
Electric	.96/year/sq.ft.

Approximate installed cost for R-19 is \$.30 per sq.ft.  
Savings of \$.01 to \$.03 additional would be forthcoming if R-30 was installed  
at a cost of \$.45 per sq.ft.

Installation of R-11 to Partially Insulated Attics  
(2" or less) would produce the following savings:

Natural Gas	\$ .042/year/sq.ft.
Fuel Oil	.065/year/sq.ft.
Electric	.204/year/sq.ft.

Installation of R-11 is \$.18 per sq.ft.

Addition of Storm Window or Door  
would produce the following savings:

Natural Gas	\$ 5.06/year/window
Fuel Oil	7.70/year/window
Electric	24.30/year/window

Installation cost would be \$30.00 to \$50.00 per unit

Carnegie-Mellon University are providing technical information on costs and cost savings of various retrofits used in conjunction with the rehabilitation projects they have carried out in various Pittsburgh neighborhoods. This information is being coordinated with the technical information provided by corporate entities and utilities for use by the savings and loan associations in carrying out the financing aspects of the program.

The Chamber of Commerce and the savings and loans are meeting with local builders and contractors to take full advantage of the commonality of structures and equipment in neighborhoods originally built by the same contractor. The similarity in design and age of the structures will speed retrofitting techniques within the area.

Trade Union representatives are being brought into the program at this stage as an integral part of the delivery system. The unions will train workers for the actual retrofit crews.

JULY 1977

The energy impact program for the Pittsburgh area is commencing July 5, following extensive media coverage for the selected area(s). The objective of the impact program is to test all facets of the planned long range program among all income levels.

The financial institutions in the selected area have a full time energy saver loan officer available; the Carnegie-Mellon Institute analysis provides computer printouts identifying generalized income groupings; the technical assistance work completed by the utilities, manufacturers of retrofit materials, and the academic community is in the hands of the financial community for direct use with

customers; the delivery system, composed of Action Housing, Neighborhood Housing Services, and local contractors begins the actual retrofit of homes in the selected area(s).

The NSLL is meeting with the major functional groupings: financial institutions, utilities, corporate entities, public sector, and delivery systems to ensure that the linkages between the various aspects of the program are made. The NSLL is making sure that all essential background material has been passed on to the functional organizations that will be dealing with the public face to face.

The plan for this phase is a series of short seminars between the NSLL and each functional group. The primary goal will be to reinforce the total plan concept and the importance of all the work, not just the specialized functions of any one group.

By the end of July, every phase of the program will be in operation to some degree in the initial selected areas.

#### AUGUST 1977

The program implementation begins in July continues on in August. As problems surface, they will be addressed by those most closely involved. The NSLL plays the important role of adjusting problem areas to the total program ensuring the integrity of the program and its goals as a whole.

The savings and loan associations are adjusting their approach to the public as the response of the public is encountered.

The corporate entities, utilities, and academic institutions

are responding to specific informational requests that the public is making on the savings and loan institutions, the various parts of the delivery system and the public sector.

The NSLL and the energy committee is determining if these needs are being adequately handled bilaterally between functional groups and ensuring that duplication of requests do not occur. The Committee itself is functioning as a clearing house for this purpose.

#### SEPTEMBER - DECEMBER 1977

Implementation of the pilot program continues in the designated area and the goals set are achieved.

As the heating season approaches and then begins, the various functional elements are staffed at levels necessary to meet increasing demand.

The savings and loans and the utilities are coordinating the feedback on energy savings from installed retrofits. This information is then fed into the ongoing informational and marketing aspect of the program.

The public sector and corporate entities have completed the plan of corporate material donations to the low income portion of the program.

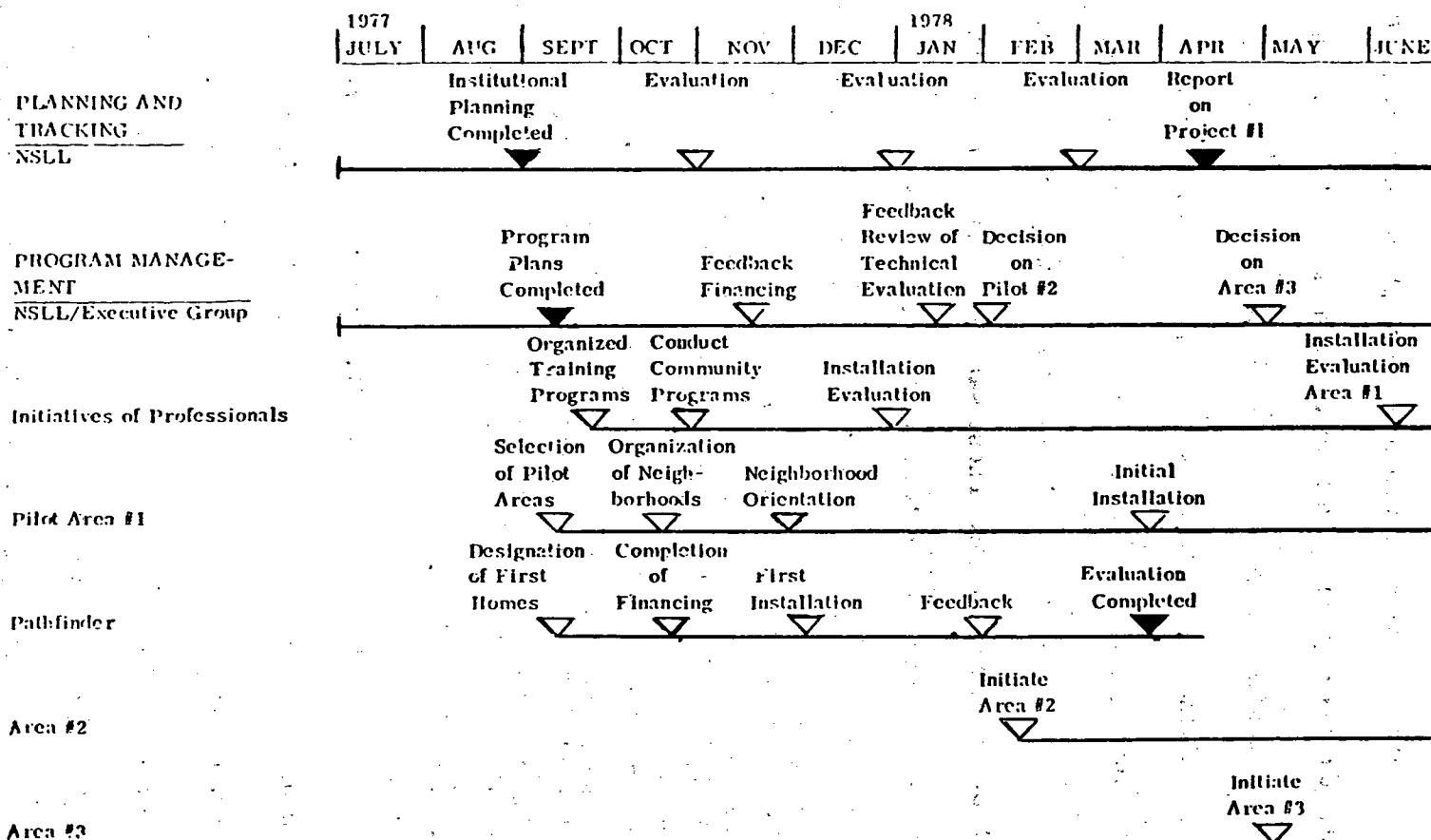
The NSLL is meeting with the Pittsburgh energy committee to use the program in the initial designated areas as the base for moving into the total program of retrofitting 80,000 units each year. (See Milestone Chart, Exhibit VI)

#### National Application

The NSLL, has evidenced by its contract with ERDA,

PLANNING SCHEDULE

EXHIBIT VI



that a test can be conducted in a demonstration site to determine the utility of offering innovative financing techniques through members of the financial community to encourage energy efficiency in single-family residences. No sector of the financial community is as well equipped or interested in providing finance for residential retrofits as is the savings and loan industry. Even small unprofitable loans for retrofits serve to secure their portfolio of home mortgages.

Three specific financial techniques were identified and developed for use in Pittsburgh. These same three may have limited or minor significance in any other demonstration site. What is important is that the selection of the three techniques was the result of a process that is applicable nationwide. Based on extensive research into the legislation, regulation, and practice of a variety of financing techniques, the NSLL developed a list of twelve that have merit for use in financing energy conservation materials for single-family home owners. Based on its research, the NSLL can identify and develop the most effective financing techniques for any demonstration site in the country.

The NSLL believes that in any site, the members of the local financial community provide the best focal point for any energy conservation program aimed at single-family residences. The community-minded savings and loan associations have frequently acted as the "door opener" for community-wide programs related to housing.

Whereas it is possible to carry on a program aimed at residential energy efficiency through the efforts of the financial community, the

widest participation by the leadership structure of any community must be encouraged to participate. The inclusion of diversified leadership elements will not obscure the fact that the core of any such program rests with the financial community and the methods available through them to facilitate the objective of maximizing the energy efficiency of single-family residential housing.



United States  
of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 95<sup>th</sup> CONGRESS, FIRST SESSION

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WASHINGTON, TUESDAY, APRIL 19, 1977

No. 64

## SAVINGS AND LOAN LEAGUE AT WORK IN PITTSBURGH ON ENERGY CONSERVATION

HON. WILLIAM S. MOORHEAD  
OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 19, 1977

Mr. MOORHEAD of Pennsylvania. Mr. Moorhead, with good cause, many institutions in our society are now examining their activities with an eye toward energy conservation.

One of the most significant inquiries is being conducted by officials of the National Savings and Loan League.

League officials have recently been at work in Pittsburgh on preliminary plans for a pilot energy conservation project. They expect to cooperate with Pittsburgh business, labor and government officials in fashioning a plan to aid current homeowners and new buyers to guarantee that their houses are energy efficient.

Success in Pittsburgh will allow NSLL officials to design similar plans, honed to local conditions and local resources, in other parts of the Nation.

I am enclosing in the RECORD at this time an article from the league's publication, the Journal, on NSLL's energy conservation efforts.

### THE IMPACT OF THE ENERGY CRISIS ON THE S. & L. INDUSTRY

(B. Thomas G. Bolle, Senior Project Analyst, NSLL Office of Government Liaison, and Richard C. Knight, Vice President, Government Liaison)

Increasing concerns about energy conservation have recently been catapulted into the status of an emergency, with drought in the West, crippling cold in the South accompanied by snow, frigid conditions in the eastern half of the country including twelve feet of accumulated snow in upstate New York.

The severe weather conditions have placed a great pressure on energy supplies, particularly natural gas. Some industrial and commercial facilities have had to shut down, resulting in temporary unemployment. Schools have been closed for varying periods of time and homeowners are urged by President Carter to turn their thermostats down in order to conserve.

#### CRISIS HAS FOCUSED ATTENTION

The magnitude of the weather crisis has focused attention on large issues, such as the overall impact on the economy and the problems of energy supply and distribution. However, concerns of the individual homeowner and the effect that rising utility rates have on the financial security of homes and homeowners are just as important.

This is of great importance to the savings and loan industry, the holder of approximately 60 per cent of the mortgages in this country. The recent weather conditions have

only added to the problem of soaring energy prices. Over the past ten years utility bills have increased faster than any other costs directly affecting homes—in some cases as much as 150 per cent.

Mortgage lenders are already aware of the fact that rising utility rates have on the security of their investment. The increase in utility rates calls into question the traditional methods of credit evaluation for prospective mortgagors. The impact of energy costs on the ability of homeowners to meet mortgage payments is already showing up in sudden increases in bad collection figures for some industry members. These figures are not based on the recent bad weather conditions of January but on the comparatively milder months of November and December. While bad collection figures are not synonymous to total defaults, they do dramatically symbolize the problem of energy costs for the mortgage holder.

#### ANSWERS BEING SOUGHT

What is the answer, or is there an answer? Short of emergency action by the federal government the lender must look to local conditions and to the regulations under which he operates. There is great variety in state legislation and regulation that governs state chartered savings and loans. Similarly, the regulation of the utilities varies from state to state. In addition, the inclination of the utilities to participate in energy conservation programs also varies. For instance, in the state of Washington, the utilities are barred by regulation from financing energy conservation retrofits in single family residences. In Minnesota, one major utility is financing home owners who wish to purchase insulation. In Pennsylvania, the utilities are not now participating in any such program but some of the savings and loan associations are readily making home improvement loans down to amounts in the mid-hundreds.

#### LOCAL CONDITIONS DICTATE TERMS

In short, the lender must consider and operate in terms of the opportunities and constraints which face him in his industry and in light of the local conditions that exist. If any national energy conservation programs are to be forthcoming, they must recognize the differences that exist around the nation with respect to all of the factors that must be considered for an effective program. These include: climate; financing legislation, regulation, and practice; utility regulation and practice; and the interrelationship of all of the various elements.

The weather that the nation has experienced may be unusual but the fact of rising utility rates is quite real and the effect of these rising rates will not pass with the spring thaw. The rise in utility rates is a reflection of existing and projected cost of continuing to supply energy for the nation. Taking into account new sources such as the North Sea and areas off the shore of the U.S. mainland, the cost in the 1980's for new facilities to produce gas and oil will range between \$10,000 and \$50,000 for an extra barrel equivalent per day. For electricity, which does not burn fuel directly, the cost of a total system, including installation as well as generation could range from \$150,000

to \$300,000 per equivalent of one barrel of oil per day.

#### COST WILL CONTINUE TO RISE

Such figures are hard to relate to the individual homeowners but the trend is clear. Energy in the foreseeable future is going to be expensive and the cost will continue to rise.

Both of the common alternatives for meeting our future energy needs, either by continuing to expand our capacities for power generation or by conserving energy, involve capital-intensive technology, whether it is a nuclear power plant or solar heating system. However, low level technologies are available that can be applied to existing housing in order to make homes more energy efficient. Insulation, storm windows, storm doors, heat pumps, etc., will not stop rising energy rates but they will slow the increases that the homeowner pays per month, by maximizing energy efficiency within the home. For the lender, such technical fixes do not take away the uncertainty of the effect of rising energy costs, but they can mitigate the effect and make the mortgage investment sound.

#### IMPACT SHOULD BE CONSIDERED

Associations should consider the potential impact of rising energy costs and take a hard look at policies regarding home improvement loans and other financing vehicles. Insulation and storm windows may not cost enough to make a loan profitable but the cost of dealing with the effects of rising energy rates may put such considerations into a new perspective. Other financing instruments should be examined as well, to see if in a given situation a particular instrument can be used that helps the homeowner meet his monthly obligations and helps the mortgage holder to insure his investment.

Part of our research has included an initial feasibility pilot study to determine if an energy conservation program for single-family residences is of interest on a metropolitan-wide basis. Pittsburgh was selected as the initial pilot site and meetings have been held with the various segments of the city's leadership in the hope that Pittsburgh would follow through with an energy conservation program, with the National Savings and Loan League and ERDA assisting as best fits the needs of the city and the resources of the two organizations.

In support of energy conservation measures, the National League has entered into a research contract with the U.S. Energy Research and Development Administration to identify the various financial techniques that homeowners may use to carry out energy retrofits. The League has also formed an energy committee to oversee the staff research and to participate in the final report to ERDA. Considering the fact that industry economists are projecting a \$4 billion drawdown in accumulated savings due to increased utility costs in the current year, it behooves the industry to be alert to how our businesses are affected by the energy crisis.

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ATTACHMENT B

FEDERAL NATIONAL MORTGAGE ASSOCIATION

FNMA

JAMES E. MURRAY  
SENIOR VICE PRESIDENT AND GENERAL COUNSEL

February 25, 1977

Mr. Simon H. Trevas  
Gailor & Elias  
700 E Street, S.E.  
Washington, D.C. 20003

Dear Mr. Trevas:

I am replying to your inquiry regarding a possible change in FNMA's policy with respect to "future advances" made under the security instrument to finance a homeowner's purchase of devices, materials or services relating to energy conservation. It is assumed that the substantial question of lien priority, which makes the future advance an impractical option in many jurisdictions, is set aside as a consideration in our response. I would also note that the uniform FNMA/FHLMC mortgage form for single-family mortgages contains a future advances clause and that a home mortgage submitted to FNMA under which a future advance has been made and repaid is not thereby rendered ineligible for purchase.

FNMA would certainly consider a change in policy with respect to home mortgages held in portfolio if appropriate changes in applicable law and practice are forthcoming. Our concern with future advances is grounded in the impracticality of dealing with these obligations under current conditions. Apart from the lien priority issue, future advances are subject to diverse, arbitrary restrictions on the total amount of advances that can be made. Evaluation of the risk of making an advance tends to be expensive, as the cost of the improvement being financed must be analyzed in relation to the current market value of the secured property. The lender must be satisfied that the overall loan to value ratio resulting after the future advance is made will be an acceptable risk. In effect, an up-dated appraisal of the property may be necessary.

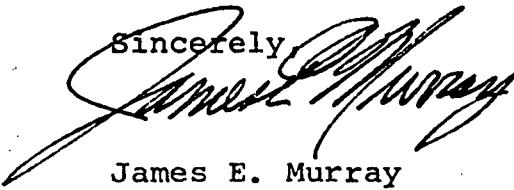
Mr. Simon H. Trevas

A further concern would be the mortgage insurance implications of future advances which would have to be explored. I am uncertain whether the use of a future advances clause is acceptable to mortgage insurers and, if so, what coverage to the lender might be available. It is likely that the interest rate on the future advance, reflecting market conditions at the time of the advance, would differ from the rate of the original note. The possible usury or other legal restrictions of this practice would have to be considered on a jurisdiction-by-jurisdiction basis.

From the standpoint of the secondary market, sufficient incentives would be required for FNMA Servicers to incur the costs of making the advances on behalf of FNMA. Any such incentives could have the effect, of course, of reducing potential savings to the borrower that the future advance device may offer as compared to a refinancing of the outstanding loan. FNMA itself would have to consider the additional costs which a program of future advance obligations would entail. As an example, it is my understanding that the current FNMA accounting system would not readily accommodate such practices.

I have indicated the practical basis for our current policy. This does not preclude the further exploration of a new approach to this financing device under different circumstances. We would be pleased to consider new proposals which may emerge from your study.

Sincerely



James E. Murray

# The Mortgage Corporation

November 11, 1976

Simon A. Trevas, Esquire  
GAILOR & ELIAS  
700 E Street, S. E.  
Washington, D. C. 20003

Dear Mr. Trevas:

It was a pleasure speaking with you several days ago concerning The Mortgage Corporation's "future advances" policy.

As a recap of our discussion, the following provisions reflect the Corporation's policy with regard to future advances (Sellers' Guide Conventional Mortgages):

## 1.305 Future Advances

a. Advances Made Prior to Purchase. FHLMC will purchase Home Mortgages in whole or in part as to which future advances have been made prior to the Delivery Date provided that: (i) such advances have been consolidated with the outstanding principal amount secured by the mortgage and that such secured principal amount, as consolidated, bears a single rate of interest and term of repayment, and (ii) the lien securing such consolidated principal amount is expressly insured as having first lien priority by a title insurance policy or in an endorsement thereto insuring the mortgagee's interest.

b. Advances Made After Purchase. As to Home Mortgages purchased in part only by FHLMC, FHLMC hereby consents to Seller making future advances provided: (i) the mortgage continues to be a valid first lien after the advance; (ii) that as of the time such advance is made, Seller reaffirms the warranties and representations contained in this Guide relative to the Home Mortgage and to Borrower; and (iii) as between FHLMC and Seller, Seller agrees that such advance and the interest and other charges thereon shall, in all regards and for all purposes relative to FHLMC or its successors and assigns, be subordinate in right of payment to the interest in such mortgage purchased by FHLMC, and FHLMC's right to payment of the principal, interest and other sums due FHLMC shall be prior in all respects to any right to payment of Seller in connection with such advances.

Simon A. Trevas, Esquire  
November 11, 1976  
Page Two

The Mortgage Corporation, itself, cannot make future advances. The Corporation's enabling Act (P.L. 91-351) grants no such authority to it nor does the legislative history of that statute reveal congressional intent to impute such authority to the Corporation.

I am hopeful that the foregoing has been responsive to your question. If I can provide you with any further information, please let me know.

Very truly yours,

  
Morton C. Swichkow  
Associate General Counsel

MCS:b1p

CC: Henry L. Judy

**ATTACHMENT C**

**Legal Review of Federal and State  
Savings and Loan Lending Authority**

**National Savings and Loan League  
Washington, D.C.**

**Contract #E (49-18) 2156  
Energy Research and Development Administration**

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## Legal Review of Federal and State Savings and Loan Lending Authority

The legal review was undertaken in response to task number two of the subject contract and accurately describes the lending authorities provided by statute to Federal and state-chartered savings and loan associations. In all instances, legislation must be implemented by regulations issued either by the Federal Home Loan Bank Board in the case of Federal associations or by the State in the case of state-chartered associations. Legislation and regulations of the type researched herein are primarily permissive in nature with the result that legislation is not always implemented by regulation and associations may not always use the full authority granted them by regulations.

For this review, in addition to the statutes, regulations were reviewed for Federal associations and for the states of Pennsylvania, Florida, Texas, California, Georgia, Illinois, Maryland, New Jersey, New York and Missouri. The extent to which lending authorizations become common practice can only be determined when an indepth study of lending practice is undertaken in a given area. For example, some savings and loan associations may specialize in home improvement loans while another in the immediate vicinity may make no home improvement loans whatsoever.

The development of an operational energy plan for a state or political subdivision thereof will require further legal review of the regulations issued to implement state savings and loan statutes in other than the ten

states noted above. For Federal associations and for the states where regulations have been reviewed, this document will serve as an invaluable reference manual.

FEDERAL SAVINGS AND LOAN ASSOCIATIONS

AND

FEDERAL LOAN INSURANCE/GUARANTY PROGRAMS

A review of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. §§1461-1468 (1969), and of the Federal Home Loan Bank Board regulations promulgated pursuant thereto, was undertaken to determine the availability of financial mechanisms which could be used by federally-chartered savings and loan associations to provide financing to homeowners wishing to undertake energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under federal law and regulation are discussed in Section I of this memorandum.

Section II of this memorandum is concerned with certain of the federal loan insurance and guaranty programs authorized by the National Housing Act as amended, 12 U.S.C. §§1701-1750g (1969), and by the Servicemen's Readjustment Act of 1944, as amended, 38 U.S.C. §§1801-1824 (1959) and with the regulations promulgated pursuant thereto. Under such programs, state-chartered savings and loan, building and loan or savings associations, or cooperative banks, as well as federally-chartered savings and loan associations, may obtain federal insurance or guaranties for qualified loans to qualified borrowers, subject to the terms and conditions set forth in each of the above two Acts and in the applicable regulations. Generally, the state savings and loan association statutes or codes exempt loans so insured or guaranteed from the loan-to-value limitations, percentage of assets limitations or loan terms, payment plans or security requirements that are otherwise applicable to the loans made by associations chartered and operating in such states. The loan insurance and/or guaranty programs described in Section II below are those deemed to be the most useful with respect to financing homeowner energy conservation measures. The discussion of these programs contained herein is concerned primarily with the requirements for loan eligibility under each of the respective programs, rather than with the technicalities of the contract of insurance or guaranty between the association and the applicable federal agency or with the insurance/guaranty claim procedures prescribed by the various sets of regulations.

## I. FEDERAL SAVINGS AND LOAN ASSOCIATIONS

### A. Variable Rate Mortgages

Neither the Home Owners' Loan Act of 1933, as amended, (hereinafter "the Act") nor the regulations promulgated pursuant thereto by the Federal Home Loan Bank Board (hereinafter "regulations") expressly authorize or prohibit the use of variable rate mortgage instruments by federally-chartered savings and loan associations (hereinafter "associations") in connection with loans secured by home or residential property. Certain sections of the regulations, however, substantially restrict an association's ability to use such instruments in conjunction with installment loans secured by home or combination home and business property and with flexible payment loans secured by single-family dwellings.

The regulatory definition of "installment loan" states that, for loans secured by home or combination home and business property, "...no required payment after the first payment shall be more, but may be less than any preceding payment." 12 C.F.R. §541.14(a) (1976). The regulatory definition of "flexible payment loan" states that each required payment to be made during the initial period of such a loan is to be made in an amount

... not less than one-twelfth of the annual interest rate times the unpaid principal balance of the loan and such rate is not [to be] increased during such initial period unless pursuant to a subsequently negotiated agreement.

The flexible payment definition further provides that "...no required payment after the end of such initial period shall be more but may be less, than the first required payment after the end of such initial period." Id. §§541.14(c)(3), (4) (1976).

These definitions preclude an association from using a variable rate mortgage instrument in conjunction with a loan written on either an installment or flexible payment plan from implementing interest rate increases by increasing the amount of the required monthly loan payments. Accordingly, as stated by the Federal Home Loan Bank Board ("FHLBB") in its memorandum ruling #T-56:

Federal associations exercising their rights under [interest rate adjustment] clauses may only extend the maturity of the loan. Memorandum T-56, FHLBB Office of Examinations and

Supervision (Feb. 12, 1974) (Emphasis in the original). 1/

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1/ Memorandum Ruling #T-56 is still controlling for loans secured by home or combination home and business property although on February 14, 1975, the Federal Home Loan Bank Board ("FHLBB") published proposed regulations which would have expressly authorized associations to adjust the interest rate charged on a loan secured by improved real property by either adjusting the amount of the required loan payments or by adjusting the term of the loan to 35 years or by a combination of the two. The FHLBB proposals would have amended certain sections of the existing regulations (i.e., the sections defining "installment loan", "partially amortized loan" and "flexible payment loan") so as to permit such adjustments and would have added new sections setting forth both general conditions for the use of variable interest rate provisions by associations and specific restrictions as to their use in conjunction with single-family dwelling loans. 40 Fed. Reg. 6870-74 (1975).

On November 5, 1975, the FHLBB published a resolution stating that, effective December 8, 1975, federal associations would be permitted to implement changes in the interest rate charged on installment loans secured by multi-family or commercial property by changing the amounts of the required monthly payments. This permission was reflected by an amendment of the regulatory definition of "installment loan" so that the ban on a required monthly payment in an amount greater than any previous monthly payment contained in that definition was made applicable only to loans secured by home or combination home and business property.

With respect to its February proposals which would have granted associations similar authority with respect to loans secured by improved real property other than multi-family or commercial property (i.e., loans secured by home or combination home and business property), the FHLBB stated:

Although the Board continues to believe such loans should be permitted, it has determined to take no further action at this time to permit such loans because of the substantial Congressional opposition to the proposal. Those provisions of the proposal not implemented by this Resolution are therefore withdrawn. 40 Fed. Reg. 51414-15 (1975).

Even this one available means of implementing interest rate increases is not unrestricted, however. The regulations provide that neither installment loans nor flexible payment loans secured by home or combination home and business property may be written for terms in excess of 30 years. 12 C.F.R. §545.6-1(a)(1976). An association using a variable rate mortgage instrument with either a flexible payment or an installment loan may therefore implement interest rate increases by means of loan term extensions only to the extent that the original loan term was for a period of less than 30 years.

At least one commentator has concluded that the combination of the regulatory ban on increases in the required monthly loan payments and the 30-year maximum term limitation contained in the regulations "...effectively preclude[s] the use of adjustable interest rates by federal [savings and loan associations]" 2/

#### B. Second Mortgages.

The Act provides that "...associations shall lend their funds only on the security of their savings accounts or on the security of first liens upon real property..." 12 U.S.C. §1464 (c) (Supp. 1975). Similarly, the regulations preface the section describing the real estate lending powers of federal associations by stating that associations may "...make the following types of loans on the security of first liens on improved real estate..." 12 C.F.R. §545.6-1(1976). The phrase "loans on the security of first liens" is defined in the regulations as meaning:

...loans on the security of any instrument... which makes the interest in the real estate described therein...specific security for the payment of the obligation secured by such instrument: Provided, the instrument is of such nature that, in the event of default, the real estate...could be subjected to the satisfaction of such obligation with the same priority as a first mortgage or...deed of trust in the jurisdiction where the real estate is located.  
Id., §541.9(a)(1976).

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2/ "Adjustable Interest Rates in Home Mortgages: A Reconsideration: 1975 Wis. L. Rev. 742.

A 1971 opinion of the FHLBB General Counsel interpreting the above definition, however, permits an association to make a second loan secured by the same real estate as secures a first mortgage or deed of trust held and owned by the association, if there are no intervening liens. The Opinion states that:

A second secured loan to a borrower presently indebted to the association under a loan secured by a first mortgage on the same property as would secure the second loan, would not result in a second lien, provided that the association retains the first loan and there are no intervening liens. In these circumstances no other party would have priority over the association upon foreclosure, and the second loan would result in a (permissible) first lien. 3/

In addition, associations may make loans secured by liens on primarily residential real property which are not "permissible first liens" pursuant to, and subject to the conditions contained in, §545.6-26 of the regulations. Section 545.6-26 (designated "non-conforming secured loans") was promulgated in order to implement the provision of §1464(c) of the Act which states:

Subject to such prohibitions, limitations and conditions as the Board may prescribe, any... association may invest in loans...upon the security of...real property...used for primarily residential purposes...that do not comply with the limitations and restrictions in this subsection [e.g., the §1464(c) provision stating that associations may make loans only on the security of their savings accounts or on the security of first liens upon real estate]...12 U.S.C. §1464(c) (Supp. 1976).

Section 545.6-26 of the regulations provides that associations meeting a scheduled items test (or securing approval for an exception) and a net worth test may invest amounts not in excess of 2% of their assets and additional amounts "...equal to one percent (or fraction thereof) of assets for each percentage point (or fraction thereof) of net worth in excess of the greater of (i) 5 percent of withdrawable accounts or (ii) [required] net worth...", in loans secured by residential real property which are not otherwise authorized. An association's total investment in such non-conforming secured loans may at no time exceed an amount equal to 5% of

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3/ Op.G.C. (10/22/71) as quoted in FHLBB Annotated Manual of Statutes and Regulations, ¶719, n.6 at 118 (Rev.ed. 1976).

its assets, however. Loans where "...the security interest is not a first lien..." are among those which §545.6-26 expressly authorizes qualified associations to make (12 C.F.R. §545.6-26(a) (1976)), provided that the amount loaned does not exceed "...the value or the purchase price of the security therefor, whichever is less, at the time the investment is made." Id., §545.6-26(e) (1976).

#### C. Flexible Payment Mortgages

The regulations authorize associations <sup>4/</sup> to make loans secured by single family dwellings with flexible payment terms. The borrower must certify in writing that he/she occupies or in good faith intends to occupy the dwelling securing such a loan as his/her principal residence. The payments on such loans are to be made as follows:

During an initial period of the loan term (not to exceed five years), the borrower need make only monthly payments of interest, with each such payment to be in an amount not less than one-twelfth the annual interest rate times the unpaid principal balance of the loan. Following this initial period, monthly payments sufficient to retire the debt, both principal and interest, within the balance of the loan term must be required. The amount of the first such required payment following the initial period must be fixed at the beginning of the loan term and no payment required to be made subsequent to such first payment may be required in an amount more, but may be required in an amount less, than the amount of such first payment. The loan agreement must describe the payment schedule. 12 C.F.R. §541.14(c) (1976).

Uninsured flexible payment loans secured by single-family dwellings are subject to no percentage of assets limitations unless they (a) are made in amounts in excess of \$55,000, (b) are made in amounts in excess of 80% of the value or of the purchase price of the security property, or (c) are secured by property located beyond the association's regular lending area. Id., §545.6-7(a)(1) (1976).

Flexible payment loans may not be made for terms in excess of 30 years (Id., §545.6-1(a) (1976)) and may not be made for amounts in excess of 75% of the value of the security property, except under the following conditions:

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<sup>4/</sup> The regulations state that "[a]ny Federal association which has charter K..." may make the monthly installment loans, flexible payment loans, loans without full amortization, other installment loans and partially amortized loans described in §545.6-1(a), secured by such real property and subject to such other terms and conditions as prescribed by that section. A subsequent section of the regulations provides in addition that:

cont...

1) Such loans may be made in amounts in excess of 75% of the value of the security property if the members of an association so authorize, but may not be made in excess of (a) 80% of the value of the security property if the loan is not insured or guaranteed; (b) the maximum percentage of value acceptable to the insuring agency if the loan is insured; or (c) 80% of the value of the security property, plus the amount guaranteed, if the loan is guaranteed. Id., §545.6-1(a)(1) (1976).

2) Such loans (secured by single-family dwellings) may be made in amounts in excess of 80% but not in excess of 90% of the value of the security property if, inter alia:

\* \* \*

(ii) The amount of the loan does not exceed the lesser of: (a) \$55,000, or \$68,750 with respect to single-family dwellings in Alaska, Guam and Hawaii, (b) 90 percent of the value of the real estate securing the loan or (c) 90 percent of the purchase price of such security property;

(iii) The loan contract requires that...the equivalent of one-twelfth of the estimated annual taxes and assessments on the real estate security be paid monthly in advance to the association;

(iv) The borrower...has executed a certification in writing stating...that no lien or charge upon such property, other than the lien of the association or liens or charges which will be discharged from the proceeds of the loan, has been given or executed by the borrower or has been contracted or agreed to be so given or executed...;

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...any Federal association which has a charter in any form not inconsistent with the provisions of §§545.6 to 545.6-13 [i.e., Charter K (rev.), Charter N or Charter S, but not Charter E] may upon authorization by its board of directors make...[a]ny loan that a Federal association which has Charter K may make under §545.6-1... Id., §545.6-3(1976).

Since Charter E is no longer used by any federal association, all federal associations may make the flexible payment loans described in section I.C. of this memorandum, as well as the loans described in sections I.B, I.D and I.E, subject to the approval of their respective boards of directors.

(v) If the loan is sought or assumed for the purpose of enabling a purchaser to acquire the security property, the vendor or vendors have executed a certificate in writing [with the same contents as the borrowers certificate described above]...;

(vi) If the loan is sought or assumed for the purpose of enabling a purchaser to acquire the security property, the purchaser and vendor...have jointly executed a certification in writing stating the purchase price of the security property...; [and]

\* \* \*

(viii) The aggregate of the principal amount of the association's investment in flexible payment loans [in amounts in excess of 80 percent of the value of the security property]... (exclusive of loans with respect to which the unpaid principal balance has been reduced to an amount not in excess of 80 percent of the value or purchase price, whichever is less, determined at the time the loans were made) does not exceed 5 percent of the association's assets. Id., §545.6-1(a)(4)(1976).

3) Such loans may be made in amounts in excess of 90% but not in excess of 95% of the value of the security property if the requirements set forth herein at 2(b)-2(f), supra, are met and if, in addition:

(a) The amount of the loan does not exceed the lesser of: (a) \$42,000, or \$50,000 with respect to single-family dwellings in Alaska, Guam and Hawaii, (b) 95 percent of the value of the real estate securing the loan, or (c) 95 percent of the purchase price of such security property; [and]

(b) Either -

1)...[A]s long as the unpaid balance of such a loan is in excess of...90 percent of the value or purchase price of the real estate security, whichever is less, determined at the time the loan was made, that portion of the unpaid balance of the loan...in excess of an amount equal to 80 percent of such value or purchase price...is guaranteed or insured...; or

2) The association establishes and maintains a specific reserve with respect to such loan equal to one percent of the principal balance thereof until... [it] has been reduced to an amount not in excess of 90 percent of the value or purchase

price of the real estate security, whichever is less, determined at the time the loan was made. Id., §545.6-1(a)(5) (1976).

D. Balloon Payment Mortgages.

1. Unamortized Loans.

The Act authorizes associations 5/ to make loans secured by first liens on home and combination home and business property without requiring amortization of principal but requiring payments of interest at least semiannually. Such loans may be made in amounts not in excess of 80% of the value of the security property and for terms not in excess of 18 months. The aggregate amount of all such loans made by an association may not at any one time exceed an amount equal to 5% of the association's assets. 12 U.S.C. §1464(c) (Supp. 1976).

The regulations both qualify and expand the above authority. They provide that loans so secured may be written without requiring payments of principal, but requiring payments of interest at least semiannually and may be made in amounts not in excess of 50% of the value of the security property and for terms not in excess of 5 years. In addition, if the members of the association so authorize, unamortized loans may be made in amounts not in excess of 50% of the value of the security property and for terms not in excess of 5 years. In addition, if the members of the association so authorize, unamortized loans may be made in amounts not in excess of 60% of the value of the security property and for terms not in excess of 3 years. The regulations state that an association, with the approval of its members, may use up to 5% of its assets to make unamortized loans in amounts not in excess of 80% of the value of the security property and for terms not in excess of 18 months but such loans must be made for the purpose of facilitating the trade-in or exchange of the home or combination home and business property. 12 C.F.R. §545.6-1(a)(3) (1976).

Unamortized loans secured by homes or combination home and business property (except those made in amounts not in excess of 80% of the value of the security property, for terms not in excess of 18 months and made for the purpose of facilitating the trade-in or exchange of such property) may be made subject to no percentage of assets limitations, provided that they (a) are made in accordance with the applicable term and loan-to-value limitations, (b) are made for amounts not in excess of \$55,000, if secured by single-family dwellings or are made for amounts not in excess of the maximum amounts per family unit prescribed in §207 (c)(3) of the National Housing Act, if secured by home or combination home and business property other than single-family dwellings.

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5/ See N.4, supra.

and (c) are secured by property located within the association's regular lending area. Id., §545.6-7(a) (1976).

## 2. Partially Amortized Loans

The regulations provide that an association <sup>6/</sup> may make a loan for a term of less than 30 years which is repayable in full in a lump sum at the end of the loan term but which also requires monthly payments of interest and principal to partially amortize the loan. Such monthly payments must be made in amounts not less than would be required to fully amortize a loan of the same amount, interest and principal, within a 30 year loan term. 12 C.F.R. §541.14(b) (1976). Such loans may be made on the security of "other dwelling units, <sup>7/</sup> or combinations of dwelling units, including homes, and business property involving only minor or incidental business use." (Id., §545.6-1(b) (1976)) and may not be made for amounts in excess of 80% of the value of the security property. Id., §545.6-1(b) (2) (ii) (1976).

## E. Other Installment Loans.

The regulations provide that an association <sup>8/</sup> may make an amortized installment loan secured by home or combination home and business property with payments required on other than a monthly basis. Such loans

...may be made with interest payable at least semi-annually and with regular periodic principal installments payable at least annually in an amount sufficient to retire the debt, interest and principal, within 15 years. 12 C.F.R. §545.6-1(a) (2) (1976).

Such loans may be made in amounts not in excess of 75% of the value of the security property unless a higher percentage of value limitation has been authorized by the members of the association, but in no event may such loans be made in excess of:

1. 80 percent of the value, if loan is not... insured or guaranteed...;
2. The maximum percentage of the value acceptable to the insuring agency, if an insured loan; or

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6/ See N.4, supra.

7/ The regulations define the phrase "other dwelling units" as meaning "...real estate upon which is located or which comprises or includes...[a] structure or structures designed primarily for residential use and consisting of single-family dwellings or dwelling units for more than four families in the aggregate..." Id., §541.10-3(a) (1976).

8/ See n.4, supra.

3. 80 percent of the value, plus the amount guaranteed if a guaranteed loan. Id., §545.6-1 (a) (1976)

Such loans are subject to no percentage of assets limitations if they are (a) made in amounts not in excess of \$55,000 if secured by single-family dwellings or are made for amounts not in excess of the maximum amounts per family unit prescribed in §207(c) (3) of the National Housing Act, if secured by home or combination home and business property other than single-family dwellings (b) are made in accordance with the applicable loan-to-value limitations set forth above and (c) are secured by property located within the association's regular lending area. Id., §545.6-7(a) (1976).

F. Home Improvement Loans.

The Act provides that associations may use up to 20% of their assets to make both home improvement loans insured pursuant to the National Housing Act, as amended, or insured or guaranteed pursuant to the Servicemen's Readjustment Act, as amended, and to make "...other loans for property alteration, repair or improvement, including the construction of new structures related to residential use of the property." 12 U.S.C. §1464(c) (Supp. 1975). Such loans may not be made in amounts in excess of \$10,000 if not insured or guaranteed. The Act further provides that:

without regard to any other provision of this subsection, but subject to such prohibitions, limitations and conditions as the Board may by regulation prescribe, any...association may make...any loan not exceeding \$10,000 for the repair, equipping, alteration, or improvement of any real property... Id.

The regulations promulgated to implement §1464(c) of the Act provide that any federal association having a charter in the form of Charter K (rev.) or Charter N, upon the approval of such a loan plan by its board of directors, and any federal association having a charter in the form of Charter K amended by the addition of section 14.1 to such charter, may invest up to 20% of its assets in loans "...with or without security, for property alteration, repair, improvement, or for the equipping of any residential real property..." located within its regular lending area, subject to the terms and conditions set forth in the regulations. 12 C.F.R. §545.8(a) (1976).

Such loans must be evidenced by notes or other written evidences of debt. The net proceeds of all loans made by an association for the same property alteration, repair or improvement may at no time exceed \$10,000. The aggregate outstanding unpaid net proceeds of all loans made by an association for the

equipping of any one property may not exceed \$10,000 nor may the outstanding aggregate amount of all loans made by an association for the equipping of residential real property exceed an amount equal to 5% of its assets. Property improvement and equipping loans are to be repayable in equal weekly, biweekly, monthly, bi-monthly or quarterly installments, except that the first and/or final installment may be required in an amount not less one-half nor more than one and one-half times the amount of the regular installment. Such loans may not be made for terms in excess of 15 years and 32 days.

In addition to these property improvement and equipping loans, an association having a charter in one of the forms listed above and meeting both a net worth test and a scheduled items test (or securing FHLBB approval for an exception therefrom), may, upon the approval of such a loan plan by its board of directors, use up to 2% of its assets (or up to 5% if certain other conditions are met) to make:

...loans directly for constructing, adding to, improving, altering, repairing, or equipping, or furnishing what is or what is expected to become residential real property, where the association relies substantially on the borrower's general credit standing and forecast of income, with or without security, or the association relies on other assurances for repayment (including a third party guaranty or similar obligations). Id., §545.6-8(c).

Such loans may not be made with respect to residential real property located beyond an association's regular lending area and must be fully documented with respect to such things as the loan's purpose, the source and reliability of repayment, the borrower's reputation and capacity, and such other information as may be necessary to establish the soundness of the loan. Id.

In the future, associations may also be granted the authority to make loans for property repair, alteration or improvement, subject to the same rules as presently govern the making of construction loans by associations. On November 10, 1976, the FHLBB published proposed amendments to the regulations which would authorize associations to make property repair, alteration and improvement loans, secured by home, combination home and business property or by multi-family dwellings, which could be made in amounts of up to 80% of the value of the security property, for terms not in excess of 18 months (or, if the loan is secured by a multi-family dwelling, not in excess of 36 months) and with principal deferred until the end of the loan term. Interest on such loans would be payable semi-annually. An association would also be permitted to combine such a property improvement loan and any

type of authorized permanent, long-term loan (i.e., monthly installment, flexible payment, other installment, partially amortized or unamortized loan) into a single loan. If an association so combines two such loans into one, "...the term of the permanent loan shall be considered to begin at the end of the term allowed for ... alteration, repair or improvement." 41 Fed. Reg. 49639. The FHLBB has requested that interested persons submit written comments on its proposal by December 13, 1976. Id.

G. Future Advances.

Neither the Act nor the regulations promulgated thereunder contain any provisions concerning the making of mortgages to secure future advances.

II. FEDERAL LOAN INSURANCE/GUARANTY PROGRAMS

A. Property Improvement Loans

1. National Housing Act - Title I

Section 2 of Title I of the National Housing Act, as amended, (12 U.S.C. §1703) (hereinafter "the Housing Act") provides that:

The Secretary [of the Department of Housing and Urban Development (hereinafter "the Secretary")]] is authorized and empowered... to insure...financial institutions [which are subject to supervision and examination by a Federal agency or by any State and] which the Secretary finds qualified by experience or facilities and approves as eligible for credit insurance, against losses...as a result of loans and advances of credit...for the purpose of...financing alterations, repairs and improvements upon or in connection with existing structures... and the building of new structures...upon real property...by the owners thereof. 12 U.S.C. §1703(a) (Supp. 1975).

The Housing Act specifically provides that the "alterations, repairs and improvements" to be financed by the loans granted insurance "...may include the provision of energy

conserving improvements or the installation of solar energy systems." 9/ Id.

The loans to be insured may not exceed \$10,000 in amount (if for other than a dwelling to be occupied by two or more families) and may not exceed 12 years and 32 days in term (if for other than a structure to be used exclusively for agricultural purposes). The rate of interest charged on such loans may not exceed the maximum rate set by the Secretary at such level as he finds necessary to meet the loan market. Id., §§1703(b), 1709-1 (Supp. 1975). In addition, the items to be financed must "...substantially protect or improve the basic livability or utility of [the] properties [to be repaired, improved or altered]...." If a loan has been granted insurance under Title I of the Housing Act, the lending institution may claim for up to 90% of any subsequent loss on that loan. Id. §1703(a) (Supp. 1975).

The regulations promulgated by the Department of Housing and Urban Development (hereinafter "HUD regulations") pursuant to the Housing Act, both reiterate the requirements set forth in that Act and prescribe additional terms and conditions for insured property improvement loans. The HUD regulations provide that the note evidencing such a loan must include an acceleration clause and must be repayable in equal biweekly or monthly installments (unless a different payment schedule is approved by the Federal Housing Commissioner). The note may provide for a first or a final payment in an amount not less than one-half nor more than one and one-half times the amount of the regular installment, however. 12 C.F.R. §§201.2(b), (c) (1976).

Before making an improvement loan to be insured under the provisions of Title I of the Housing Act, the insured lender must obtain a credit application (on the form prescribed by the Federal Housing Commissioner) executed by the borrower and must also either obtain a commercial credit report on the borrower or itself conduct an investigation of the borrower's credit. The credit information upon which the lender relies "...must... clearly show the borrower to be solvent, with reasonable ability to pay the obligation and in other respects a reasonable credit risk." Id. §201.5(a) (1976).

If such a loan is to be made in an amount of \$7,500 or less, the taking of security for the loan is left to the discretion of the insured lender. If, however, the loan is to be made

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9/ Both the definition of "energy conserving improvements" and the definition of "solar energy systems" contained in the Housing Act provide that such improvements/systems must be "... in conformity with such criteria and standards as shall be prescribed by the Secretary in consultation with the National Bureau of Standards. 12 U.S.C. §1703(a) (Supp. 1976).

in an amount in excess of \$7,500, exclusive of financing charges, the loan must "...be secured by a recorded lien upon the improved property." Id., §§201.2(f), 201.5(f) (1976).

With respect to the rate of interest which may be charged on such loans, the HUD regulations state that the maximum financing charge (including interest) that an insured lender may collect on such a loan is 12% per annum. Such regulations also provide that:

Finance charges for individual loans shall be made in accordance with the tables of calculation issued by the [Federal Housing] Commissioner. Id., §201.4(a) (1976).

No points or discounts may be collected on a loan insured under Title I of the Housing Act but, if the lender takes a mortgage or other security instrument to secure payment of the loan, the lender may collect, in addition to the permitted financing charge, certain expenses actually incurred by it in connection with the loan transaction, provided that these expenses are not paid from the loan proceeds and are not included in the amount of the note. These additional permitted expenses are as follows: "...recording or filing fees, documentary stamp taxes, title examination charges and hazard insurance premiums." Id., §201.4(b) (1976).

An insured loan for the repair, alteration or improvement of residential or other than agricultural real property may be refinanced (with or without additional advances) and still be covered by insurance, provided that the refinanced loan meets all applicable improvement loan requirements. Such a loan may be refinanced:

...for an additional period not in excess of 7 years and 32 days from the date of the refinancing, provided that the term of the new note does not extend beyond 12 years from the date of the original note. Id., §201.9(1976).

2. Title 38 U.S.C. Ch. 37 - Servicemen's Readjustment Act of 1944

Title 38, U.S.C. Ch. 37 (hereinafter "chapter 37") is a continuation and restatement of title III of the Servicemen's Readjustment Act of 1944. It provides that:

Any loan to a World War II or Korean conflict veteran [having a total service of 90 days or more and discharged under

honorable conditions 10/], if made for any of the purposes, and in compliance with the provisions, specified in this chapter is automatically guaranteed by the United States in an amount not more than 60 per centum of the loan if [it]... is made for any of the purposes specified in section 1810 of this title. 38 U.S.C. §1803(a)(1) (Supp. 1975). 11/

A loan made to a veteran "[t]o repair, alter or improve...a dwelling owned by him and occupied by him as his home "is one of the loans which §1810 of chapter 37 states shall be automatically guaranteed, provided that, inter alia:

- a) the proceeds of such loan will be used to pay for the property...improved;
- • •
- b) the veteran is a satisfactory credit risk;
- c) the nature and condition of the property is such as to be suitable for dwelling purposes (38 U.S.C. §1810(b) (1959));
- d) the loan to be paid by the veteran for such...repairs or alterations does not exceed the reasonable value thereof as determined by the Administrator [of Veteran Affairs]; and...
- e) Such repair, alteration, or improvement substantially protects or improves the basic livability or utility of such property. Id., §1810(b) (Supp. 1975).

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10/ If a veteran's discharge or release from service was under conditions other than honorable, he may apply to the Administrator of Veteran's Affairs for a certificate of eligibility for chapter 37 loan guaranty or insurance. 38 U.S.C. §1802(c) (1959).

11/ Pursuant to the provisions of §1818 of chapter 37 and of §36.4349 of the Veterans Administration regulations, any veteran who served on active duty for more than 180 days after January 31, 1955, and who was charged or released from such duty on other than dishonorable conditions, is eligible for all loan guaranty benefits set forth in chapter 37.

In addition, §1810 provides that the amount of guaranty entitlement available to a veteran for all of the loans described therein may not exceed \$17,500, less any entitlement previously used by the veteran. Id., §1810(d) (Supp. 1975). Loans made pursuant to §1810 will only be automatically guaranteed if they are made by financial institutions (e.g., national banks, insurance company credit unions or building and loan associations) which are subject to examination and supervision by a federal agency or by any State, or other lenders approved by the Administrator of Veteran Affairs (hereinafter "the Administrator"). Id., §1802(d) (Supp. 1975). Further, such loans will not be automatically guaranteed unless the veteran certifies that he occupies the property as his home at the time of the loan closing. Id., §1804(c) (Supp. 1975).

Chapter 37 also contains a provision authorizing the insurance of loans for property alteration, repair or improvement. Section 1815 provides that:

Any loan which might be guaranteed under the provisions of this chapter, when made... by any financial institution subject to examination and supervision by an agency of the United States or of any State may, in lieu of such guaranty be insured by the Administrator under an agreement whereby he will reimburse any such institution for losses incurred on such loan up to 15 per centum of the aggregate of loans so made... by it. Id., §1815(a) (Supp. 1975).

Insured or guaranteed improvement loans to veterans may be made with such payment terms and conditions as the parties to the loan may agree, provided that the terms and conditions are in accordance with the regulations promulgated by the Administrator. No loan guaranteed or insured pursuant to chapter 37, however, may have a term in excess of 30 years and 32 days. The interest rate charged on such loans may not exceed the maximum rate set by the Administrator at such level as he finds the loan market demands. Id., §§1803 (c) (1), (d) (1) (Supp. 1975).

The regulations promulgated by the Administrator pursuant to chapter 37 of title 38 (hereinafter "VA regulations") set forth additional requirements for such loans. They provide that all such loans made for a term in excess of 5 years must be amortized, with periodic payments of approximately equal size required. The payments must be such as to reduce principal not less often than annually during the life of the loan. The amount of the final installment of any guaranteed or insured loan may not be more than two times the average amount of the regular installments. 38 C.F.R. §36.4309(a) (1975). The interest charged on any loan made after March 30, 1976 pursuant to the provisions of chapter 37 may

not exceed 8 1/2% per annum on the unpaid principal balance. 41 Fed. Reg. 14864 (April 8, 1976). The lending institution may collect no additional charges or fees from the borrowing veteran other than those specifically authorized in the regulations, e.g., recording fees, appraisal fees and hazard insurance premiums. Id., §36.4312 (1975).

The amount of the guaranty for any one loan made pursuant to §1810 of chapter 37 for the purpose of the repair, alteration or improvement of residential property may not exceed 60% of the original principal amount, or \$12,500, whichever is less. Id., §36.4302(a)(1)(1975).

In addition, the VA regulations prescribe both reasonable value and security requirements for loans to be guaranteed or insured pursuant to §1810 and §1815 of chapter 37, respectively. Section 36.4336 of the VA regulations provides that no loan made for the alteration, repair or improvement of property will be eligible for a guaranty or insurance if the cost to the veteran exceeds the reasonable value of such property, as determined by the Administrator. With respect to the security required for such loans, §36.4351(a) of the VA regulations provides that if such loans are made for amounts in excess of \$1,000 and in excess of 40% of the value of the property to be altered, repaired or improved, the loan must be secured by a first lien upon such property. If such loans are made for amounts in excess of \$1,000, but not in excess of 40% of the value of the property which is to benefit from the loan proceeds, the loans must be secured by either a first or second lien upon such property. Loans made in amounts of \$1,000 or less need not be secured.

Guaranteed or insured loans may be "...extended in the event of default, to avoid imminent default or in any other case where the prior approval of the Administrator is obtained." If such a loan is extended, the rate of amortization for such extension may not be "...less than sufficient to fully amortize at least 80 percent of the loan balance so extended within the maximum maturity prescribed for loans of its class" unless the Administrator approves a different rate. Id., §36.4314 (1975).

#### B. Experimental Financing: Graduated Payment Mortgages

Pursuant to §308 of the Housing and Community Development Act of 1974, which amended the National Housing Act by adding a new §245, entitled "Experimental Financing" (12 U.S.C. §1715Z-10), mortgage loans written with amortization rates corresponding with anticipated borrower income may be insured by the Secretary of Housing and Urban Development. The new §245 provides that the Secretary

...may insure on an experimental basis under any provision of [title II of the Housing Act]...mortgages and loans with provisions of varying rates of amortization corresponding to anticipated variations in family income to the extent he determines such mortgages or loans... have promise for expanding housing opportunities.... 12 U.S.C. §1715z-10 (Supp. 1975).

The aggregate principal amount of the mortgages insured pursuant to this experimental program "...may not exceed 1 per centum of the outstanding principal amount of mortgages and loans estimated to be insured during any fiscal year under [title II of the Act]."  
Id.

The Graduated Payment Mortgage Insurance program promulgated by the Department of Housing and Urban Development pursuant to §245 of the Housing Act was scheduled to become effective on November 1, 1976. The graduated payment loans are to be insured pursuant to §203 ("Mutual Mortgage Insurance and Insured Home Improvement Loans") and §234 ("Condominium Ownership Mortgage Insurance") of the Housing Act and must meet all of the requirements for those insurance programs other than those from which they are specifically exempted. Five payment plans have been authorized for insured graduated payment loans. Three of the plans permit monthly mortgage payments increasing annually over a period of five years at rates of 2 1/2, 5 and 7 1/2%, respectively. The remaining two plans permit ten years of increasing payments at 2% and 3% annually. The monthly payments during each year are to remain level, however. Starting in the sixth year (for the five year plans) or the eleventh year (for the ten year plans) the monthly mortgage payments are to remain level for the remainder of the loan term, in amounts sufficient to retire the debt, interest and principal, within such term. 41 Fed. Reg. 42948 (September 29, 1976).

The Graduated Payment Mortgage Insurance program is limited to owner-occupant mortgagors and to single family dwelling units. Such loans may not be made for terms in excess of 30 years and may not be made in principal amounts in excess of the lesser of (a) the loan-to-value limitation prescribed by §203 or §245 of the HUD regulations, whichever is applicable, or (b) "...\$45,000 for a one-family residence or unit minus the amount of deferred interest capitalized, computed by dividing \$45,000 by the highest outstanding balance factor [as determined from the tables of calculation published by the Secretary]..." HUD Handbook 4240.2, Section 245 Experimental Financing Program (October 27, 1976).

The minimum downpayment required for such loans in most cases will be greater than that required for standard level payment mortgages. Since the payments in the early years of such loans will frequently not be sufficient to fully cover the interest due on the loan, the outstanding principal of such loans will increase. In such situations the additional downpayment will insure that the outstanding mortgage balance will at no time exceed the amount that could be authorized for standard, level payment mortgage loans insured under §203 or §234 of the Housing Act. Id.

C. Experimental Housing Mortgage Insurance Program

Loans for energy conservation improvements may be eligible for federal insurance under the Experimental Housing Mortgage Insurance program if they are of such a nature as to be eligible for insurance under §203 ("Mutual Mortgage Insurance and Insured Home Improvement Loans"), §213 ("Cooperative Housing Insurance"), §220 ("Rehabilitation and Neighborhood Conservation Housing Insurance"), §221 ("Housing for Moderate Income and Displaced families") or §234 ("Condominium Ownership Mortgage Insurance") of the Housing Act. Section 233 (12 U.S.C. §1715x) of the Housing Act provides that:

...the Secretary is authorized to insure... mortgages (including home improvement loans, and including advances on mortgages during construction) secured by properties including dwellings involving the utilization and testing of advanced technology in housing design, materials, or construction, or experimental property standards for neighborhood design if the Secretary determines that (A) the property is an acceptable risk...[or] (B) the utilization and testing of the advanced technology... will provide data or experience which the Secretary deems to be significant in reducing housing costs or improving housing standards, quality, livability or durability... 12 U.S.C. §1715x(a)(1)(1969).

Although loans must meet the eligibility requirements for loans insured under the various Housing Act Title II programs named above in order to be eligible for experimental housing insurance, such loans need not meet the acceptable risk tests applicable to loans insured under other programs. 24 C.F.R. §233.5(a)(1)(1976). In addition, the Federal Housing Commissioner is authorized to set limits on the amounts of such loans by taking the percentage of value limitations set forth in the various other Housing Act title II insurance programs and applying those limitations in order to determine the maximum amount for which an insured experimental housing loan may be written, as follows:

1. [loans for new construction:...]...Such percentage shall be applied to the [Federal Housing] Commissioner's estimate of the cost of replacing the property using comparable conventional...materials and construction, or of using advanced housing technology..., whichever is lesser;
2. [loans for repair or rehabilitation:...]...Such percentage shall be applied to the sum of the Commissioner's estimate of the value of the property before repair or rehabilitation; plus...the lesser of either the Commissioner's estimate of the cost of replacing the improvements using comparable conventional designs [or] materials...or of using advanced technology...; [and]
3. [Home improvement loans:...]...The limits shall be determined on the basis of the Commissioner's estimate of the cost of replacing the improvements using comparable conventional designs [or] materials ...or of using advanced technology...whichever is the lesser. Id., §233.5(a)(z)(1976).

The dwelling to be constructed, repaired or improved from the loan proceeds must be approved for experimental housing insurance prior to the beginning of such construction, repair or improvement. Id., §233.15(c)(1976). Further, the borrower/mortgagor must execute an agreement or covenant permitting "...the Commissioner to make inspections and technical observations of the experimental features of the project" before a loan will be granted insurance under the experimental housing program. Id., §233.30(1976).

## ALABAMA

A review of Alabama savings and loan association law, Code of Alabama title 5, §§211-262 (1958) as amended (hereinafter the "Code") was undertaken to determine the availability of financial mechanisms which could be used by savings and loan associations (hereinafter "association") in Alabama to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Alabama law are discussed below.

### A. Variable Rate Mortgages

Although the Code neither expressly authorizes nor prohibits the use of variable rate mortgages, an interest ceiling of 8 percent per annum on loans evidenced by a written contract (Code Ala. title 9, §60 (1958)), severely restricts their use. Nevertheless, the Code authorizes the Commissioner of Savings and Loan to approve any plan for a real estate loan which is otherwise permitted under the Code. *Id.*, title 5, §231 (1958). It would appear that the Commissioner could, pursuant to that authority, approve the use of a variable rate mortgage.

### B. Second Mortgages

The Code requires that every real estate loan be secured by a mortgage "constituting a first lien, or the full equivalent thereof," and securing the original loan and each and every subsequent advance and loan by the lending association. It appears that the Code would permit an association to make additional loans secured by a mortgage on the same real property provided that no other lender has an intervening lien which would be senior to such association's lien. Code Ala. title 5, §231 (1958).

### C. Flexible Payment/Balloon Payment Mortgages

In addition to the power to make direct reduction home loans, an association may make "other real estate loans, whether amortized or unamortized". Code Ala. title 5, §230 (1958). Associations may not use an aggregate amount exceeding 30% of their capital in making such loans. *Id.*

Further, as noted in part A above, real estate loans may be made on any plan approved by the Commissioner of Savings and Loan. *Id.*, title 5, §231 (1958).

Any state-chartered association may also make any loan which such association could make were it operating as a federally-chartered association. Id., title 5, §261 (1958). Among such loan plans are flexible payment and unamortized mortgages.

D. Home Improvement Loans

There is no specific reference to home improvement loans in the Code. Presumably all such loans must be secured by mortgages on real estate which meet the requirements generally applicable to mortgages on real estate. As has been noted above, loans secured by such mortgages may be made on either amortized or unamortized loan plans.

E. Future Advances

1. The Code provides that a mortgage constituting a first lien may secure the original loan "and each and every subsequent advance and loan" by the association to the borrower. Code Ala. title 5, §231 (1958).

2. The Uniform Mortgage Instrument for Alabama contains a non-uniform covenant which provides for future advances as follows:

Upon request of Borrower, Lender, at Lender's option prior to release of this Mortgage, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby.

## ALASKA

A review of the Alaska Savings Association Act, as amended, Alaska Stat. §§06.30.495 -06.30.605 (1962), was undertaken to determine the availability of financial mechanisms which could be used by savings associations and savings and loan associations in Alaska to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Alaskan law are discussed below. In addition, the terms prescribed by Alaskan law for non-insured property improvement loans are also set forth.

### A. Variable Rate Mortgages

The Alaska Savings Association Act (hereinafter "the Act") while neither expressly authorizing nor prohibiting the use of variable rate mortgage instruments by savings associations or savings and loan associations (hereinafter "associations"), does limit the practicality of such instruments when used in conjunction with loans written on a direct reduction payment plan. The definition of such "direct reduction loans" contained in the Act states that:

... the initial loan contract shall not provide for a monthly installment of an amount larger than a previous monthly installment ....

Alaska Stat. §06.30.910(4) (1962).

An association could thus not write a loan contract that provides for increases in the amount of the required monthly installments in order to implement interest rate increases pursuant to a variable rate clause. The Savings Association Act does permit associations to collect increased interest pursuant to a variable rate clause by extending the term of a direct reduction loan, subject to the 30 year maximum term limitation applicable to such loans.

The rate of interest that could be charged by an association on a loan in a principal amount not in excess of \$100,000, pursuant to a variable rate clause, could not exceed the maximum legal rate established by Alaska's interest and usury statutes. Such statutes provide that:

No interest may be charged by express agreement of the parties in a contract or loan commitment which is four percentage points above the annual rate charged member banks for advances by the 12th Federal Reserve District that prevailed on the 25th day of the month preceding the commencement of the calendar quarter during which the contract or loan commitment is made. Id., §45.45.010 (6) (Supp. 1975).

B. Second Mortgages

Real estate loans secured by mortgages or deeds of trust that create other than a first lien (or the equivalent thereof) against the security property are not authorized. The Alaska Savings Association Act provides that "every real estate loan shall be secured by a mortgage, trust deed or other instrument constituting a first lien, or the equivalent of a first lien, upon the real estate securing the loan." Alaska Stat. §06.30.555 (1962). The Act is silent as to whether two or more instruments creating successive liens upon the same real property, one of which is the first mortgage and all of which are owned by the same association, are collectively deemed to constitute the "equivalent of a first lien" for the purposes of §06.30.555 of the Alaska Statutes.

C. Flexible Payment/Balloon Payment Mortgages

In addition to specifically authorizing associations to make direct reduction home loans in amounts not in excess of \$45,000, the Savings Association Act provides that an association may use an aggregate amount not exceeding 30% of its assets at the time of use, or a larger amount with the approval of the commissioner, for other loans, including the following:

1. Home loans of any amount, which are not direct-reduction home loans, regardless of where the home property securing the loan is situated; and

## ARIZONA

A review of the Arizona Savings & Loan Code, as amended, 2 Ariz. Rev. Stat. §§6-401 to 6-494 (1975) was undertaken to determine the availability of financial mechanisms which could be used by savings associations or savings and loan associations in Arizona to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Arizona law are discussed below. In addition, the terms prescribed by Arizona law for non-insured property improvement loans are also set forth.

### A. Variable Rate Mortgages

The Arizona Savings & Loan Code (hereinafter "the Code") neither expressly authorizes nor prohibits the use of variable rate mortgage instruments by savings associations or savings and loan associations ("associations"). Assuming that the absence of specific provisions on point does not preclude the use of such instruments, an Arizona association using a variable rate mortgage in conjunction with a loan written on a direct reduction payment plan could implement interest rate increases by increasing the amount of the required regular payments on the loan or by increasing the loan term. The interest rate charged by an association on a loan secured by a one or two family dwelling could at no time exceed a rate of 10 percent per annum, however, since that is the maximum interest rate permitted for loans so secured by the Arizona interest and usury statutes. 14 Ariz. Rev. Stat. §§44-1201, 44-1202 (Supp. 1975).

### B. Second Mortgages

An association is authorized to make a loan secured by improved real estate which is subject to a prior lien, if (a) the prior lien exists in favor of the association; or (b) the amount of the prior lien is deducted from the amount of the loan

and is retained by the association to pay such lien; or (c) the prior lien is fully provided for in the closing of the loan transaction. 2 Ariz. Rev. Stat. §6-447(c) (1975).

The Code does not place a specific limitation on the amount of loans made on the security of real estate previously encumbered but provides generally that direct reduction loans secured by real estate may be made in amounts not in excess of 66 2/3 percent of the appraised value of the property mortgaged, unless the loan is insured or unless the withdrawable capital of the lending association is insured by the FSLIC. In the latter instance, such real estate loans may be made in amounts not in excess of the percentage of the appraised value of the security property established by regulation. Id., §4-448(1).

C. Flexible Payment Mortgages

Pursuant to Section 6-446(9) of the Code, authorizing state-chartered savings and loan associations to "make any loan or investment now or hereafter authorized for federal savings and loan associations . . .," associations in Arizona may make loans secured by single family dwellings with only payments of interest required during an initial period not to exceed five years. The required payments following the initial period must be in amounts sufficient to retire the debt, both interest and principal, within the balance of the loan term. 12 C.F.R. §§541.14(c), 545.6-1 (a) (1) (1976).

D. Balloon Payment Mortgages

1. (Straight Mortgages). An association may make a real estate loan without requiring full amortization. Such loans may be made either (a) for a term not to exceed five years and in an amount not to exceed 50 percent of the appraised value of the security; or (b) for a term not to exceed three years and in an amount not to exceed 60 percent of the appraised value of the

security. Interest on such loans must be payable not less often than semi-annually. 2 Ariz. Rev. Stat. §6-488(4) (1975).

2. (Partial Amortization). Pursuant to Section 6-446(9) of the Savings and Loan Code (giving state-chartered associations the authority to make such loans as federal associations are authorized to make), Arizona savings and loan associations could make a loan repayable in full in a lump sum at the end of the loan term (such term being less than 30 years) but also requiring partial amortization through regular monthly payments of principal and interest, in amounts not less than would be required to amortize the entire loan of the same amount within a 30 year loan term. 12 C.F.R. §541.14 (1976).

E. Future Advances

1. The Arizona Savings and Loan Code states that a loan contract may provide for "additional or future advances to be made at the option of the parties up to a total amount stated in the recorded security instrument." 2 Ariz. Rev. Stat. §6-449(c)(2) (1975).

2. The Uniform Mortgage Instrument for Arizona contains a non-uniform covenant providing for future advances as follows:

Upon request of Borrower, Lender, at Lender's option prior to release of this Deed of Trust may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Deed of Trust when evidenced by promissory notes stating that said Notes are secured hereby.

F. Home Improvement Loans

An association may make loans for the purpose of the repair, improvement, rehabilitation or alteration of existing structures or in connection with the building of new structures. Any such loans not secured, guaranteed, or insured by the United States or an instrumentality thereof shall be limited in installments, terms and amount as established by the superintendent of bank's

rules and regulations. The outstanding aggregate unpaid balances of all such loans may not exceed an amount equal to 25% of the lending association's assets. 2 Ariz. Rev. Stat. §6-445(3) (Supp. 1975).

## ARKANSAS

A review of Arkansas savings and loan association law, Arkansas Statutes Annotated §§67-801 to-868 and §§67-1801 to -1862 (1966) (hereinafter the "Statutes"), was undertaken to determine the availability of financial mechanisms which could be used by savings and loan, or building and loan associations (hereinafter "association") in Arkansas to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Arkansas law are discussed below.

### A. Variable Rate Mortgages

Although the Statutes neither expressly authorize nor prohibit the use of variable rate mortgages, the Supreme Court of Arkansas has held that an increase in the interest rate on a note is valid where the increased rate is not in excess of the maximum legal rate. Red Bud Realty Co. v. South, 153 Ark. 380, 241 S.W. 21 (1922). The maximum rate of interest on loans generally, is 10% per annum. Ark. Const. Art. 19, §13.

The Statutes do not prescribe mortgage loan terms and conditions, but rather direct the Savings and Loan Association Board to issue rules and regulations relating thereto. Ark. Stat. §67-1819 (1966). Presumably, the Board could authorize a variable rate mortgage plan in which the increase in the rate of interest is realized through an increase in the amount of the periodic payment and/or an extension of payments within the loan term.

### B. Second Mortgages

An association may make loans secured by a second, or other junior, mortgage on improved real estate provided the association owns all prior liens encumbering that real estate. Ark. Stat. §67-830 (1966).

On real estate loans generally, no association may make loans in the aggregate to any one borrower in excess of: \$5,000 if the association's assets do not exceed \$50,000; \$10,000 if assets do not exceed \$200,000; \$15,000 if assets do not exceed \$500,000; \$25,000 if assets do not exceed \$2,500,000; 1% of assets if assets exceed \$2,500,000. Id., §67-831 (1966).

### C. Flexible Payment/Balloon Payment Mortgages

As noted in part A above, the Statutes do not prescribe terms and conditions for mortgage loans. However, the Statutes do authorize the Board to adopt rules and regulations empowering a state-chartered association to make any loan that a federal association doing business in Arkansas is authorized to make. Ark. Stat. §67-1858(5) (Supp. 1973). Among loans authorized for federal associations are flexible payment and unamortized mortgages.

### D. Home Improvement Loans

There is no specific provision for home improvement loans in the Statutes. Presumably, the Savings and Loan Association Board would issue regulations relating to such loans, provided that the loans are accompanied by a transfer and pledge of shares or units issued by the association or secured by a mortgage on improved real estate. Ark. Stat. §67-830 (1966).

### E. Future Advances

Although no reference to future advances was seen in the Statutes, the Uniform Mortgage Instrument for Arkansas contains a non-uniform covenant which provides for future advances as follows:

Upon request of Borrower, Lender, at Lender's option prior to release of this Mortgage, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby.

## CALIFORNIA

A review of the California Savings and Loan Association Law, as amended, Cal. Fin. Code §§5000-9717, 11000-11709 (1968) and of the regulations promulgated thereunder was undertaken to determine the availability of financial mechanisms which could be used by savings and loan and building and loan associations ("Associations") in California to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Wisconsin law are discussed below.

### A. Variable Rate Mortgages

California associations are expressly permitted to use variable interest rate clauses in mortgage contracts, deeds of trust, real estate sales contracts or any notes or negotiable instruments used in connection therewith, when the purpose of such documents is "... to finance the purchase or construction of real property containing four or fewer residential units or on which four or fewer residential units are to be constructed." Cal. Civ. Code §1916.5 (West Supp. 1976).

In order for an increase in the interest rate pursuant to a variable rate provision to be valid, the variable rate provision must be contained in the security document or any evidence of the debt issued in connection therewith, and such document or documents must also contain the following provisions:

1. A requirement that when an increase in interest is required or permitted by a movement in a particular direction of a prescribed standard, an identical decrease is required in the interest rate by a movement in the opposite direction of the prescribed standard.
2. The rate of interest shall change not more often than once during any semiannual period, and at least six months shall elapse between any two such changes.
3. The change in the interest rate shall not exceed one-fourth of 1 percent in any semiannual period, and shall not result in a rate more than 2.5 percentage points greater than the rate for the first loan payment due after the closing of the loan.
4. The rate of interest shall not change during the first semiannual period.

5. The borrower is permitted to prepay the loan in whole or in part without a prepayment charge within 90 days of notification of any increase in interest.

6. A statement attached to the security document and to any evidence of debt issued in connection therewith printed or written in a size equal to at least 10-point bold type, consisting of the following language:

NOTICE TO BORROWER: THIS DOCUMENT CONTAINS PROVISIONS FOR A VARIABLE INTEREST RATE.

Id., §§1916.5(a)(1)-(6) (West Supp. 1976).

Section 240 of the Regulations of the California Savings and Loan Commissioner (hereinafter "Regulations") sets forth further requirements concerning the use of variable rate provisions in mortgage instruments. The standard on which changes in the interest rate are to be based must be:

... the last published weighted average cost of savings, borrowings and Federal Home Loan Bank advances to California members of the Federal Home Loan Bank of San Francisco as computed from statistics tabulated by the Federal Home Loan Bank of San Francisco. ....  
Regulations of the Savings and Loan Commissioner, 10 Cal. Admin. Code, ch. 2, §240.2(a) (West Supp. 1976).

Associations are to effect interest rate changes:

... in such manner as to maintain the same margin above or below the initial interest rate of such note as the last published standard is above or below the last published standard at the date of such note. Id., §240.2(b) (West Supp. 1976).

The Regulations also provide that "[d]ecreases [in the interest rate] shall be mandatory and increases shall be optional with the Lender." Id., §240.2(b)(7) (1975). In addition, the Regulations state that:

The fact that an association may not have invoked a permissible increase, in whole or in part, shall not be deemed a waiver of the association's right to invoke said

increase at any time thereafter within the limits imposed by ... [the Regulations].  
Id., §240.2(b)(8) (West Supp. 1976).

Associations are required to give notice to borrowers at least 30 days prior to the effective date of an interest rate increase. Id., §240.5 (1975). In order to implement changes in the interest rate pursuant to a variable rate clause, associations may:

... (a) change the amount of monthly payment of an amortized loan, or (b) with consent of the borrower, reduce or extend the maturity date, or (c) a combination of both (a) and (b), provided that the loan shall be paid in full in regular monthly installments by the end of the maximum amortization period allowed ... [by law] at the time the instrument was executed. Id., §240.3 (1975).

#### B. Second Mortgages

The California Savings and Loan Association Law (hereinafter "the Law") provides that each real estate loan made by an association must be secured by a first mortgage or deed of trust upon real property. Cal. Fin. Code §7102(a) (West Supp. 1976). Under certain conditions, associations may make real estate loans secured by other than what "in fact" are first mortgages or trust deeds, however, since the Law also states that if an association owns two or more mortgages or deeds of trust creating "... successive liens ... upon the same real property ... and one is in fact a first mortgage or first deed of trust ...", such mortgages or deeds of trust "... shall collectively be deemed a first mortgage or trust deed. ..." Id., §7103 (West 1968).

The Law does not place a specific limitation on the amount that may be loaned on the security of mortgages or deeds of trust upon real property which are not "in fact" first mortgages or deeds of trust. It does provide generally that "[a]n association may make amortized loans on the security of residential real property ... in an amount not in excess of 80% of the appraised value of such real property." Id., §7153 (West Supp. 1976). Associations are also authorized to make loans on the security of real property in amounts in excess of 80% of the appraised value of such property if certain conditions are met. Among these conditions is a requirement that the borrower make

... a certification in writing that ...  
[there is] no lien or charge upon the property other than the lien of the associa-

tion, or liens or charges which will be discharged from the proceeds of the loan. ...  
Id., §§7153.2(e), 7153.8 (Deering Supp. 1976).

C. Balloon Payment Mortgages

If at least 90% of the unpaid principal of all of its loans then in force are amortized loans, an association may make loans without requiring amortization of principal. Such loans may be made either in an amount not to exceed 60% of the appraised value of the security property and for a term not in excess of three years or in an amount not to exceed 70% of the appraised value of the security property and for a term not to exceed two years. Such unamortized loans may not be extended at the end of their term but they may be refinanced as amortized loans. Cal. Fin. Code §§7154, (West Supp. 1976), 7170 (West 1968).

D. Flexible Payment Loans\*

Except to the extent that they are permitted to refinance an unamortized loan as an amortized loan at the end of the original loan term [Cal. Fin. Code §7174 (West Supp. 1976)], California associations are not permitted to make loans secured by improved real property with flexible payment terms. The Law provides that if loans so secured are amortized and are not (a) made to finance construction or (b) secured by one-to-four family residential property acquired by the borrower as a trade-in or exchange to facilitate the sale of another such property, the first monthly installment of such a loan which includes payment of principal must fall due within three months after the date of the loan. Id., §7151 (West Supp. 1976).

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\* Section 235.7 of the Regulations authorizes associations to make "combination permanent and construction loans" that are, in effect, loans with flexible payment terms. Pursuant to that section, an association may combine an unamortized loan for the purpose of construction on residential real property (the term of which may not exceed 3 years) with an amortized loan secured by such residential real property (the term of which may not exceed 30 years) into a single loan. The first monthly installment of the amortized loan that includes principal must be made within 3 months after the end of the construction term. Section 235.7 expires "by operation of law on the 61st day after the final adjournment of the 1975-76 regular session of the Legislature." Regulations of the Savings & Loan Commissioner, 10 Cal. Admin. Code, ch. 2, §235.7 (1975).

**E. Home Improvement Loans**

Associations are authorized to make loans or advances of credit, secured or unsecured, "... for the purpose of financing repairs, alterations, improvements or equipment, except furnishings, on residential real property. ..." Cal. Fin. Code §7184 (West Supp. 1976). Any one such loan or advance may not exceed \$10,000 in amount for the same property improvement, repair or alteration. Any one such loan or advance for the equipping of real property shall not exceed \$10,000 when aggregated with the balance of all outstanding equipment loans relating to the same real property. Such loans may not be made for periods in excess of fifteen years. The aggregate amount of all such loans made by an association may not exceed an amount equal to 20% of its assets.

**F. Future Advances**

Although the Law contains no provisions concerning the making of mortgages to secure future advances, the Uniform Mortgage Instrument for California contains a non-uniform covenant providing for future advances as follows:

Upon request of Borrower, Lender, at Lender's option prior to release of this Deed of Trust, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Deed of Trust when evidenced by promissory notes stating that said notes are secured hereby.

## COLORADO

A review of the Colorado Savings and Loan Law, as amended, 4 Col. Rev. Stat. 1973, §§11-40-101 to 11-46-103 (1974), was undertaken to determine the availability of financial mechanisms which could be used by savings and loan associations ("associations") in Colorado to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Colorado law are discussed below.

### A. Variable Rate Mortgages

The Colorado Savings and Loan Law (hereinafter "the Law") neither expressly authorizes nor prohibits the use of variable rate mortgage instruments. It does, however, limit the practicality of their use in conjunction with loans written on a direct reduction payment plan. Section 11-41-119(3)(a) of the Law (designated "[d]irect reduction installment loans") provides that "[n]o installments may be required which are larger than prior installments." 4 Col. Rev. Stat. 1973 §11-41-119(3)(a) (1974).

Under the provisions of this section, an association wishing to use a variable rate mortgage in conjunction with a direct reduction installment loan would be precluded from increasing the amount of the required regular installments in order to implement interest rate increases pursuant to a variable rate provision. An association in Colorado could, however, realize increases in the interest rate charged on a loan by extending the term of the loan, subject to the 30 year maximum term limitation established by the Act for such loans. Id.

The interest rate that could be charged on a loan by an association pursuant to a variable rate provision would not be subject to any statutory restrictions. The Law provides that an "... association may charge, contract for, and recover such rate of interest as may be provided in the notes or other evidences of indebtedness ..." (Id., §11-41-115(1) (1974)) and further provides that "[n]o interest that may accrue to an association shall be deemed usurious ...." Id., §11-41-115(4) (1974).

### B. Second Mortgages

In addition to providing that associations may make loans

to their "... members—<sup>1/</sup> secured by first lien trust deeds or mortgages upon improved real estate", the Law also states that associations may make "... additional loans or advances on the same property secured by additional encumbrances [which] shall be deemed to be first liens for the purposes of [the Law] ... unless an intervening lien has been recorded." 4 Col. Rev. Stat. 1973, §11-41-119(1) (1974).

The Law places no specific limitations on the amount that an association may loan on the security of a second mortgage. It provides generally that direct reduction installment loans secured by improved real estate "... may be made for amounts not in excess of eighty percent of the appraised value of the tendered security ..." (Id., §11-41-119(3)(a) (1974)) and that loans without full amortization so secured "... may be made for an amount not in excess of fifty percent of the appraised value of the property ...." Id., §11-41-119(3)(b) (1974).

#### C. Flexible Payment Mortgages

Although a flexible payment plan is not among those which the Law expressly states may be used in connection with loans secured by real estate, the Law does provide that:

Any association operating under articles 40 to 46 of this title may make any type or kind of loan ... that a federal savings and loan association may at any time be authorized to make by any law, rule, regulation, decision or order which is or may be applicable to federal savings and loan associations. 4 Col. Rev. Stat. 1973 §11-41-119(4) (Supp. 1975).

Pursuant to this section, an association in Colorado may make a loan (secured by a single family dwelling) with flexible payment terms, as follows: During an initial period of the loan term (not to exceed 5 years) the borrower is required to make only payments of interest on the loan. Following such initial period, the loan payments are to be made on a direct-reduction basis with the borrower required to make regular, periodic payments in amounts sufficient to retire the debt, both interest and principal, within the balance of the loan term. 12 C.F.R. §§541.14(c), 545.6-1(a)(1) (1976).

#### D. Balloon Payment Mortgages

An association may make a loan secured by improved real estate without requiring full amortization of principal but

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<sup>1/</sup> A person borrowing from an association is, by definition, a member of that association.

requiring payments of interest at least annually. Such a loan may be made either in an amount not in excess of 50% of the appraised value of the security property and for a term not in excess of five years or in an amount not in excess of 60% of the appraised value of the security property and for a term not in excess of three years. The aggregate amount of all such loans made by an association may not exceed an amount equal to 10% of the association's assets. 4 Col. Rev. Stat. 1973 §11-41-119(3)(b) (1974).

E. Home Improvement Loans

The Law provides that an association may make a loan for the repair, equipping, alteration and improvement of real property. Such loans may be made in principal amounts not in excess of \$5,000 and are otherwise

...subject to such restrictions, limitations, prohibitions, conditions and provisions as the [savings and loan] commissioner may from time to time, by rule or regulation ... prescribe.  
4 Col. Rev. Stat. 1973, §11-41-118(6) (1974).

F. Future Advances

1. Associations are authorized to make "... additional advances secured by the original encumbrance if the original loan contract makes proper provision therefor." 4 Col. Rev. Stat. 1973, §11-41-119(10) (1974).

2. The Uniform Mortgage Instrument for Colorado contains a non-uniform covenant providing for future advances as follows:

Upon request of Borrower, Lender, at Lender's option prior to release of this Deed of Trust, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Deed of Trust when evidenced by promissory notes stating that said notes are secured hereby.

## CONNECTICUT

A review of Connecticut building or savings and loan association law, General Statutes of Connecticut §§36-172 to 36-193 (1975) (hereinafter the "Statutes") was undertaken to determine the availability of financial mechanisms which could be used by building or savings and loan associations (hereinafter "association") in Connecticut to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Connecticut law are discussed below.

### A. Variable Rate Mortgages.

Although variable rate mortgages are not expressly authorized, the Statutes contain nothing that would bar or substantially restrict their use. Since the Statutes do not prohibit loans from being repaid in unequal installments, an association could increase the amount of the periodic payment in order to realize the increased interest rate. Gen. Stat. Conn. §36-178 (1975).

Loans, secured by a mortgage on real estate in Connecticut, in excess of \$5,000, are exempt from usury provisions. This exemption facilitates the use of variable rate mortgages. Id., §37-9 (1975).

### B. Second Mortgages.

An association may make second mortgages which are guaranteed by the administrator of veteran's affairs or insured in accordance with the Serviceman's Readjustment Act of 1944. Such loans are subject to statutory and regulatory limitations. Gen. Stat. Conn. §36-178(i) (1975).

### C. Flexible Payment Mortgages.

The Statutes provide for what might be described as an inverted flexible payment mortgage. The payment of principal due on any mortgage loan may be waived upon majority vote of an association's board of directors provided the principal indebtedness of such loan is 50% or less of the reappraised value of the secured property. Interest on any such loan must be paid at least semiannually. Gen. Stat. Conn. §36-178(h) (12) (1975).

Additionally, the Statutes direct the bank commissioner to promulgate rules and regulations in substantial conformity with

those promulgated by the Federal Home Loan Bank Board. Id., §36-178g. (1975). Such regulations would, presumably, include the power to make flexible payment mortgages.

**D. Balloon Payment Mortgages.**

An association may make secured loans not exceeding 50% of the appraised value of the property which require payments of interest only, at least semiannually. The term of such loans may not exceed 5 years nor may more than 2% of an association's total assets be apportioned to the aggregate unpaid balance of such loans. Gen. Stat. Conn. §36-178(h)(9) (1975).

**E. Home Improvement Loans/Personal Loans.**

An association may make unsecured loans for purposes of home improvement. The amount of such loan may not exceed \$10,000 nor may the term exceed ten years and thirty-two days. Gen. Stat. Conn. §36-178F. (1975).

An association may also make unsecured personal loans, evidenced by a note of debt, not in excess of \$5,000 to any single borrower. Such personal loans require consecutive installments of principal repayments to be made either weekly or monthly and the loan term may not exceed sixty months and thirty-two days. The interest rate on personal loans may not exceed 1% per month. Id. §36-178(aa) (1975).

The aggregate amount of home improvement, personal and education loans may not exceed 8% of an association's assets, Id., §36-178a. (1975).

**F. Future Advances.**

1. The Statutes provide that additional sums, evidenced by a note or notes secured by a mortgage, may be advanced to the mortgagor. Such advances may at no time exceed the original amount of indebtedness nor may the terms of repayment of the advances extend beyond the maturity of the original mortgage. Gen. Stat. Conn. §36-178(h)(7) (1975).

2. The Uniform Mortgage Instrument for Connecticut contains a non-uniform covenant which provides for future advances as follows:

Upon request of Borrower, Lender, at Lender's option prior to release of

this Mortgage, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Mortgage exceed the original amount of the Note nor shall the maturity of Future Advances secured hereby extend beyond the time of repayment of the Note.

3. Advancements may also be made by writing open-end mortgages in accordance with the provisions of Gen. Stat. Conn §49-2 (1975). Such provisions appear to be more restrictive than those of subdivisions 1 and 2 of this part F.

## DELAWARE

A review of Delaware building and loan association law, 5 Delaware Code Annotated §§1701-2011 (1974) (hereinafter "Code") was undertaken to determine the availability of financial mechanisms which could be used by building and loan or savings and loan associations (hereinafter "association") in Delaware to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Delaware law are discussed below.

### A. Variable Rate Mortgages.

Although the Code does not expressly authorize the use of variable rate mortgages, the Code authorizes the payment of direct reduction loans in "unequal" installments, a favorable factor in the use of variable rate mortgages. 5 Del. Code Ann. §1905(a) (1974).

The Code further enhances the feasibility of variable rate mortgages by its indexation of interest rates.

"[B]orrower may agree to pay, and any lender may charge and collect from such borrower, interest at any rate agreed upon in writing in excess of 6% per annum, but not in excess of 4% over the discount rate charged by the Federal Reserve Board of Governors to its member banks." 6 Del. Code §2301(a) (Supp. 1975).

Additionally, an association may charge a borrower, who agrees in writing to such a charge, a premium of 3% of the original amount of the loan. 5 Del. Code Ann. §1906(b) (1974). A premium paid pursuant to this section is not deemed usurious, although when added to interest paid upon the loan it exceeds the legal rate of interest. Id.

### B. Second Mortgages

Not more than 50% of the shareholders' invested capital in any association doing business in Delaware may be "loaned on real estate security on other than first loans". 5 Del. Code Ann. §1912 (1974). The Code does not specify dollar or asset limitations to any one borrower or on the same real estate.

### C. Flexible Payment/Balloon Payment Mortgages.

Although the Code discusses only direct reduction loans, it invites a liberal interpretation of permissible lending plans:

"Building and loan associations incorporated under this Code or any other law of this state may make direct reduction or other loans upon bonds. . ." (emphasis added). 5 Del. Code Ann. §1905(a) (1974)

It should be noted initially that the term "bonds" appears from the context to mean the written instrument evidencing the debt; in other states the term "promissory note" might be used.

The only qualification on "other" loans, as well as on direct reduction loans, are that they be secured by a mortgage on real estate, and that they be restricted territorially. Additionally, any state-chartered association may become a member of a Federal Home Loan Bank. All powers and privileges granted thereunder to federally-chartered associations are extended to state-chartered members. Id., §1909 (1974). Presumably, such federal powers as the ability to grant flexible payment mortgages and unamortized mortgages would be extended to state-chartered associations.

### D. Home Improvement Loans.

The Code provides that an association may make direct reduction loans for the repair, alteration or improvement of real estate when the loan is evidenced by a note or bond issued under the National Housing Act. The association is further authorized to make such loans in an amount and on terms that may be acceptable to the Federal Housing Administration. Although the Code is not clear on this point, it appears that an association may make such loans only on real estate with respect to which it holds a mortgage securing an earlier loan. 5 Del. Code Ann. §1905(b) (1974).

### E. Future Advances.

1. Any mortgage may be written to secure future advances. The total amount of existing indebtedness and future advances outstanding at any one time may not exceed, excluding sums advanced to protect the security of the mortgage, an amount specified in the mortgage. All future advances must be made within five years of the date of execution of the mortgage. 25 Del. Code Ann. §2118 (Supp. 1975).

2. The Uniform Mortgage Instrument for Delaware contains a non-uniform covenant which provides for future advances as follows:

"Upon request of Borrower, Lender, at Lender's option prior to release of this Mortgage, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Mortgage, not including sums advanced in accordance herewith to protect the security of this Mortgage, exceed the original amount of the Note."

## FLORIDA

A review of the Florida Savings Association Act, as amended, 19 Fla. Stat. Ann. §§665.011 - 665.717, 665.53 - 665.64 (1966) was undertaken to determine the availability of financial mechanisms which could be used by savings associations or savings and loan associations in Florida to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Florida law are discussed below.

### A. Variable Rate Mortgages

The Florida Savings Association Act (hereinafter "the Act"), while neither expressly authorizing nor prohibiting the use of variable rate mortgage instruments, does limit the practicality of their use in conjunction with certain direct-reduction loans in which a savings association or savings and loan association (hereinafter "association") is required to invest at least 60% of its non-liquid assets. The definition of such direct-reduction loans provides not only that such loans may not be made for terms in excess of 30 years, but also that:

... the initial contract ... shall not provide for any subsequent monthly installment of interest and principal in an amount larger than any previous monthly installment .... 19 Fla. Stat. Ann. §665.021(4) (1966).

Accordingly, an association wishing to use a variable rate mortgage instrument in connection with a direct-reduction loan of the type meeting the Act's 60% of non-liquid assets investment requirement would be substantially limited as to the means by which it could realize interest rate increases pursuant to the variable rate clause. It would be precluded from increasing the amount of the required monthly installment and could extend the loan term only to the extent that the original loan term was less than 30 years.

The Florida Savings Association Act does permit associations to make loans on plans other than the direct-reduction plan described in the Act, however, if such other loan plans are approved by the Florida Department of Banking and Finance. 19 Fla.

Stat. Ann. §665.391 (Supp. 1975). It may therefore be possible for a state-chartered association to use a variable rate mortgage instrument in conjunction with a loan plan that would offer the association greater flexibility in terms of the methods that it may use to collect interest increases pursuant to the variable rate provision than is possible under the direct-reduction loan plan defined in the Act.

**B. Second Mortgages**

Real estate loans secured by mortgages or deeds of trust that create other than a first lien (or the equivalent thereof) against the security property are not authorized. The Florida Savings Association Act provides that:

Every real estate loan shall be secured by a mortgage, deed of trust or other ... instrument constituting a first lien or claim, or the full equivalent thereof, upon the real estate securing the loan. 19 Fla. Stat. Ann. §665.391(4) (Supp. 1975).

The Act is silent as to whether two or more instruments creating successive liens upon the same real property, one of which is the first mortgage and all of which are owned by the same association, are collectively deemed to constitute the "full equivalent" of a first lien for the purposes of §665.391(4) of the Florida statutes.

**C. Flexible Payment/Balloon Payment Mortgages** <sup>2/</sup>

The only real estate loan plan specifically provided for in the Act is direct reduction. Associations may be permitted to make loans secured by real estate with other than direct reduction terms, however, since the Act provides that:

Real estate loans eligible for investment under this Act may be written ... upon any other loan plan approved by the department [of banking and finance]. 19 Fla. Stat. Ann. §665.391 (Supp. 1975).

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2/ Although mortgages with balloon payment terms are not expressly provided for in the Florida Savings Association Act, a definition of balloon mortgages and requirements as to their contents (as well as exemptions therefrom) are contained in Chapter 697 ("Instruments Deemed Mortgages . . .") of the Florida Statutes. 19 Fla. Stat. Ann. §697.05 (1966).

D. Future Advances

1. An association is authorized to make a mortgage to secure not only existing indebtedness but also to secure future advances. Such advances are to be made at the option of the parties up to a total amount stated in the mortgage. 19 Fla. Stat. Ann. §665.391(5) (Supp. 1975). The advances must be made within twenty years from the date of the mortgage. Id., §697.04 (1966).

2. The Uniform Mortgage Instrument for Florida contains a non-uniform covenant providing for future advances as follows:

Upon request of Borrower, Lender, at Lender's option within twenty years from the date of this mortgage, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Mortgage, not including sums advanced in accordance herewith to protect the security of this Mortgage, exceed the original amount of the Note plus U.S. \$ \_\_\_\_\_.

E. Home Improvement Loans

Savings associations are authorized to make property improvement loans pursuant to the provisions of any title of the National Housing Act (12 U.S.C.A. §1701 et seq.) and may make other loans, subject to any limitations as to the maximum loan amount prescribed by the Department of Banking and Finance, secured or unsecured, to homeowners for the maintenance, repair, alteration, modernization, landscaping, improvement, furnishing or equipment of their properties. 19 Fla. Stat. Ann. §665.381(4) (Supp. 1975).

## GEORGIA

A review of the Georgia Code provisions concerning the operation of building and loan associations, 14A Code of Ga. Ann. §§41A-3501 to 41A-3529 (1974), and of the regulations promulgated thereunder by the Georgia Department of Banking (hereinafter "regulations") was undertaken to determine the availability of financial mechanisms which could be used by building and loan associations in Georgia to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Georgia law are discussed below.

### A. Variable Rate Mortgages

The building and loan association provisions of the Georgia Code and regulations neither expressly authorize nor prohibit the use of variable rate mortgage instruments. The regulations do, however, limit the practicality of their use by building and loan associations (hereinafter "associations") in conjunction with conventional installment home loans having terms in excess of 36 months. Section 80-4-1-.10 (2) of the "Rules and Regulations of the State of Georgia" provides that the contract for such a loan "...shall not provide for any subsequent installment of an amount larger than any previous monthly installment." 2 Rules and Regs. of Ga. §80-4-1-.10 (1976). Pursuant to this section, an association would be precluded from making a contract for such a loan that provided for increases in the required monthly installments in order to implement interest rate increases. An association in Georgia could, however, realize increases in the interest rate charged on such a loan by extending its maturity date, subject to the 25 year maximum term limitation established by the regulations. Id.

The interest and usury provisions of the Georgia Code also place restrictions on an association's use of variable rate mortgage instruments. Pursuant to such provisions, an association could at no time charge an interest rate in excess of 9% per annum on a loan secured by a first mortgage on real property. 17 Code of Ga. Ann. §57-101.1 (Supp. 1976).

### B. Second Mortgages

An association is authorized to make a loan secured by a mortgage on real estate which is "junior to a prior

"mortgage" on such real estate if the association owns and holds the prior mortgage. 2 Rules and Regs. of Ga. §80-4-1-.10(4) (1976). The aggregate amount loaned by an association on the security of the prior and junior (first and second) mortgages on any one property may not exceed an amount equal to 80% of the fair market value of such property, unless Federal Housing Administration insurance or a guarantee under the provisions of the Servicemen's Readjustment Act of 1944 has been obtained for one or both of such loans. Id., §80-40-1-.10(5) (1976).

#### C. Flexible Payment Mortgages

Real estate loans with flexible payment terms are not specifically provided for in either the building and loan association provisions of the Georgia Code or in the regulations. The regulations do provide, however, that:

An association may make...any and all loans specifically authorized to be made...in this State by Federal Chartered Savings and Loan Associations providing such association meets all of the conditions and requirements set forth with reference to such lending by Federal Associations. 2 Rules and Regs. of Ga. §80-41-.10(7) (1976).

Since the regulations of the Federal Home Loan Bank Board ("FHLBB") permit federally-chartered associations operating in Georgia to make loans having flexible payment terms on the security of single-family dwellings, associations chartered in Georgia may also make such flexible payment loans, subject to the terms and conditions set forth in the FHLBB regulations. 12 C.F.R. §§541.4(c), 545-6-1(a)(1) (1976).

#### D. Balloon Payment Mortgages

1. (Unamortized loans). The Georgia building and loan association regulations permit associations to make home loans written on a conventional installment payment plan for amounts not in excess of \$35,000 and for terms not in excess of 25 years. The regulations also provide that associations may use up to 45% of their assets (or more with the approval of the Georgia Building and Loan Commissioner) to make certain real estate loans of other types including, inter alia, loans having a non-installment (unamortized) payment plan. Beyond the general limitations

apparently applicable to all real estate loans (e.g., no loans may be made in excess of 80% of the value of the security property), however, the regulations prescribe no conditions or terms for such non-installment loans. 2 Rules and Regs. of Ga. §80-4-1-.10(3)(d) (1976).

2. (Partial amortization). Pursuant to the section of the regulations permitting state-chartered associations to make any loan which federally-chartered savings and loan associations operating in Georgia are permitted to make, subject to the same conditions and requirements applicable to the federally-chartered associations, an association in Georgia may make loans secured by real estate which are payable in a lump sum at the end of the loan term but which also require partial amortization of principal, subject to the terms and conditions prescribed for such loans by the FHLBB regulations. 12 C.F.R. §§541.1-545.6-1(a)(3)(i) (1976).

#### E. Home Improvement Loans

Neither the building and loan association provisions of the Georgia Code nor the building and loan association regulations specifically authorize associations to make secured or unsecured loans to homeowners for the repair, alteration or improvement of their properties, unless such loans have been insured pursuant to Title I of the National Housing Act or insured or guaranteed pursuant to Title III of the Servicemen's Readjustment Act of 1944. 2 Rules and Regs. §§80-4-1-.10(4), (6) (1976).

Pursuant to the regulatory provisions permitting state-chartered associations to make any loans which federally-chartered savings and loan associations operating in Georgia are permitted to make, however, associations in Georgia may make uninsured, unguaranteed property improvement loans, secured or unsecured, to homeowners subject to the terms and conditions set forth in the FHLBB regulations. 12 C.F.R. §545.8(1976).

#### F. Future Advances

1. Although the Georgia Code contains no substantive requirements for the making of mortgages to secure future advances, the Code does state that:

The operation of "open-end" clauses contained in real estate mortgages... which clauses provid[e] that such instruments... secur[e], in addition to the debt therein named or described,

any other debt or obligation that may be or become owing by the mortgagor... is limited to other debts or obligations arising ex contractu [out of a contract]... between the original parties to such security instrument. 20 Code of Ga. Ann. §67-1316 (1967).

2. The Uniform Mortgage Instrument for Georgia contains a non-uniform covenant providing for Future Advances as follows:

Upon request of Borrower, Lender, at Lender's option prior to release of this Mortgage, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby.

## HAWAII

A review of Hawaii savings and loan association law, Hawaii Revised Statutes §§407-1 to 407-114 (1968) (hereinafter the "Statutes") was undertaken to determine the availability of financial mechanisms which could be used by savings and loan, and building and loan associations (hereinafter "associations") in Hawaii to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Hawaiian law are discussed below.

### A. Variable Rate Mortgage.

The Statutes neither expressly authorize nor prohibit the use of variable rate mortgages. Generally, the Statutes provide only for direct reduction loans. However, the terms and conditions prescribed in the Statutes for repayment of such loans would not preclude the use of variable rate mortgages. The option of implementing the variable rate through an increase in the amount of the periodic payment and/or an extension of payments within the loan term would appear to be available. H.R.S. §407-83 (1968).

While there is no limitation specifically applicable to interest rates on mortgages, the interest ceiling on written contracts in Hawaii is 12% per annum. H.R.S. §478-3 (1968).

### B. Second Mortgage.

The Statutes state that every real estate loan must be secured by a mortgage or other instrument constituting a first lien or the full equivalent thereof. H.R.S. §407-83 (1968).

The Section goes on to state that:

...[E]very such mortgage or other instrument shall create, and preserve to the association a first lien, which shall equally secure the original loan and each and every subsequent advance and loan in any amount and for any purpose by the association to the borrower. No subsequent loan to the borrower by any other person shall establish an intervening lien, which shall disturb the first lien of such association as security for every advance and loan made to the borrower. ...

The above quotation suggests that an association can make a loan secured by a second mortgage provided that the association holds all prior liens on the property in question.

Loans on home property in general may not be made in excess of 80 percent of the unencumbered appraised value thereof (H.R.S. §407-84 (Supp. 1975)), but there does exist the authority for making loans greater than the amount if certain conditions obtain. (See H.R.S. §407-84.)

The total amount, however, that may be loaned by an association on any home property may not exceed \$75,000. H.R.S. §407-92 (Supp. 1975).

C. Flexible Payment/Balloon Payment Mortgages.

The Statutes require that all mortgage loans be repaid on a direct reduction basis. H.R.S. §407-83 (1968).

However, H.R.S. §407-46 (1968) permits an association to become a member of a Federal Home Loan Bank. Any association becoming a member thereof acquires all powers, not in conflict with state law, which are granted through the Federal Home Loan Bank Act and the regulations of the Federal Home Loan Bank Board. Since the terms and conditions of flexible payment and unamortized mortgages, two plans authorized for members of a Federal Home Loan Bank, appear to contravene state law, the state of Hawaii may reject such plans.

D. Home Improvement Loans.

Home improvement loans may be made without the security of a lien provided they do not exceed \$5,000 or the maximum amount allowed federal associations, whichever is greater. The loan must be evidenced by a written instrument. Each loan must be repayable in regular monthly installments within a period of five years. H.R.S. §407-89 (1968).

E. Future Advances.

1. H.R.S. §407-83 (1968) implicitly recognizes the authority of an association to make future advances, provided such advances are secured by a mortgage constituting a first lien or the full equivalent thereof:

[E]very such mortgage or other instrument shall create, and preserve to the

association a first lien, which shall equally secure the original loan and each and every subsequent advance and loan in any amount and for any purpose by the association to the borrower.  
(Emphasis added.)

2. The Uniform Mortgage Instrument for Hawaii contains a non-uniform covenant which provides for future advances as follows:

Upon request of Borrower, Lender, at Lender's option prior to release of this Mortgage, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby.

## IDAHO

A review of Idaho savings and loan association law, Idaho Code Annotated §§26-1801 to 26-1945 (1967) (hereinafter the "Code"), was undertaken to determine the availability of financial mechanisms which could be used by savings and loan associations (hereinafter "associations") in Idaho to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Idaho law are discussed below.

### A. Variable Rate Mortgages.

Although the Code neither expressly authorizes nor prohibits the use of variable rate mortgages, little therein restricts their use. Except for one unamortized plan, all loan plans authorized by the Code require payments of principal and interest either in equal monthly installments over a term of thirty years or in equal annual, semiannual or quarterly installments over a term of twenty years, provided that such installments are sufficient to amortize the full debt, both principal and interest within the term provided. Idaho Code Ann. 26-1936(1) (1967). If the variable rate mortgage were to be implemented, the increase in the rate of interest might then be realized through an extension of payments within the loan term.

Additionally, the director of the Department of Finance is authorized to approve "any other plan." Id., §26-1931 (Supp. 1976).

The Code provides an interest ceiling of 12% per annum on loans generally, which exceed \$10,000 and are made by a corporation organized for profit. Although §28-22-105 did not specify whether an association would come within the definition of a corporation organized for profit, it would appear that an association should benefit from this higher interest ceiling. Id., §28-22-105 (Supp. 1976). An association, in addition, may make a reasonable charge for fees and services incidental to the making of the loan, which charge is not considered interest. Id., §26-1932(1) (Supp. 1976).

### B. Second Mortgages.

An association may make a real estate loan secured by a second mortgage if all prior liens are owned by such association. Idaho Code Ann. §26-1935(4) (1967).

The Code provides no specifics regarding dollar or asset limitations on second mortgages. There are, however, limitations on the total amount which may be loaned to any one borrower. An association may make a loan to any one borrower provided that the sum of (1) the proposed loan and (2) the total balances of all outstanding loans owed by the borrower does not exceed the lesser of (a) 10% of such association's savings liability or (b) the sum of such association's reserves for losses and undivided profits. Notwithstanding the above rule, a loan may be made if the sum of the proposed loan and balances of all outstanding loans owed by the borrower does not exceed \$100,000. Id., §26-1935(13) (1967).

Similarly, no association may make any one direct real estate loan on existing property in an amount exceeding \$25,000 or 1% of the association's savings liability, whichever is greater. The director of the Department of Finance may authorize higher dollar or asset limitations. Id., §26-1935(9) (1967).

C. Flexible Payment Mortgages.

Although all loan plans require equal and regular payments of principal and interest (with the exception of one unamortized plan), the director of the Department of Finance is authorized to approve "any other loan plan." Idaho Code Ann. §26-1931 (Supp. 1976).

Further, a state-chartered association may make any loan or investment which such association could make were it incorporated and operating as a federally-chartered association. Id., §26-1934 (Supp. 1976). Among loan plans authorized for federally-chartered associations is the flexible payment mortgage.

D. Balloon Payment Mortgages.

Real estate loans without any amortization of principal are permitted provided the interest is payable at least semi-annually and the term of the loan does not exceed 5 years. Idaho Code Ann. §26-1936(1)(a) (1967).

E. Home Improvement Loans.

Loans for purposes of improving and equipping the home may be made pursuant to any title of the National Housing Act, secured or unsecured, not to exceed \$5,000 and repayable in monthly installments over a period not to exceed 62 months. Idaho Code Ann. §26-1930(3) (1967).

The interest ceiling on loans not in excess of \$10,000 is 10% per annum. Id., §28-22-105 (Supp. 1976).

Future Advances.

1. Any mortgage to secure future advances may be made, at the option of the parties, up to a total amount stated in the mortgage. Idaho Code Ann. §26-1931(5) (Supp. 1976).

2. The Uniform Mortgage Instrument for Idaho contains a non-uniform covenant providing for future advances as follows:

Upon request of Borrower, Lender, at Lender's option prior to full reconveyance of the Property by Trustee to Borrower, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Deed of Trust when evidenced by promissory notes stating that said notes are secured hereby.

## ILLINOIS

A review of the Illinois Savings and Loan Act of 1955, as amended, Illinois Statutes Annotated, 32 §§701-944 (Smith-Hurd 1970) (hereinafter the "Statutes") and the regulations promulgated thereunder was undertaken to determine the availability of financial mechanisms which could be used by building and loan or savings and loan associations (hereinafter "association") in Illinois to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Illinois law are discussed below.

### A. Variable Rate Mortgages.

The Statutes implicitly authorize the use of variable rate mortgages in a provision which states that an association may, at any time

. . . enter into a written agreement with the borrower to modify, in any manner not inconsistent with the provisions of this Act, the terms of a loan as to the amount, time, or method, of the payments to be made, the interest rate, and any other provision of the loan contract; . . .

Ill. Stat. Ann. 32 §796(b) (1970).

Further, the Statutes provide that "no interest, premium, or interest on such interest or premium, or charge which may accrue to an association under the provisions of this (Savings and Loan) Act, shall be deemed to be usurious." Id. 32 §800 (Supp. 1976)

The variable rate mortgage could, then, be implemented through an increase in the amount of the periodic payment and/or an extension of payments within the loan term.

### B. Second Mortgages.

The Statutes provide that an association may make a loan on real estate which is subject to a prior lien if such association holds the prior lien. Ill. Stat. Ann. 32 §793(c) (1970).

Although the Statutes provide no dollar or asset limitations for second mortgages uniquely, the Statutes do stipulate that no association may at any one time hold loans in an amount equal to or in excess of 10% of the association's total withdrawable accounts or an amount equal to the total net worth of the association, whichever is less. Id., 32 §806 (Supp. 1976)

C. Flexible Payment Mortgages.

The Statutes authorize the board of directors of each association to specify the terms on which loans to members may be made. Ill. Stat. Ann. 32 §794 (Supp. 1976).

In addition, a variation on the flexible payment mortgage is suggested in the Statutes by the following:

"When the balance of a loan being repaid under the direct reduction of principal plan does not exceed 40 percent of the value of the security therefor, and the loan has been reduced by periodical payments over a period of not less than 3 years to the extent that the unpaid balance does not exceed 50 percent of the amount originally secured, the board of directors may agree in writing with the borrower that for a period not to exceed 3 years, no payments need be made on the unpaid principal amount of the loan. . .".

Id., 32 §796(a) (1970)..

Flexible payment mortgage plans authorized for federally-chartered associations would, presumably, be authorized for state-chartered associations which are members of a Federal Home Loan Bank since the Statutes provide to such members the powers and privileges of federally-chartered associations.

Id., 32 §706(c) (1970).

D. Balloon Payment Mortgages.

Unamortized mortgage loans may be made in accordance with the following schedule: maximum term of 5 years, maximum ratio of loan to appraised value 50%; 4 years, 60%; 3 years, 80%. Interest on such loans must be paid not less often than semi-annually. No association may make such loans in excess of 15% of such association's total assets. Ill. Stat. Ann. 32 §794(d) (Supp. 1976).

E. Home Improvement Loans.

Unsecured loans for the purpose of repair, improvement or equipment of real estate or for any other purpose may be made by an association. Such loans are limited to \$15,000 for each borrower; must be repaid over a period of 15 years or less in substantially equal installments not less frequent than semi-annually; and the aggregate unpaid balance of such loans may not exceed the percentage of asset limitation on the association established by the Commissioner of Savings and Loan. Ill. Stat. Ann. 32 §791(5)(c) (Supp. 1976).

F. Future Advances.

1. The Statutes provide that mortgage loan contracts may provide for future advances to be made at the option of the parties up to a total amount stated in the mortgage instrument. Ill. Stat. Ann. 32 §795(c)(4) (Supp. 1976).

2. The Uniform Mortgage Instrument for Illinois contains a non-uniform covenant which provides for future advances as follows:

Upon request of Borrower, Lender, at Lender's option prior to release of this Mortgage, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Mortgage, not including sums advanced in accordance herewith to protect the security of this Mortgage, exceed the original amount of the Note plus US \$.....

## INDIANA

A review of Indiana building and loan association law, Burn's Indiana Statutes Annotated §§28-1-21-1 to 28-1-21-45 (1974) (hereinafter the "Statutes"), was undertaken to determine the availability of financial mechanisms which could be used by building and loan, rural loan and savings, or guaranty loan and savings associations (hereinafter "association") in Indiana to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Indiana law are discussed below.

### A. Variable Rate Mortgages

Although the Statutes neither expressly authorize nor prohibit the use of variable rate mortgages, nothing contained in either the building and loan, or interest and usury laws would preclude their use. The Statutes permit a direct reduction loan plan with a maximum term of 30 years. Ind. Stat. §28-1-21-23(b)(2) (Supp. 1976). The variable rate mortgage might be implemented via the direct reduction loan plan with the option of an increase in the amount of the periodic payment and/or an extension of payments within the 30 year loan term.

### B. Second Mortgages

The Statutes state that the primary obligation evidencing a real estate loan must be secured by a mortgage or other instrument which constitutes a first lien on the real estate unless the association already holds a first mortgage upon the real estate. Ind. Stat. §28-1-21-25(a) (supp. 1976).

The Statutes do not provide dollar or asset limitations on second mortgages specifically. On real estate loans generally, the loan to value ratio may not exceed 80%, except, where certain conditions obtain, the loan to value ratio may be increased to a maximum of 95%. Ind. Stat. §28-1-21-25(b) (1)-(5) (Supp. 1976).

### C. Flexible Payment Mortgages

The only mortgage loan plans specifically authorized by the Statutes are amortized and unamortized plans. Flexible payment mortgages may be permitted, however, since the Statutes authorize state-chartered associations to exercise all powers conferred upon federally-chartered associations. Ind. Stat. §28-1-21-2(d) (Supp. 1976).

#### D. Balloon Payment Mortgages

An association may make a loan secured by real estate without requiring amortization of principal but requiring payment of interest at least semiannually. The term of such a loan may not exceed 5 years. Ind. Stat. §28-1-21-23(b)(3) (Supp. 1976).

#### E. Home Improvement Loans

There is no specific provision for home improvement loans in the Statutes. Presumably, such loans must be made on the security of a mortgage or a pledge of shares and in accordance with such mortgage payment plans and asset limitations as are imposed on general real estate loans.

#### F. Future Advances

Although no reference to future advances was seen in the Statutes, the Uniform Mortgage Instrument for Indiana contains a non-uniform covenant which provides for future advances as follows:

Upon request of Borrower, Lender, at Lender's option prior to release of this Mortgage, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Mortgage, not including sums advanced in accordance herewith to protect the security of this Mortgage, exceed the original amount of the Note plus US\$.....

IOWA

A review of Iowa savings and loan association law, Iowa Code Annotated §§534.1-.70 (1970), (hereinafter the "Code") was undertaken to determine the availability of financial mechanisms which could be used by savings and loan, building and loan and savings associations (hereinafter "association") in Iowa to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Iowa law are discussed below.

**A. Variable Rate Mortgages.**

Although variable rate mortgages are neither expressly authorized nor prohibited by the Code, an interest ceiling of 9% per annum, Iowa Code Ann. §535.2 (Supp. 1976), rather restricts their use.

However, there are other factors provided in the Code which would make such loan plans feasible. Loan terms as prescribed by the Code are such that the variable rate could be implemented through an increase in the amount of the periodic payment or an extension of payments within the term of the loan. Either option could be implemented through a direct reduction plan, which plan may have a maximum term of 30 years. Id., §543.21(2) (1970).

Further, the following provision enhances the feasibility of variable rate mortgages:

"Real estate loans may be made as authorized by this chapter or upon any other loan plan approved by the supervisor (of banking)." Id., §534.21(1) (Supp. 1976).

**B. Second Mortgages.**

The Code states that every real estate loan must be secured by an instrument constituting a first lien upon the real estate. Iowa Code Ann. §534.21(6) (1970). The Code neither defines nor provides any comment on what "constitutes" a first lien.

The limit on first mortgage real estate loans is \$50,000. Id., §534.21(3) (Supp. 1976). Additionally, an association may use an aggregate amount not exceeding 40% of its assets to make

loans in excess of the \$50,000 limitation. Several qualifications attach to such loans. Id., §534.21(4) (1970).

C. Flexible Payment Mortgages.

The Code provides only for direct reduction and unamortized loan plans. Iowa Code Ann. §534.21(2) (1970). However, the supervisor of banking may authorize the use of "any other plan." Id. Hence, a flexible payment mortgage may very well be authorized by the supervisor.

Further, powers (including the power to grant flexible payment mortgages) granted federally-chartered associations, not in conflict with state law, are extended to state-chartered associations. Id., §534.21 (Supp. 1976).

D. Balloon Payment Mortgages.

An unamortized loan plan is authorized by the Code. Such loans may not exceed 50% of the value of the real estate, maturity may not exceed 5 years and interest must be paid at least semiannually. Loans not in excess of 60% of the value of the real estate and not exceeding 3 years in maturity may also be made. Iowa Code Ann. §534.21(2) (1970).

E. Home Improvement Loans.

An unsecured "property improvement" loan, not in excess of \$5,000 and amortized to mature within 8 years, may be made. No more than 15% of an association's assets may be so invested. Iowa Code Ann. §534.19(6) (Supp. 1976).

F. Future Advances.

1. The Code provides that any mortgage made by an association may be made to secure future advances. Such future advances are to be made at the option of the parties up to a total amount stated in the mortgage. Iowa Code Ann. §534.21(7) (1970).

2. The Uniform Mortgage Instrument for Iowa contains a non-uniform covenant which provides for future advances as follows:

Upon request of Borrower, Lender, at Lender's option prior to release of this Mortgage, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall

be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Mortgage, not including sums advanced in accordance herewith to protect the security of this Mortgage, exceed the original amount of the Note.

## KANSAS

A review of the Kansas Savings and Loan Code, as amended, 2 Kan. Stat. Ann. §§17.5101-17.5823 (1974) was undertaken to determine the availability of financial mechanisms which could be used by savings and loan associations ("associations") in Kansas to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Kansas law are discussed below.

### A. Variable Rate Mortgages

While the Kansas Savings and Loan Code (hereinafter "the Code") neither expressly authorizes nor prohibits the use of variable rate mortgage instruments, it contains no provisions that would substantially restrict their use by associations. Assuming that the absence of specific provisions on point does not preclude the use of such instruments, an association in Kansas wishing to use a variable rate mortgage in conjunction with a loan written on a direct reduction payment plan could, pursuant to the Code, implement an interest rate increase by increasing the amount of the required periodic payments. An association could also extend the term of such a loan in order to realize interest rate increases pursuant to a variable rate provision, provided that the resulting loan term was not in excess of 30 years. 2 Kan. Stat. Ann. §17-5101(e) (1974).

Section 16-205 of the Kansas interest and usury statutes may, depending upon its construction, effectively bar the use of variable rate mortgage instruments, however. That section provides:

When a rate of interest or charges is specified in any contract, that rate shall continue until full payment is made .... 2 Kan. Stat. Ann. §16-205 (1974).

Whether an association may satisfy §16-205 by the inclusion of a variable rate clause in the loan contract (thus in effect 'specifying' that the rate of interest to be charged on the loan shall vary) and accordingly charge different rates of interest on a loan prior to its full repayment is unclear. If more specificity is required, possibly the addition of a provision establishing maxima and minima rates of interest would suffice.

B. Second Mortgages

Real estate loans secured by mortgages or instruments that create other than a first lien (or the equivalent thereof) against the security property are not authorized. The Code provides that:

Every real estate loan shall be secured by a mortgage or other instrument constituting a first lien, or the full equivalent thereof, upon the real estate securing the loan ....  
2 Kan. Stat. Ann. §17-5507 (Supp. 1975).

The Code does not define the phrase "full equivalent thereof" and is silent as to whether two or more instruments creating successive liens upon the same real estate, one of which is the first mortgage and all of which are owned by the lending association, would collectively be deemed to constitute "the full equivalent" of a first lien for the purposes of §17-5507.

C. Flexible Payment/Balloon Payment Mortgages

In addition to authorizing associations to make direct reduction home loans in amounts not in excess of \$55,000, the Code permits associations to use up to 40% of their assets (or a larger amount with the savings and loan commissioner's approval) to make other types of real estate loans, including the following:

1. Home loans of any amount, which are not direct reduction home loans; and
2. Other real estate loans, whether amortized or unamortized regardless of the amount thereof. 2 Kan. Stat. Ann. §17-550(i), 17-550(j) (Supp. 1975).

Pursuant to this broad authority and subject to both the 40% of assets limitation and an additional provision which prohibits an association from using more than 30% of its assets for loans of any one of the types permitted pursuant to the "forty percent (40%) of asset lending power", associations could make loans secured by real estate having either flexible payment or balloon payment terms.

D. Line of Credit Real Estate Loans

The Code states that upon the adoption of such a loan plan by its board of directors, an association may make:

Line of credit real estate loans for home property, secured or unsecured, subject to such prohibitions, limitations and

conditions as the [savings and loan] commissioner may prescribe. 2 Kan. Stat. Ann. §17-5501(t)(C) (Supp. 1975).

The aggregate amount of all of an association's line of credit real estate loans may not exceed an amount equal to 3% of its assets or all of its surplus, undivided profits and reserves. 2 Kan. Stat. Ann. §17-5501(t)(C) (Supp. 1975).

**E. Home Improvement Loans**

The Code provides that, upon the adoption of such a loan plan by its board of directors, an association may make:

Simple interest, discount or gross charge loans for property alteration, repair, equipping or improvement, without the security of a lien upon such property, subject to such prohibitions, limitations and conditions as the commissioner by regulation may prescribe.

The aggregate amount of all such property improvement loans made by an association may not exceed an amount equal to 20% of the association's assets. 2 Kan. Stat. Ann. §17-5501(t)(B) (Supp. 1975).

**F. Future Advances**

1. The Code states that any mortgage securing a real estate loan may "provide for future advances up to the original amount of the mortgage, for any purpose ...." 2 Kan. Stat. Ann. §17-5507 (Supp. 1975).

2. The Uniform Mortgage Instrument for Kansas contains a non-uniform covenant providing for future advances as follows:

Upon request of Borrower, Lender, at Lender's option prior to release of this Mortgage, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Mortgage, not including sums advanced in accordance herewith to protect the security of this Mortgage, exceed the original amount of the note.

lack of consumer safe-guard provisions (e.g., a provision specifying the index to be used in determining interest rate charges and provisions setting forth other terms, conditions and limitations on such changes) such as those promulgated by both the California and Wisconsin legislatures in conjunction with their express authorization of the use of variable rate mortgage instruments, and also in view of the Act's effective prohibition of the preferred method of interest rate increase implementation (as is discussed below), the latter interpretation seems the more likely one.

Whatever the correct interpretation of §289.451(1) may be, it is clear at least that the Act does not expressly prohibit the use of variable rate mortgage instruments by associations. It is also clear that the Act contains provisions which limit the practicality of the use of such instruments in conjunction with real estate loans written on a direct reduction payment plan. The definition of "direct reduction loan" contained in the Act provides that:

...the initial loan contract shall not provide for any subsequent monthly installment of an amount larger than any previous monthly installment...11 Ky.  
Rev. Stat. §289.011(4) (1972).

Pursuant to this definition, an association would be precluded from making a contract for a loan written with direct reduction payment terms that provided for increases in the amount of the required monthly installment in order to implement interest rate increases pursuant to a variable rate provision. An association in Kentucky could realize increases in the interest rate charged on such a loan by extending the term of the loan, however, provided that both the resulting loan term and interest rate were within the limitations established by the association's board of directors or its bylaws. Id., §289.451(1) (Supp. 1976).

An additional restriction on the use of variable rate mortgage instruments exists in connection with loans in principal amounts of \$15,000 or less. The Kentucky interest and usury statutes provide that the interest charged on such loans may not exceed a rate of 8-1/2% per annum. 13 Ky.  
Rev. Stat. §360.010(1)(a) (Supp. 1976).

### 3. Second Mortgages

Real estate loans secured by mortgages or other instruments not constituting a first lien upon the security property are not authorized. The Act provides that "[e]very real estate loan shall be secured by a mortgage or other instrument constituting...a first lien upon the real estate securing the loan...". 11 Ky. Rev. Stat.

## KENTUCKY

A review of the Kentucky Savings and Loan Act, as amended, 11 Ky. Rev. Stat. §§289.010-289.991 (1972) was undertaken to determine the availability of financial mechanisms which could be used by savings and loan associations ("associations") in Kentucky to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Kentucky law are discussed below.

### A. Variable Rate Mortgages

The Kentucky Savings and Loan Act (hereinafter "the Act") contains a provision concerning direct reduction loans which states:

The board of directors may or the bylaws of the association shall prescribe interest rates which may be variable and may describe the duration of the loan...11 Ky. Rev. Stat. §289.451(1) (Supp. 1976) (Emphasis added).

It is unclear, however, whether the authors of the Act, by using such language, intended to expressly authorize the use of variable rate mortgage instruments or whether they instead merely intended to permit an association's board of directors and/or bylaws to prescribe a range of interest rates rather than one specific interest rate for all of an association's direct reduction loans.<sup>1/</sup> In view of the

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<sup>1/</sup> Section 289.461 of the Act (concerning property improvement loans) uses variable interest rate language similar to that used in §289.451(1), supra. It provides that:

Savings and loan associations may make property improvement loans...at variable rates of interest, but not in excess of those rates provided by Title I of the Federal Housing Act of 1934, as amended, for insured loans...Id., §289.461(2)(a) (Supp. 1976) (emphasis added).

As compared with the wording of §289.451(1), the text of §289.461(2)(a) more strongly suggests that the "variable rates of interest" language is intended to permit an association to make loans of the same type at varying rates of interest (e.g., one loan at 8% per annum and another at 8.5% per annum) rather than to permit an association to vary the rate of interest charged on any one loan during its term.

§289.441(3) (1972). The Act does not define the phrase "constituting...a first lien" and is silent as to whether two or more instruments creating successive liens upon the same real property, one of which is the first mortgage and all of which are owned by the same association, would collectively be deemed to "constitute a first lien" for the purposes of §289.441(3).

#### C. Flexible Payment/Balloon Payment Mortgages

The only real estate loan plan specifically provided for in the Act is direct reduction. 11 Ky. Rev. Stat. §289.451 (Supp. 1976). The regulations governing Kentucky savings and loan associations may permit associations to make real estate loans having flexible or balloon payment terms, however, since the provision of the Act authorizing the issuance of such regulations states that:

Notwithstanding any restrictions elsewhere contained in this chapter, the commissioner [of banking and securities] may prescribe ... regulations authorizing state-chartered associations to make any loans...under the same terms, conditions, limitations, restrictions and safeguards which such associations could make...were they operating as federal savings and loan associations. 11 Ky. Rev. Stat. §289.705(i) (1972).

#### D. Home Improvement Loans

Associations are authorized to make loans to home and/or property owners for the maintenance, repair, modernization and improvement of their properties, with or without security. 11 Ky. Rev. Stat. §289.461(2)(a) (Supp. 1976). Associations may not take any first lien or first mortgage as security for such loans. Id., §289.461(3)(e) (Supp. 1976). The Act does not set a maximum amount for such loans made by an association and not insured pursuant to Title I of the National Housing Act, as amended, or guaranteed pursuant to the Serviceman's Readjustment Act of 1944, as amended, but does provide that the rate of interest charged on property loans not so insured or guaranteed "may not exceed \$6.00 per \$100 per annum and such charges may be made in advance." Id., §289.461(2)(a) (Supp. 1976). The maximum term permitted for such loans is 12 years and 32 days. Id.

#### E. Future Advances

##### 1. The Act provides that...

any mortgage that can be made by an association under the provisions of this

chapter may be made...to secure future advances to be made at the option of the parties up to an amount stated in the mortgage... 11 Ky. Rev. Stat. §289.441(4) (1972).

2. The Uniform Mortgage Instrument for Kentucky contains a non-uniform covenant providing for future advances as follows:

"Upon request of Borrower, Lender, at Lender's option prior to release of this Mortgage, may make Future Advances to Borrower. Such Future Advances, with interest thereon shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Mortgage, not including sums advanced in accordance herewith to protect the security of this Mortgage, exceed the original amount of the Note plus U.S.\$ \_\_\_\_\_. All Future Advances secured by this Mortgage shall be due and payable on or before the maturity date of the indebtedness evidenced by the Note."

## LOUISIANA

A review of Louisiana savings and loan association law, Louisiana Revised Statutes Annotated §§6:701 to :936 (Supp. 1976) (hereinafter the "Statutes") was undertaken to determine the availability of financial mechanisms which could be used by building and loan, savings and loan, homestead, or savings associations (hereinafter "association") in Louisiana to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Louisiana law are discussed below.

### A. Variable Rate Mortgages

Although variable rate mortgages are not expressly authorized, Louisiana savings and loan association law poses no substantial restrictions on their use. Indeed, the Statutes declare that:

Loans eligible for investment by an association ... may be written only upon a plan approved by the commissioner [of state banks] including interest rates to borrowers, maximum percentage loaned on appraised value of collateral, amortization period of loans, and other phases thereof. La. Stat. §6:824 (Supp. 1976).

It would appear that the commissioner has the authority to approve a variable rate mortgage plan which would realize the increase in the rate of interest through an increase in the amount of the periodic payment.

However, it is not possible to reach any final conclusions on this point without benefit of either further information on what plans have in fact been approved by the commissioner or input from the commissioner's office on what plans would meet his approval.

Nothing in Louisiana's interest and usury law would limit an association's ability to use variable rate mortgages. The Statutes provide that the amount of simple conventional interest which may be charged on mortgages on immovable property may not exceed 10% per annum. Further, on those mortgages guaranteed by the Veteran's Administration or insured by the Federal Housing Administration, an interest rate within the maximum limitations set by such agencies may be charged, notwithstanding that such rate of interest may exceed the state maximum. Id. §§9:3503, :3504 (Supp. 1976).

## B. Second Mortgages

In Louisiana, an association may make loans secured by second mortgages on properties on which it has an "existing first mortgage and vendor's privileges". The aggregate of all mortgages and vendor's privileges in favor of an association may not exceed the amount which the association is authorized to lend on any particular property. La. Stat. § 6:834 (Supp. 1976). La. Stat. § 6:822(B) provides that an association may not make loans in excess of the value of the real estate which secures the loans.

The Statutes, in addition, provide a formula for limitations on loans to any one borrower.

No association shall make a real estate loan to one borrower if the sum of (i) the amount of such loan and (ii) the total balances of all outstanding real estate loans owed to such association by such borrower exceeds an amount equal to 10% of such association's savings liability or an amount equal to such association's reserves for losses and undivided profits, whichever is less, except that any loan may be made if the sum of (i) and (ii) does not exceed one hundred thousand dollars. Id., § 6:822(B)(1) (Supp. 1976).

## C. Flexible Payment/Balloon Payment Mortgages

Although the Statutes do not prescribe terms and conditions for mortgage loans, it would appear that the State Bank Commissioner has the authority to approve flexible payment and balloon payment mortgage loans. La. Stat. § 6:824 (Supp. 1976). The provisions of Section 6:824 are quoted in part A of this memorandum.

Additionally, the Statutes authorize state-chartered associations to make those loans which are authorized for federally-chartered associations. Id. § 6:731 (Supp. 1976).

## D. Home Improvement Loans

An association may make loans for the repair, modernization or improvement of property. If secured, such loan may not exceed \$10,000; if unsecured, such loan may not exceed \$5,000. La. Stat. § 6:822(C) (Supp. 1976).

Every loan on home appliances and equipment must be secured by a mortgage and vendor's privilege thereon. Such loan may not exceed 90% of the original invoice price, when new, of the collateral. Id., § 6:833(B) (Supp. 1976).

E. Future Advances

1. During the existence of any vendor's privilege and first mortgage, an association may advance money to the borrower for any purpose. The aggregate of such advances, when added to the balance due on the amount of the original loan and any other advances, may not exceed the amount of the original loan. La. Stat. §6:829 (Supp. 1976).

2. The Uniform Mortgage Instrument for Louisiana contains a non-uniform covenant which provides for future advances as follows:

Lender may make advances to protect the security of this Mortgage pursuant to paragraph 7 hereof and in addition, if this is a Vendor's Lien Mortgage, Lender may at Lender's option prior to release of this Mortgage and upon request of Borrower, make Future Advances to Borrower. Such advances and Future Advances with interest thereon at the rate of .... percent per annum shall be secured by this Mortgage. At no time shall the principal amount of the indebtedness secured by this Mortgage, including advances (to protect the security of the mortgage) and Future Advances made pursuant to this paragraph, if any, exceed the original amount of the Note plus US\$...

## MAINE

A review of Maine savings and loan law, 9-B Maine Revised Statutes Annotated §§771-772 (hereinafter the "Statutes") was undertaken to determine the availability of financial mechanisms which could be used by savings and loan associations (hereinafter the "association") in Maine to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Maine law are discussed below.

### a. Variable Rate Mortgages

Although the Statutes do not expressly authorize the use of variable rate mortgages, there is no provision under the Section treating amortized mortgage loans, 9-B M.R.S.A. §732(3) (1975), which prohibits a subsequent payment greater than any previous payment. Use of the variable rate could also be accomplished by including a clause in the mortgage contract that provides for extension of the maturity date or by originally making the final payment date of the contract later than necessary to complete the amortization.

Additionally, there are no usury provisions in the Statutes which would preclude the use of variable rate mortgages. Indeed, a loan made by a financial institution which is secured by a first mortgage on real estate is not subject to an interest ceiling, provided that such loan is not intended as an evasion of the interest limitations imposed on consumer type loans. 9-B M.R.S.A. §432. (1975).

### b. Second Mortgages

Additional loans upon the same real estate may be made provided that the association holds all prior liens on such real estate. 9-B M.R.S.A. §732(7) (1975).

The Statutes do not specify dollar or asset limitations with respect to second mortgages. However, there are general loan size limitations pertaining to total loans made on the same real estate and to any one borrower. On the same real estate the limit is \$35,000 or 10% of the association's surplus account, whichever is greater. To any one borrower the limit is \$45,000 or 20% of the association's surplus account whichever is greater. 9-B M.R.S.A. §732(10) (1975).

c. Flexible Payments

While no plans for flexible payments are outlined in the Statutes, the section treating "other prudent loans" grants an association the power to make loans which would not otherwise be legal but for this section, provided the directors of the association consider them to be "prudent loans." 9-B M.R.S.A. §736(1) (1975). Loans made under this authority may not exceed 1% of the association's deposits if made to any one borrower nor may the aggregate amount of such loans exceed 10% of the association's deposits. 9-B M.R.S.A. §736(3) (1975).

Additionally, an association which is a member of a Federal Home Loan Bank may exercise all powers and privileges accorded such members under the Federal Home Loan Bank Act provided that such association shall at all times be subject to requirements imposed on associations by state law. 9-B M.R.S.A. §763(2) (1975).

d. Balloon Payments

The Statutes provide for nonamortizing real estate loans under the following conditions: (1) interest must be payable at least semi-annually; (2) maturity of loan may not exceed five years; (3) no loan may exceed 75% of appraised value. 9-B M.R.S.A. §732(4) (1975). Such loans may not, in the aggregate, exceed 20% of the association's assets. 9-B M.R.S.A. §732(5) (1975).

e. Home Improvement Loans

Home improvements loans may be made when evidenced by a written note, whether secured or unsecured. Such loans to any one borrower may not exceed 1% of the association's deposits and the aggregate amount of such loans may not exceed 10% of the association's deposits. 9-B M.R.S.A. §734 (1975). Such loans would be subject to the interest limitations imposed on consumer type loans. 9-B M.R.S.A. §432(2) (1975).

f. Future Advances

1. Any mortgage may be written so as to secure future advances. The total amount of existing indebtedness and future advances outstanding at any one time may not exceed the amount specified in the mortgage. 9-B M.R.S.A. §436(1) (1975).

2. The Uniform Mortgage Instrument for Maine contains a non-uniform covenant which provides for future advances as follows:

"Upon request of Borrower, Lender, at Lender's option prior to discharge of this Mortgage, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Mortgage, not including sums advanced in accordance herewith to protect the security of this Mortgage, exceed the original amount of the Note plus US \$ \_\_\_\_\_."

## MARYLAND

A review of Maryland building or savings and loan association law, Annotated Code of Maryland Art. 23, §§144-161KK (1957) as amended (hereinafter the "Code"), and regulations promulgated thereunder was undertaken to determine the availability of financial mechanisms which could be used by building or savings and loan associations, and homestead associations (hereinafter "association") in Maryland to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Maryland law are discussed below.

### A. Variable Rate Mortgages.

Maryland associations are authorized to invest in mortgages on real estate subject to the Regulations of the Board of Building, Savings and Loan Association Commissioners. Ann. Code Md. Art. 23, §161Z(2) (1973).

Although the regulations neither expressly authorize nor prohibit the use of variable rate mortgages, nothing therein substantially restricts their use. The regulations provide for an amortized, 30 year term mortgage plan. Regs. No. 09.05.73(B)(1). The option of implementing the variable rate through an increase in the amount of the periodic payment and/or an extension of payments within the loan term would appear to be available.

Similarly nothing in the interest and usury law would bar the use of variable rate mortgages. A lender may charge simple interest on a loan secured by residential property not in excess of 10% per annum, subject to several qualifications, two of which require as follows:

The loan is secured by a first mortgage or first deed of trust on any interest in residential real property;  
There is no prepayment penalty in connection with the loan.  
Ann. Code Md. §12-103(b)(ii)-(iii) (1973)

### Second Mortgages.

An association may make a second mortgage on real property which is a second lien provided such association holds the first lien thereon. Ann. Code Md. Art. 23, §161Z(a)(2) (1973). Neither the Code nor the regulations provide dollar or asset limitations

specifically for second mortgages. However, the aggregate amount of any loan upon the security of improved residential property may not exceed 90% of the market value of the security. Regs. No. 09.05.73(B)(1).

C. Flexible Payment Mortgages.

Flexible payment mortgages, although not provided for in the Code or regulations, are implicitly authorized for state-chartered associations which, pursuant to Ann. Code Md. Art. 23, §161Z(e) (1973), become members of a Federal Home Loan Bank and operate under the rules and regulations thereof.

D. Balloon Payment Mortgages.

The regulations provide that unamortized loans may be made on the security of improved property. Such loans may not exceed 70% of the fair market value of the security and the term may not exceed 5 years. Regs. No. 09.05.73(B)(3).

E. Home Improvement Loans.

An association may make loans, for home improvements, which may be secured or unsecured, provided that such loans are made in accordance with the relevant provisions of the National Housing Act. Ann. Code Md. Art. 23, §161Z(a)(5) (1973).

Among the regulatory provisions relating to unsecured home improvement loans are the following:

The maximum principal advance for improvements on any single residential property shall not exceed (\$5,000.00).

Each loan shall be amortized in regular monthly installments within a term not exceeding eight years.

The aggregate outstanding principal balance of all such loans, exclusive of Title I, Property Improvement Loans insured by the Federal Housing Administration under the National Housing Act, as from time to time amended, shall not, at any time, exceed five per cent of the total assets of the association.

Regs. No. 90.05.52(b)-(d).

On such unsecured loans not exceeding \$3,500, a rate of simple interest of 18% per annum may be charged. On such unsecured loans exceeding \$3,500, a rate of simple interest of 12% per annum may be charged. Such rates are subject to several qualifications set forth in Ann. Code Md. §12-103(c) (Supp. 1976).

**F. Future Advances.**

1. The Code stipulates that no mortgage may be a lien for any sum of money in excess of the aggregate principal sum appearing on the face of the mortgage. Ann. Code Md. §7-102(a) (1973).

2. The Uniform Mortgage Instrument for Maryland contains a non-uniform covenant which provides for future advances as follows:

Upon request of Borrower, Lender, at Lender's option prior to release of this Deed of Trust, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Deed of Trust when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Deed of Trust, not including sums advanced in accordance here-with to protect the security of this Deed of Trust, exceed the original amount of the Note.

## MASSACHUSETTS

A review of the Massachusetts cooperative bank laws, 5B Ann. Laws Mass., ch. 170, §§1-53 (1970) was undertaken to determine the availability of financial mechanisms which could be used by cooperative banks in Massachusetts to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Massachusetts law are discussed below.

### A. Variable Rate Mortgages

While the Massachusetts laws regulating the operations of cooperative banks neither expressly authorize nor prohibit the use of variable rate mortgage instruments, such laws do place restrictions on their employment by cooperative banks in conjunction with loans written on a direct reduction plan. The section of the cooperative bank laws concerning "direct reduction mortgage loans" provides that such loans shall require "... fixed monthly payments in substantially the same amount during the term of the loan ...." 5B Ann. Laws Mass., ch. 170 §23(1) (1970). Pursuant to this section, a cooperative bank using a variable rate mortgage in conjunction with a direct reduction loan could only implement an interest rate increase by increasing the amount of the monthly payments to a very limited extent. An association could, however, extend the term of such a loan in order to implement an interest rate increase, provided that the resulting term did not exceed (a) 30 years if the loan is secured by "... a dwelling designed to be occupied by not more than four families and occupied or to be occupied in whole or in part by the mortgagor" or (b) 25 years if the loan is otherwise secured. Id., ch. 170, §24(2) (1970).

The interest rate that a cooperative bank could charge on a loan secured by a first mortgage on real estate pursuant to a variable rate provision would not be limited by the Massachusetts interest and usury laws. Such laws provide that for loans so secured "... it shall be lawful to pay, reserve or contract for any rate of interest or discount." Ann. Laws Mass., ch. 107, §3, ch. 140 §90A (1970).

### B. Second Mortgage

A cooperative bank may make a loan secured by a mortgage constituting other than a first lien on real estate if the

association owns all prior liens. 5B Ann. Laws Mass. §23 Supp. 1975). The cooperative bank laws place no specific limitation on the amount that may be loaned on the security of a second mortgage but do provide generally that:

... the principal sum of any loan secured by a mortgage on any one parcel of real estate shall when made ... not exceed five percent of the aggregate amount of the guaranty fund, surplus and other reserves of the corporation [cooperative bank] or sixty thousand dollars, whichever is greater .... Id., ch. 170, §24 (4) (Supp. 1975).

The cooperative bank laws also provide that

the aggregate liability of any one person outstanding at any one time on real estate loans held by [a] ... corporation [cooperative bank] shall not ... exceed fifty thousand dollars or three percent of the share liabilities of such corporation, whichever is greater .... Id., ch. 170, §24(5) (Supp. 1975).

#### C. Balloon Payment Mortgages ("Common Form Mortgage Loans")

A cooperative bank may make a common form mortgage loan secured by real estate in an amount not in excess of 75% of the value of the real estate securing the loan and for a term not in excess of three years. During the period that the principal balance of the loan is in excess of 70% of the value of the security real estate, the loan must be partially amortized at an annual rate of not less than 2% of the original amount of the loan. Once the principal balance equals or is less than 70% of the value of the security real estate, no amortization of the loan principal need be required. The aggregate principal balance of all such loans made by a cooperative bank, not including loans which have been converted to the "common form" plan, may not exceed an amount equal to 25% of its assets. 5B Ann. Laws Mass. ch. 170 §23(3) (Supp. 1975).

#### D. Flexible Payment Mortgages

A flexible payment plan is not among the real estate loan plans described in the Massachusetts cooperative bank laws. However, such laws do provide that:

Subject to such requirements or limitations as the directors [of the Cooperative Central Bank] may determine, the corporation [cooperative bank], with the assent of the persons obligated on any loan ... may revise, amend, modify ... or otherwise change any of the terms, payments or obligations pertaining to such loans. 5B Ann. Laws Mass. ch. 170, §24(8) (1970).

It would appear that a cooperative bank could, pursuant to that section, effectively make a real estate loan with flexible payment terms by initially writing the loan as a "common form mortgage" (see C, supra) with no or partial amortization required, depending upon the principal amount of the loan, and then, at the end of a period not exceeding three years, convert such loan to a direct reduction loan.

Cooperative banks may also obtain specific regulatory authorization to make loans with flexible payment terms. If twenty-five cooperative banks apply to the Cooperative Central Bank for the authority to invest in loans other than those authorized for investment by the cooperative bank laws, the directors of the Cooperative Central Bank

... may request the commissioner [of bank] ... to authorize cooperative banks, notwithstanding any other provisions of this chapter [170] or general or special law, to invest their funds in any such loans or investments. Id., §26(7) (Supp. 1975).

#### E. Home Improvement Loans

1. A cooperative bank may make a loan or advance of credit, secured or unsecured, for the repair, alteration, improvement or rehabilitation of improved real property, if the cooperative bank holds a mortgage upon the real property to be so repaired, altered, improved or rehabilitated. The aggregate amount of such loans outstanding with respect to any one parcel of property may not exceed \$5,000, nor when

... combined with the balances due on mortgages held by the corporation [cooperative bank] upon said parcel of real estate, exceed the value of said parcel of real estate as then certified by the security committee of such corporation .... 5B Ann. Laws Mass. ch. 170, §26(6) (Supp. 1975).

Such loans may not be written for terms in excess of eight years. The payments on such loans must be made in substantially equal monthly installments and must be such as to amortize the loan, interest and principal, within the loan term. Id.

2. A cooperative bank may make a loan, secured or unsecured, to an owner of improved real estate within its lending area, upon which the cooperative bank holds no mortgages, for the purposes of financing the repair, alteration, improvement or rehabilitation of such real estate or for the equipment of such real estate, under the following conditions provided that:

a. [E]ach such loan shall be evidenced by a note, and may, in the discretion of such [cooperative bank], be secured by a mortgage which shall be a lien on the real estate so loaned upon;

b. [N]ot less than ninety percent of the unpaid balance of such loan shall be guaranteed or insured by a [qualified] mortgage insurance company ...; [and]

c. [T]he note or mortgage shall provide that ... it shall become due and payable simultaneously with the transfer of the mortgaged premises or with the payment of the balance due on any first mortgage of said premises .... 5B Ann. Laws Mass. ch. 170, §26(6A) (Supp. 1975).

Such loans may not be made in amounts in excess of \$7,500 (exclusive of interest and discount) for any one parcel of real estate, may not be made for terms in excess of ten years and are otherwise subject to the conditions and limitations prescribed by the Massachusetts cooperative bank laws for loans made on the security of first mortgages. Id.

#### F. Other Loans

Cooperative banks having assets of \$5 million or more (and other cooperative banks with the written approval of the commissioner of banks) may make a loan or a series of loans, secured or unsecured, to responsible borrowers, evidenced by a note or some other instrument. The amount of interest and other finance charges that a cooperative bank may collect upon such loans is established by regulation. The aggregate amount of such loans made by a cooperative bank to any one person may not exceed \$6,000, exclusive of interest or discount. The excess of any one person's total obligation over \$4,500 must be secured by a first lien on property having a fair market value of at

## MICHIGAN

A review of the Michigan Savings and Loan Association Act of 1964, as amended, 17 Mich. Stat. Ann. §§23.540(101) - 23.540(499)(1971), was undertaken to determine the availability of financial mechanisms which could be used by savings and loan associations and savings associations ("associations") in Michigan to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Michigan law are discussed below.

### A. Variable Rate Mortgages

While the Michigan Savings and Loan Association Act of 1964 (hereinafter "the Act") neither expressly authorizes nor prohibits the use of variable rate mortgage instruments, the Michigan money and interest statutes preclude the use of such instruments by associations in connection with loans secured by first liens on real estate. These statutes provide that:

For the period ending on December 31, 1977, it is lawful for the parties to any note ... or other evidence of indebtedness ... the bona fide primary security for which is a first lien on real property ... to agree in writing to the payment of any rate of interest, but no such note, mortgage ... or other evidence of indebtedness shall provide that the rate of interest initially effective may be increased for any reason whatsoever.

14 Mich. Stat. Ann. §19.15(1c)(2) (Supp. 1976).

### B. Second Mortgages

Although Section 23.540(375)(2) of the Act provides that "every real estate loan shall be secured by a mortgage or other security interest constituting a first lien upon the real estate", a preceding section (§23.540(368e)) states that "no real estate loan shall be made ..." by an association unless there is submitted "... a signed appraisal of the real estate securing the loan, which shall be unencumbered except by prior liens held by the association." Taking the two provisions together it appears that the lien upon real estate created by a second mortgage would be deemed to "constitute a first lien" upon the real estate for the purposes of §23.540(375)(2) if the lending association owns not only the first mortgage but also all other liens or encumbrances that may be upon the real estate securing the second mortgage.

least an amount equal to the amount of such excess obligation. The aggregate balance of all such loans made by a cooperative bank and outstanding at any one time may not exceed an amount equal to 10% of its deposits not in excess of fifty million dollars plus 5% of its deposits in excess of fifty million dollars. 5B Ann. Laws Mass. ch. 170, §26(8) (Supp. 1975).

G. Future Advances

1. The Massachusetts mortgage laws contain a provision stating that sums may be advanced subsequent to the recording of any mortgage on real estate for the purposes of financing:

... repairs, improvements or replacements to, or for taxes or other municipal liens, charges or assessments on the mortgaged premises ....  
6B Ann. Laws Mass. ch. 183, §28A (1970).

The aggregate amount of such sums outstanding plus the balance due on the original amount of the indebtedness may not, at any one time, exceed an amount equal to the amount originally secured by the mortgage.

2. The Uniform Mortgage Instrument for Massachusetts contains a non-uniform covenant providing for future advances as follows:

For the purposes permitted by applicable law and upon request of Borrower, Lender, at Lender's option prior to release of this Mortgage, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Mortgage, not including sums advanced in accordance herewith to protect the security of this Mortgage, exceed the original amount of the Note plus U.S. \$ \_\_\_\_\_.

### C. Flexible Payment/Balloon Payment Mortgages

The Act does not specifically prescribe the real estate loan payment plans that may be used by associations, providing merely that:

Payments on real estate loans shall be applied first to the payment of interest on the unpaid balance of the loan and the remainder on the reduction of principal.  
17 Mich. Stat. Ann. §23.540(374) (1971).

Such language apparently contemplates the use of a direct reduction payment method (indeed, the Act contains a definition of the phrase "direct reduction loan"), but does not, on its face, actually preclude the use of flexible or balloon loan payment methods.

The rules and regulations promulgated by the Michigan savings and loan supervisory authority may describe the loan payment plans that may be used by associations in more detail since the Act provides that such authority "... may adopt rules deemed necessary to enable savings and loan associations to properly carry on the activities authorized under this [A]ct."  
17 Mich. Stat. Ann. §23.540(421) (4) (1971).

### D. Home Improvement Loans

An association is authorized to make secured or unsecured loans to home and/or other real property owners for the maintenance, repair, modernization, alteration or improvement of their properties. If such loans are unsecured, they may not exceed \$10,000 in amount. The maximum term permitted for such loans is established by regulation. An association may charge interest added in advance on any such loan at the rate of 8% per annum or less, on the entire amount of the loan from the date of disbursement to the date of maturity or to the date of the last maturing installment thereof. The Act provides that the entire amount of such loans, with interest thereon, shall be repaid by uniform weekly, semimonthly or monthly installments. 17 Mich. Stat. Ann. §23.540(370e) (1), 23.540(370e) (3) (1971).

### E. Other Loans

The Act provides that an association "... may originate and make secured or unsecured loans not otherwise authorized by this Act in an amount not to exceed \$5,000." 17 Mich. Stat. Ann. §23.540(355) (Supp. 1976). Such loans are to be repayable in "... uniform weekly, semimonthly, monthly, quarterly or

semiannual installments." Associations may charge interest added in advance on any such loan at a rate of 8% per annum or less on the entire amount of the loan. The aggregate amount of all such loans made by an association may not exceed an amount equal to 10% of its assets. Id.

**F. Future Advances**

Although the Michigan statutes contain no provisions concerning the making of mortgages to secure future advances, the Uniform Mortgage Instrument for Michigan contains a non-uniform covenant providing for future advances as follows:

Upon request of Borrower, Lender, at Lender's option prior to release of this Mortgage, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby.

## MINNESOTA

A review of the Minnesota Savings Association Act, as amended, 5 Minn. Stat. Ann. §§51A.01 to 51A.57 (1970), was undertaken to determine the availability of financial mechanisms which could be used by savings associations and savings and loan associations in Minnesota to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Minnesota law are discussed below.

### A. Variable Rate Mortgages

The Minnesota "Conventional Home Loan Assistance and Protection Act" prohibits a savings association or savings and loan association ("associations") from using variable rate mortgages in connection with "conventional loans".\* In addition to tying the maximum lawful interest rate for such loans to the monthly index of U.S. bond yields, that Act provides that:

... a contract rate within the maximum lawful interest rate applicable to a conventional loan ... at the time of the loan closing shall be the maximum lawful interest rate for the term of the conventional loan. Minn. Laws 1976, ch. 300 (1976 Minn. Sess. L. Serv. 3).

### B. Second Mortgages

The Minnesota Savings Association Act (hereinafter "the Act") provides that:

Every real estate loan shall be secured by a mortgage, deed of trust or other transaction constituting a first lien or claim, or the full equivalent thereof, upon the real estate securing the loan ... 5 Minn. Stat. Ann. §51A.38.5 (1970).

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\* The term "conventional loan" is defined as meaning a loan or advance of credit to a noncorporate borrower in an original principal amount of less than \$100,000 which is not insured by the Secretary of Housing and Urban Development or guaranteed by the Administrator of Veteran Affairs. Minn. Laws 1976, ch. 300 (1976 Minn. Sess. L. Serv. 3).

The Act does not define the phrase "full equivalent thereof." In many states (and also in the opinion of the General Counsel of the Federal Home Loan Bank Board (Op. G.C., 10/22/71),\*\* if an association makes a second loan secured by a lien on real estate and it holds the first mortgage on that same real estate, the lien securing the second loan is deemed to be the equivalent of a first lien on the real estate, provided that there are no intervening liens and that the association retains the first mortgage. While the Minnesota Act does not so provide, a reasonable argument could be made that the lien securing a second loan made by a Minnesota association under the above conditions is the full equivalent of a first lien, for the purposes of §51A.38.5.

#### C. Flexible Payment Mortgages

The Savings Association Act specifically describes only direct reduction and unamortized (balloon) real estate loan plans and requires that direct reduction real estate loans on homes or primarily residential property average annually at least 70% of an association's non-liquid assets. 5Minn. Stat. Ann. §51A.37.3 (Supp. 1976).

Associations may be permitted to make real estate loans with other than direct reduction or balloon payment terms, however, since the Act provides that "[r]eal estate loans eligible for investment by an association under sections 51A.01 to 51A.57 may be written ... upon any ... plan approved by the commissioner [of banks]." Id., §51A.38.1 (1970). In addition, the Act gives the commissioner of banks "the right to pass further regulations deemed necessary to enable savings associations to properly carry on the activities authorized ..." in the Act. Id., §51A.42.3(b) (1970) (emphasis added). The Act does not, by its express terms, give the commission that same authority with respect to savings and loan associations.

#### D. Balloon Payment Mortgages

Associations may make loans secured by real estate without requiring amortization of principal but requiring payment of interest not less frequently than semiannually. The term of such a loan may not exceed 5 years. 5 Minn. Stat. Ann. §51A.02.24 (1970). Unamortized loans may not be made for amounts in excess of the value of the security and are otherwise subject to the same limitations as direct reduction loans. Id., §§51A.37.1, 51A.37.9 (1970).

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\*\* FHLBB Annotated Manual of Statutes & Regulations, ¶719, n.6 at 118 (Rev. Ed. 1976).

#### E. Home Improvement Loans

Associations may make loans, secured or unsecured to home and/or property owners for the repairs, alteration, modernization, improvement and equipment of their homes or property. 5 Minn. Stat. Ann. §51A.37.5 (1970). The Savings Association Act contains no provisions setting forth the maximum amount and term permitted for such loans or prescribing the method of payment that must be used in connection therewith.

#### F. Future Advances

1. The Minnesota Savings Association Act provides that "any mortgage that can be made by an association may be made to ... secure future advances to be made at the option of the parties" up to a total amount stated in the mortgage. 5 Minn. Stat. Ann. §51A.38.6 (Supp. 1976).

2. The Uniform Mortgage Instrument for use in Minnesota contains a non-uniform covenant providing for future advances as follows:

Upon request of Borrower, Lender, at Lender's option prior to discharge of this Mortgage, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Mortgage, not including sums advanced in accordance herewith to protect the security of this Mortgage, exceed the original amount of the Note plus U.S. \$ \_\_\_\_\_.

## MISSISSIPPI

A review of the Mississippi Savings and Loan Law of 1962, as amended, 18 Miss. Code of 1972 Ann. §§81-11-1 to 81-11-95 (1973), was undertaken to determine the availability of financial mechanisms which could be used by savings and loan associations, building and loan associations and savings associations (hereinafter "associations") in Mississippi to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Mississippi law are discussed below.

### A. Variable Rate Mortgages

The Mississippi Savings and Loan Law of 1962 (hereinafter "the Law") neither expressly authorizes nor prohibits the use of variable rate mortgage instruments. Assuming that the absence of specific provisions on point would not preclude an association's use of variable rate mortgage instruments, nothing in the Law would substantially restrict an association's ability to use such instruments in connection with loans written on a conventional installment (direct reduction) basis, since the Law contains no provisions that would preclude an association either from increasing the amount of the required monthly payments or from extending the term of such a loan in order to implement interest rate increases pursuant to a variable rate provision.

The law does provide, however, that "no loan shall be made in violation of the usury statutes of this state ...." 18 Miss. Code 1972 Ann. §81-11-31(7) (Supp. 1976). Accordingly, an association using a variable rate mortgage instrument could at no time charge an interest rate on a loan which, when aggregated with the other costs constituting the total loan "finance charge"<sup>1/</sup>

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1/ The Mississippi Code defines "finance charge" for the purposes of §75-17-1(2) as meaning:

... the amount paid or payable by a debtor for receiving a loan ... including, but not limited to interest, brokerage fees ... points, service charges ... or any other cost or expense to the debtor for services rendered or to be rendered to the debtor in making or arranging ... a loan of money ... and for other actual services rendered by the Lender; provided, however ... with respect to a debt secured by an interest in land, bona fide closing costs and appraisal fees ... shall not be included in the finance charge. 17 Miss. Code 1972 Ann. §75-17-1(9) (Supp. 1976).

would result in a yield in excess of 10% per annum. 17 Miss. Code 1972 Ann. §75-17-1(2) (Supp. 1976).

**B. Second Mortgages**

An association may make loans on home property secured by other than first liens if the association owns all "paramount" liens. 18 Miss. Code 1972 Ann. §81-11-31(1) (Supp. 1976). The Code places no specific dollar or loan-to-value limitations on the amount that may be loaned on the security of a second mortgage but provides generally that such loans are to be made in accordance with general rules adopted by the Mississippi Savings and Loan Association Board (hereinafter "the Board"). Id., §81-11-31(11) (Supp. 1976).

**C. Flexible Payment/Balloon Payment Mortgages**

The Law contains no provisions prescribing the payment terms that associations may use in connection with real estate loans. It instead provides generally that an association's authority to make loans secured by home property or by improved real estate "... shall be subject to general rules adopted by the [B]oard." 18 Miss. Code 1972 Ann. §§81-11-31(1), (3), (11) (Supp. 1976).

Such rules may permit associations to make real estate loans having flexible payment and/or balloon payment terms to the same extent as federally chartered associations are permitted to make them since the Law provides that:

... any association organized and operating in compliance with this chapter shall have and possess all the rights, powers, privileges, benefits and immunities of a federal savings and loan association, under such conditions and circumstances as determined by the [B]oard, by general rule. Id., §81-11-47 (Supp. 1976).

In addition, notwithstanding any other provisions of the Law, an association is authorized to make any loan, including a real estate loan, having flexible payment terms if such loan is insured or guaranteed by a private mortgage guaranty insurance company licensed to do business in Mississippi. 18 Miss. Code 1972 Ann. §81-11-31(7) (Supp. 1976).

**D. Home Improvement Loans**

Pursuant to §81-11-31(7) of the Law,<sup>2/</sup> associations may make loans, secured or unsecured, to homeowners for the repair, alteration, or improvement of their properties if such loans are insured or guaranteed by the Federal Housing Administration, the Veteran's Administration or by a private mortgage guaranty insurance company authorized to do business in Mississippi. 18 Miss. Code 1972 Ann. §81-11-31(7) (Supp. 1976). Improvement loans not so insured or guaranteed are not authorized by the Law.

**E. Future Advances**

Although the Mississippi Code contains no provisions concerning the making of mortgages to secure future advances, the Uniform Mortgage Instrument for Mississippi contains a non-uniform covenant providing for Future Advances as follows:

Upon request of Borrower, Lender, at Lender's option prior to release of this Deed of Trust, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Deed of Trust when evidenced by promissory notes stating that said notes are secured hereby.

2/ Section 81-11-31(7) of the Law provides, in part, that:

Notwithstanding any other provisions of this chapter, associations may make any loan which is insured or guaranteed by the Federal Housing Administration, a private mortgage guaranty insurance company licensed to do business in the state, or by the Veteran's Administration. 18 Miss. Code 1972 Ann. §81-11-31(7) (Supp. 1976).

## MISSOURI

A review of the Missouri Savings and Loan Law, as amended, 18A Ann. Mo. Stat. §§369.010-369.369 (Supp. 1976), was undertaken to determine the availability of financial mechanisms which could be used by savings associations and savings and loan associations ("associations") in Missouri to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Missouri law are discussed below.

### A. Variable Rate Mortgages

The Missouri Savings and Loan Law (hereinafter "the Law") neither expressly authorizes nor prohibits the use of variable rate mortgage instruments in conjunction with loans secured by real estate. Assuming that the absence of specific provisions on point does not preclude the use of such instruments, nothing in the Law would restrict an association's ability either to increase the amount of a real estate loan's periodic installments or to extend such a loan's maturity date in order to implement interest rate increases pursuant to a variable rate clause.<sup>1/</sup> An association using a variable rate mortgage in Missouri could at no time charge a rate of interest in excess of 10% per annum, however, since that is the maximum contract rate permitted by Missouri's interest and usury statutes. 21 Ann. Mo. Stat. §408.030 (Supp. 1976).

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<sup>1/</sup> It should be noted that the Law places few restrictions or conditions of any kind on the making of real estate loans by associations, having delegated that responsibility to the director of the division of savings and loan supervision ("director"). 18A Ann. Mo. Stat. §§369.229(2), 369.249 (Supp. 1976). Accordingly, the regulations promulgated by the director should be consulted in order to more conclusively determine the extent to which Missouri associations may use variable rate mortgage instruments. The most recent version of the regulations promulgated pursuant to §369.229 (entitled "Loans") available for our review was issued in 1972. As of 1972, the §369.229 regulations, like the Law, neither expressly authorized nor prohibited the use of variable rate mortgage instruments. In addition, the regulations contained no provisions that would preclude or substantially restrict an association's ability to implement interest rate increases if a variable rate mortgage instrument was to be used by the association in conjunction with a monthly installment, amortized loan.

## B. Second Mortgages

An association may make a loan secured by a lien on real estate which is not a first lien, provided that the association owns and holds the first lien upon such real estate and that there are no intervening liens. 18A Ann. Mo. Stat. §69.229(3) (Supp. 1976). The Law places no limitation on the amount that may be loaned on the security of other than a first lien, but does provide that:

the director of the division of savings and loan supervision ["director"] may from time to time establish such rules and regulations in respect to loans as may be reasonably necessary to assure that such loans are in keeping with sound lending practices...  
*Id.* §369.249 (Supp. 1976). 2/

## C. Flexible Payment/Balloon Payment Mortgages

The Law does not prescribe the specific payment plans that may be used by associations in conjunction with loans secured by real estate. It provides generally that associations are permitted to:

Make loans of any type or kind, approved by the director of the division of savings and loan supervision, secured by mortgage or deed of trust constituting a first lien on real estate...and having an unexpired term of at least five years as may be fixed by the director...18A Ann. Mo. Stat. §369.229(2) (Supp. 1976). 3/

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- 2/ As of 1971, the regulations promulgated pursuant to §369.249 placed no limitations on the amount that may be loaned on the security of other than a first lien on real estate.
- 3/ As of 1972 the regulations promulgated pursuant to §369.229 contained no provisions authorizing the making of loans with flexible payment terms but did authorize the making of unamortized (balloon payment) "term loans" secured by first liens on single family dwellings, dwelling units and/or homes. The regulations placed no limitations on the amount of such loans but did specify that they could not be made for terms in excess of 5 years.

The regulations promulgated by the director in order to implement §369.299 of the Law may authorize state-chartered associations to make real estate loans having flexible payment and/or balloon payment terms to the same extent as such loans may be made by federally-chartered associations since the Law states that the director:

...may by regulation provide that an association shall have all powers, rights and privileges which it would have from time to time if organized and operating in Missouri as a federal association under the laws of the United States. Id., §369.299 (Supp. 1976).<sup>4/</sup>

#### D. Home Improvement Loans

Associations are authorized to make loans for the repair, improvement, rehabilitation or equipping of real estate. Such loans are to be made "...subject to such conditions, provisions and limitations as to amount, period of repayment and aggregate total amount in relationship to the association's total assets as are fixed by regulation of the director...". 18A Ann. Mo. Stat. §369.229(2)(2) (Supp. 1976).<sup>5/</sup>

#### E. Future Advances

1. The Law provides that an association may "...[m]ake any further advances...for any purpose to the extent authorized by the deed of trust evidencing the first lien on the property." 18A Ann. Mo. Stat. §369.229(3) (Supp. 1976).

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4/ No regulations promulgated pursuant to §369.299 were available for our review.

5/ As of 1971, the "miscellaneous loans" regulations promulgated pursuant to §369.229 set forth no percentage of assets limitations for such loans but did specify that such loans need be evidenced by a promissory note, must be payable in monthly installments and could not be made for terms in excess of 7 years.

2. The Uniform Mortgage Instrument for Missouri contains a non-uniform covenant providing for Future Advances as follows:

Upon request of Borrower, Lender, at Lender's option prior to release of this Deed of Trust, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Deed of Trust when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Deed of Trust, not including sums advanced in accordance herewith to protect the security of this Deed of Trust, exceed the original amount of the Note plus US\$                   .

## MONTANA

A review of Montana building and loan association law, Vol. 1 Pt. 2 Rev. Code Mont. 1942, §§7-101 to 7-159. (1968) was undertaken to determine mechanisms which could be used by building and loan and savings and loan associations ("associations") in Montana to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Montana law are discussed below.

### A. Variable Rate Mortgages

The Montana laws regulating the operation of building and loan associations neither specifically authorize nor prohibit the use of variable rate mortgage instruments by such associations. They do provide, however, that an association may not charge interest on a loan secured by real estate "in excess of the maximum legal rate of interest." Vol. 1, Pt. 2, Rev. Code of Mont. 1942 §§7-113(7) (Supp. 1975). Accordingly, an association could charge interest pursuant to a variable rate clause at a rate of not more than 10% per annum or nor more than four (4) percentage points in excess of the discount rate on ninety-day commercial paper in effect at the federal reserve bank in the ninth federal reserve district "[Vol. 3, Pt. 1 Rev. Code Mont. 1942, §47-125 (Supp. 1975)], whichever is greater, on a loan in an amount less than or equal to \$150,000, made for the purchase of real estate

It should be parenthetically noted that on loans, other than loans for the purchase of real estate, to be repaid in one or more deferred installments, an association may not charge interest at a rate in excess of the following schedule:

\$11 per \$100 per year on that portion of the balance not exceeding \$300;

\$9 per \$100 per year on that portion exceeding \$300 but less than \$1,000; and

\$7 per \$100 per year on that portion exceeding \$1,000.

Vol. 1, Pt. 2 Rev. Code of Mont. 1942, §5-527 (Supp. 1975)

The ability of an association to use variable rate mortgage instruments may be further restricted by the Montana building and loan association law provision requiring that (a) when the note or other evidence of the debt requires payment of a loan in periodic installments, such note or other evidence of the debt must "specifically state the actual interest rate charged the borrower upon the unpaid balance of the principal amount at each periodic payment;" and (b) when payment of a loan in periodic installments is not required, "the note or other evidence of the debt shall specifically state the actual rate of interest charged the borrower." Vol. 1, Pt. 2 Rev. Code Mont. 1942, §7-113(13) (Supp. 1975).

B. Second Mortgages

Loans secured by second mortgages on real estate are not authorized by Montana's building and loan association law. That law provides that associations may make loans to their members either on the security of the shares of the association or "on their notes secured by first mortgages on improved real estate..." Vol 1, Pt. 2 Rev. Code Mont. 1941, §7-113(13) (Supp. 1975).

The rules promulgated by the Montana Department of Business Regulation may permit associations insured by the FSLIC to make loans secured by second mortgages on real estate to the same extent that such loans may be made by federal associations, however, since Montana's building and loan association law provides that such insured, state-chartered associations

"...may, in addition to any loan or investment now permitted, make any real estate loan upon terms and conditions set by the department but not to exceed the authority to make real estate loans granted to savings and loan associations chartered by the United States, and domiciled in Montana, the provisions of any laws of this state to the contrary notwithstanding. The additional real estate loans hereby authorized may be made on the same terms and conditions and subject to the same limitations as shall from time to time be permitted by acts of Congress ... or of the [FHLBB] to federally chartered savings and loan associations domiciled in this state." Id. §7-113.1.

C. Flexible Payment/Balloon Payment Mortgages.

Montana's building and loan association law does not specify the payment plans that may be used by associations in connection with loans by first mortgages on real estate. The law states simply that such loans may be made "...upon the terms and conditions which may be provided in [the association's] constitution and by-laws." Vol. 1, Pt. 2 Rev. Code Mont. 1942, §7-113(13)(Supp. 1975).

The "terms and conditions" established by the Montana Department of Business Regulation for loans permitted in addition to those authorized in the Code may specifically authorize state-chartered associations insured by the FSLIC to make loans secured by real estate with either flexible payment or balloon payment terms to the same extent as they may be made by federally chartered savings and loan associations. The statutory provision providing for such additional permitted loans states that:

"The additional real estate loans hereby authorized may be made on the same terms and conditions... as shall from time to time be permitted by acts of Congress...or of the [FHLBB] to federally chartered savings and loan associations domiciled in this state."  
Id. §7-113.1.

D. Home Improvement Loans.

The Montana building and loan association law contains no special provisions authorizing associations to make loans to homeowners for the repair, alteration or improvement of their properties. No unsecured loans are authorized under such law whatsoever.

E. Future Advances.

1. Montana law provides that real property may be mortgaged "...to secure advances then in contemplation but to be made in the future. The total amount of all future advances contemplated and to be subject to mortgage protection must be stated in the mortgage..." Vol. 3, Pt. 1 Rev. Code Mont. 1942, §52-201(1968).

2. The Union Mortgage Instrument for Montana contains a non-uniform covenant providing for future advances as follows:

Upon request of Borrower, Lender, at Lender's option prior to full reconveyance of the Property by Trustee to Borrower, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Deed of Trust when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Deed of Trust, not including sums advanced in accordance herewith to protect the security of this Deed of Trust, exceed the original amount of the Note plus US\$ \_\_\_\_\_.

## NEBRASKA

A review of Nebraska savings and loan association law, Revised Statutes of Nebraska 1943, as amended, §§8-301 to 355 (1974) (hereinafter the "Statutes") was undertaken to determine the availability of financial mechanisms which could be used by savings and loan, building and loan, or savings associations (hereinafter "association") in Nebraska to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Nebraska law are discussed below.

### A. Variable Rate Mortgages

Although variable rate mortgages are neither expressly authorized nor prohibited by the Statutes, nothing contained therein would restrict their use. An association could realize interest rate increases pursuant to a variable rate clause by increasing the amount of the periodic payment and/or an extension of payments within the loan term since the Statutes require only that "[p]ayments on real estate loans shall be applied first to the payment of interest on the unpaid balance of the loan and the remainder on the reduction of principal." Neb. Stat. §8-315(1974). The Statutes do not require that the payments be made in "equal" regular installments.

An interest ceiling of 11 $\frac{1}{2}$  per annum, on loans generally, facilitates the use of variable rate mortgages. Id., §45-101.03 (Supp. 1975).

### B. Second Mortgages

The Statutes would permit an association to make a loan secured by a second mortgage on real estate provided that all prior liens are held by such association. Neb. Stat. §8-319(1) (1974).

Regarding real estate loans generally, the maximum amount which an association may lend upon improved real estate is 95% of the "reasonable normal cash value thereof". Id.

### C. Flexible Payment/Balloon Payment Mortgages

Mortgage loans authorized by the Statutes require repayment on a direct reduction basis. However, a state-chartered

association may make any loan that a federal association doing business in Nebraska is authorized to make. Neb. Stat. §8-319 (7) (1974). Among loans authorized for federally-chartered associations are flexible payment and unamortized mortgages.

D. Home Improvement Loans

An association may make unsecured loans to its members for property alterations, repairs or improvements. Any such loan may not exceed \$5,000, and must be repaid in regular monthly installments within 7 years. Neb. Stat. §8-319(4)(b) (1974).

E. Future Advances

1. Any interest in real property capable of being transferred may be mortgaged to secure future advances to be made at the option of the parties up to a total amount stated in the mortgage. Neb. Stat. §76-238.01(1974).

2. The Uniform Mortgage Instrument for Nebraska contains a non-uniform covenant which provides for future advances as follows:

Upon request of Borrower, Lender, at Lender's option prior to release of this Mortgage, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Mortgage, not including sums advanced in accordance herewith to protect the security of this Mortgage, exceed the original amount of the Note plus U.S. \$ \_\_\_\_\_.

NEVADA

A review of Nevada Savings and Loan Association Law, 25 Nev. Rev. Stat. §§673.001-673.850 (1976), was undertaken to determine the availability of financial mechanisms which could be used by savings and loan or building and loan associations in Nevada to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Nevada law are discussed below.

A. Variable Rate Mortgages.

Although the use of variable rate mortgage instruments is not specifically authorized in the Nevada savings and loan association statutes, little in those statutes or in the Nevada interest and usury statutes would preclude or restrict their use by savings and loan or building and loan associations (hereinafter "associations") in connection with loans secured by real estate.

The Nevada interest and usury statutes provide that parties may agree for the payment of interest at a rate not in excess of 12% per annum, or if the lowest daily prime rate at the three largest United States banking institutions is 9% or more, the maximum legal interest rate that may be agreed to be charged is a rate equal to such lowest daily prime rate plus 3.5%. 4 Nev. Rev. Stat. §99.050 (1976). The ceiling placed on interest rates in Nevada is thus not such as would significantly restrict the use of variable rate mortgage instruments.

Associations could apparently realize increases in interest pursuant to a variable rate clause by increasing the amount of the required monthly installment for a real estate loan written on the direct reduction plan provided that "the loan contract [does] not provide for any subsequent monthly installment of an amount larger than any other previous monthly installment in excess of 50 percent." 25 Nev. Rev. Stat. §673.324 (1976). Associations could also collect the proceeds from interest rate increases by extending the term of the loan. Indeed, the Nevada savings and loan association statutes, while not specifically authorizing the use of variable mortgage instruments, do appear to anticipate (and to facilitate) their use. Such statutes specifically exempt real estate loans "which have been extended in time solely as a result of variances in interest rate during the loan term" from the otherwise applicable 30 year maximum term limitation. Id.

B. Second Mortgages.

The Nevada savings and loan association statutes provide that an association may invest any portion of its funds in loans secured by first lien deeds of trust or mortgages upon real property. If an association holds the first mortgage or deed of trust on real property, and if there are no intervening liens, an association may also make a subsequent loan secured by the same property since the savings and loan law provides that "additional loans or advances on the same property, without intervening liens, shall be deemed to be first liens for the purpose of this chapter. ..." 25 Nev. Rev. Stat. §673.276(2) (1976).

The savings and loan law does not place a specific ceiling on the amount of such additional residential loans or advances but does provide generally that an association may not make loans on the security of home or combination home and business property in excess of 80% of the value of such security property. 25 Nev. Rev. Stat. §673.327(2) (1976). In addition, an association may make loans secured by a "first lien" on a one-family, owner-occupied home in amounts in excess of 80% but not in excess of 90% of the value of the security, subject to various conditions and provided that the total amount of the loan does not exceed \$37,500. Id., §673.328(5) (1976).

C. Flexible Payment Mortgages.

Nevada savings and loan law authorizes associations to use only direct reduction or noninstallment (balloon) payment plans in connection with real estate loans. An association insured by the FSLIC or an association which is a member of a federal home loan bank (as an insured association) presumably may also make real estate loans with flexible payment terms to the same extent as such loans may be made by federally chartered associations since §673.225 of the Nevada savings and loan law provides that, "notwithstanding any other provisions of this chapter," state-chartered associations so qualified "shall possess the same rights, powers, privileges, immunities and exceptions which are possessed by any federally chartered association."

D. Balloon Payment Mortgages.

Loans secured by first liens on real estate may be made without requiring full amortization of principal but with payments of interest required at least semiannually. Such loans may be made for an amount not in excess of 60% of the value of the security and for a term not in excess of 5 years, or, if authorized

by the association's directors, such loans may be made for an amount in excess of 60% but not in excess of 70% of the value of the security property and for a term not in excess of 3 years. 25 Nev. Rev. Stat. §§673.3251, 673.328(4) (1976).

E. Home Improvement Loans.

Associations are authorized to make loans for property alteration, repair or improvement without security if the loan is accepted for insurance under the provisions of the National Housing Act, as amended, or for insurance or guarantee under the provisions of the Serviceman's Readjustment Act of 1944, as amended, and if:

- (a) The net proceeds of any such loan do not exceed \$10,000.
- (b) The property is located in the association's regular lending area.
- (c) Each such loan is evidenced by one or more negotiable notes... or other written evidences of debt.
- (d) The resulting aggregate amount of all such loans does not exceed an amount equal to 15% of the association's assets.

25 Nev. Rev. Stat. §673.329 (1976).

An association may also make loans for property repair, alteration or improvement upon the security of at least a second deed of trust upon the property to be altered, repaired or improved. Such loans may not be made in amounts in excess of \$10,000. Id.

F. Future Advances.

Although the Nevada savings and loan association statutes make no reference to future advances, a covenant providing that a mortgage shall be security for "... any and all additional or future advances on loans which may be made by the mortgagee to the mortgagor" is among the covenants which the parties to any mortgage of real property may agree to adopt by reference pursuant to the Nevada statutes concerning "real mortgages." 5 Nev. Rev. Stat. §106.025(5) (1976).

In addition, the Uniform Mortgage Instrument for Nevada contains a non-uniform covenant providing for future advances as follows:

"Upon request of Borrower, Lender, at Lender's option prior to full reconveyance of the Property by Trustee to Borrower, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Deed of Trust when evidenced by promissory notes stating that said notes are secured hereby."

## NEW HAMPSHIRE

A review of New Hampshire building and loan association law, 4 N.H. Rev. Stat. Ann. §§393:1 - 393:61 (1968) was undertaken to determine the availability of financial mechanisms which could be used by building and loan associations, savings and loan associations and cooperative banks (hereinafter "associations") in New Hampshire to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under New Hampshire law are discussed below.

### A. Variable Rate Mortgages

Although the use of variable rate mortgage instruments is not expressly authorized by the New Hampshire statutes concerning the operation of building and loan associations, savings and loan associations and cooperative banks (hereinafter "associations"), nothing in such statutes prohibits or substantially restricts their use by such associations. Assuming that an absence of specific provisions on point does not preclude the use of variable rate mortgage instruments, an association wishing to use a variable rate mortgage instrument in conjunction with a loan written on a direct reduction plan would be permitted under New Hampshire building and loan association statutes to increase the amount of the required monthly installments in order to implement an interest rate increase. An association could also extend the term of such a loan in order to collect increased interest pursuant to a variable rate provision, provided that the resulting loan term did not exceed 30 years, the maximum term permitted for such loans by the New Hampshire building and loan association statutes. 4 N.H. Rev. Stat. Ann. §393:15 (1968).

Similarly, an association's use of variable rate mortgage instruments in conjunction with loans secured by first mortgages on real property would not be restricted by the New Hampshire interest and usury statutes since such statutes place no limits on the contract interest rate that may be charged on real estate loans so secured. 3 N.H. Rev. Stat. Ann. §336.1 (1966).

### B. Second Mortgages

Associations holding a first mortgage on real estate "... may take a subsequent mortgage or mortgages on the same property provided that there are no intervening liens." 4 N.H. Rev. Stat. Ann. §393:15 (1968).

The New Hampshire building and loan association statutes do not place a specific limitation on the amount that an association may loan on the security of a second mortgage, per se, but do provide generally that:

... no more than thirty thousand dollars or more than one percent of the assets of the association, whichever is greater, [may be] loaned on any one property .... Id., §393:18 (Supp. 1975).

**C. Flexible Payment/Balloon Payment Mortgages**

The New Hampshire building and loan association statutes provide that loans made by an association on the security of real estate "... shall be share sinking fund or direct reduction loans." 4 N.H. Rev. Stat. Ann. §393.15 (1968). The statutes contain no provisions that would permit an association to make real estate loans having either flexible payment or balloon payment terms.

**D. Home Improvement Loans**

Associations may make loans for the repair, alteration, improvement or rehabilitation of improved real estate, without the security of a lien upon such real estate, provided that:

(a) The loan association or cooperative bank is the holder of the first mortgage on the property to be improved; (b) the net proceeds of any such loan do not exceed ten thousand dollars; (c) each such loan is evidenced by one or more negotiable notes; [and] (d) each loan is repayable on demand or in regular monthly installments within a period of ten years. 4 N.H. Rev. Stat. Ann. §393:15-a(II) (Supp. 1975).

**E. Other Loans**

An association may make a loan for any purpose, secured or unsecured, to any one person in an amount not in excess of \$5,000. Such loans are to be repayable upon demand or in regular monthly installments within a period of 5 years. If the association takes a note payable on demand for such a loan, the association must demand payment within one year of the date of the note but may accept a new note in payment of the demand note. 4 N.H. Rev. Stat. Ann. §393.15-2(III) (Supp. 1975).

**F. Future Advances**

Although the New Hampshire statutes contain no provisions concerning the making of mortgages to secure future advances, the Uniform Mortgage Instrument for New Hampshire contains a non-uniform covenant providing for future advances as follows:

Upon request of Borrower, Lender, at Lender's option prior to discharge of this Mortgage, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Mortgage, not including sums advanced in accordance herewith to protect the security of this Mortgage, exceed the original amount of the Note plus U.S. \$ \_\_\_\_\_.

## NEW JERSEY

A review of the New Jersey Savings and Loan Act of 1963, as amended, New Jersey Statutes Annotated §§17:12B-1 to 17:12B-243 (1970) (hereinafter the "Statutes") was undertaken to determine the availability of financial mechanisms which could be used by savings and loan, building and loan associations (hereinafter "association") in New Jersey to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under New Jersey law are discussed below.

### A. Variable Rate Mortgages

Although variable rate mortgages are neither expressly authorized nor prohibited by the provisions of the Statutes specifically covering the powers of associations to make real estate loans, a chapter of the Statutes covering mortgages on real property (whether written by associations or other lenders) implicitly recognizes the validity of variable rate mortgages by providing:

If any mortgage loan or written contract or commitment for such loan provides for an increase in the rate of interest during the term of such loan, or after the execution of a written contract or commitment for such a loan, the increased rate shall not exceed 6% per annum in the case of a loan or written contract or commitment made before the effective date of this act or such rate of interest as may be authorized by law at the time such loan or written contract or commitment for such loan is made in the case of a loan or written contract or commitment for such loan made on or after the effective date of this act. (Emphasis added) N.J. §46:10B-8 (Supp. 1976).

The Attorney General of New Jersey has apparently recognized this implicit grant of authority to associations by recently issuing a formal opinion which stated that state chartered associations may issue variable rate mortgages provided the maximum term does not exceed a period of 40 years and the maximum amount of interest does not exceed the applicable usury ceiling in effect at the time such loan was made. Atty. Gen. F.O. 1976, No. 13.

However, as the quoted portion above indicates, §46:10B-8 (Supp. 1976) substantially restricts the use of variable rate mortgages by limiting any increase in the rate of interest charged on a mortgage loan to that rate of interest authorized by law at the time such loan was made. Given the presently low interest rate of not less than 6% nor more than 9.5%, per annum, as established by the Commissioner of Banking, there is little incentive for the lender to use the variable rate. Id., §31:1-1 (Supp. 1976).

The variable rate could be implemented, nevertheless, in the absence of any lending restrictions to the contrary, by either an increase in the amount of the periodic payment or an extension of payments within the loan term.

#### B. Second Mortgages

Each loan on real estate must be secured by a mortgage thereon which is a first lien. N.J. §17:12B-146 (1970).

The Statutes define a first lien as:

A mortgage upon real property shall be deemed a first lien notwithstanding the existence of a prior mortgage or mortgages held by the association, or liens of taxes or assessments which are not delinquent, building restrictions or other restrictive covenants or conditions, leases or tenancies whereby rents or profits are reserved to the owner, joint driveways, sewer rights, rights in walls, rights-of-way or other easements or encroachments which in the opinion of an officer of the association, designated for that purpose by the board, do not materially affect the security for the mortgage loan. (Emphasis added.) Id., §17:12B-11 (1970).

The Statutes provide no specifics as to dollar or asset limitations on second mortgages. On direct reduction real estate loans generally, the amount of any loan may not exceed 80% of the appraised value of such real estate. Id., §17:12B-147 (Supp. 1976). With respect to "special reduction loans", the amount of any such loan may not exceed the following percentages of the value of such real estate: where the value is up to \$40,000, 90% and where the value is over \$40,000, 80%. Id. §17:12B-150 (Supp. 1976).

Additionally, the Commissioner of Banking may authorize first mortgage loans (such term would appear to comprehend any mortgage which is deemed a first lien) to be made, by associations whose accounts are insured by the Federal Savings and Loan Insurance Corporation, for a greater percentage of value or for a longer term of years than is otherwise limited by the Statutes. However, the Commissioner may not adopt a regulation which would permit an association to make any kind of loan or investment which federal associations are not authorized to make. Id., §17:12B-152 (1970).

C. Flexible Payment Mortgages

The Statutes authorize any association to collect only interest as required periodic payments during the first 5 years of a mortgage loan. N.J. §17:9A-65.1 (Supp. 1976). In addition, §17:12B-147 (Supp. 1976) appears to permit associations to vary the amount of each periodical payment by permitting:

Any association...[to]...reduce the amount of periodical payments provided that the amount of the periodical payments thereafter required shall be sufficient to pay the balance of the loan and interest thereon within a period of 40 years or less from the time of making such agreement.

In addition, §17:12B-152 (1970) empowers the Commissioner of Banking to promulgate regulations which would authorize an association whose accounts are insured by the Federal Savings and Loan Insurance Corporation "to make any other loan or investment for a purpose not specifically authorized by [the Statutes]", but further stipulates that the Commissioner may not adopt a regulation which would permit an association to make any kind of loan or investment which Federal associations are not specifically authorized to make. §17:12B-153 (1970) of the Statutes instructs the Commissioner, when issuing such regulations, "to the extent feasible and after giving consideration to the financial and economic circumstances and the public welfare, endeavor to promulgate such rules and regulations in substantial conformity with similar rules and regulations of the Federal Home Loan Bank Board as applied to Federal associations".

D. Balloon Payment Mortgages.

Each straight mortgage loan, the principal of which is repayable within 3 years, with no interim amortization required, may not exceed 50% of the appraised value of the property. An association may renew any straight mortgage held by it for not to exceed 3 years and 50% of appraised value. The total amount in-

vested in straight mortgages may not exceed 10% of an association's assets. N.J. §17:12B-149 (1970).

E. Home Improvement Loans.

Unsecured loans for purposes of home improvement may be made in an amount not to exceed \$15,000 per borrower and the maturity may not exceed 15 years and 32 days. Payments must be made in substantially equal installments. The aggregate of such loans may not exceed 10 percent of an association's assets. N.J. §17:12B-159 (Supp. 1976).

The Commissioner of Banking may provide a rate of interest as high as 15% per annum on any such loan. Id., §17:12B-160 (Supp. 1976).

F. Future Advances.

1. The Statutes provide that an association may make future advances for any purpose expressly or implicitly reserved or provided for in any mortgage. Any future advance must be evidenced by an obligation secured by a mortgage on real estate on which the association already holds a mortgage lien. N.J. §17:12B-156(a) (1970).

2. The Uniform Mortgage Instrument for New Jersey contains a non-uniform covenant which provides for future advances as follows:

Upon request of Borrower, Lender, at Lender's option prior to release of this Mortgage, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this mortgage when evidenced by promissory notes stating that said notes are secured hereby. At no time shall Future Advances secured by this Mortgage, not including sums advanced in accordance herewith to protect the security of this Mortgage, exceed US \$3,500, nor shall such Future Advances plus the unpaid principal balance of the Note exceed the original principal amount of the Note.

## NEW MEXICO

A review of the New Mexico Savings and Loan Act, as amended, 7 N. Mex. Stat. 1953, §§48-15-45 to 48-15-151 (Supp. 1975), was undertaken to determine the availability of financial mechanisms which could be used by savings associations and savings and loan associations ("association") in New Mexico to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under New Mexico law are discussed below.

### A. Variable Rate Mortgages

The New Mexico Savings and Loan Act (hereinafter "the Act") neither expressly authorizes nor prohibits the use of variable rate mortgage instruments in conjunction with loans secured by real estate. Assuming that the absence of specific provisions on point does not preclude the use of such instruments by associations in New Mexico, nothing in the Act would substantially restrict an association's ability to increase the amount of a real estate loan's required periodic installments in order to implement an interest rate increase pursuant to a variable rate provision. An association could also extend the term of a loan secured by real estate in order to realize an increase in the rate of interest charged on the loan, subject to the 30 year maximum term limitation established by the Act. 7 N. Mex. Stat. 1953, §48-15-83(C) (Supp. 1975). The rate of interest that an association would charge on a secured loan pursuant to a variable rate provision could at no time exceed 10% per annum, however, since that is the maximum rate permitted by the New Mexico interest and usury statutes for such loans. 8 N. Mex. Stat. 1953, §50-6-16 (1962).

### B. Second Mortgages

An association may make a loan secured by a lien other than a first lien upon real estate provided that every prior lien of record upon the real estate is owned by or subordinated to the association. 7 N. Mex. Stat. 1953, §§48-15-80, 48-15-83(F) (Supp. 1975). The Act places no specific dollar or loan to value limitations on the amount that an association may loan on the security of other than a first lien on real estate, but provides generally that no loan made upon the security of real estate upon which is located or will be located a home, homes or a combination of home and business property may be made in an amount in excess of 80% of the value of such real estate. The Act also states that a loan made upon the security of a single-family dwelling may be made for an amount not in excess of 90% of the value of the security real estate if the association meets certain net worth and percentage of assets requirements and if the dollar amount of the loan is not in excess of the maximum established by the New Mexico savings and loan supervisor. 7 N. Mex. Stat. 1953, §48-15-83(A) (Supp. 1975).

### C. Flexible Payment/Balloon Payment Mortgages

The Act does not prescribe the specific payment plans that an association may use in connection with loans secured by real estate and thus neither expressly authorizes nor prohibits the making of real estate loans with flexible and/or balloon payment terms. The regulations promulgated by the New Mexico savings and loan supervisor pursuant to the Act may, however, grant a state-chartered association express authority to make such loans to the same extent as they may be made by federally-chartered associations if the state-chartered association is a member of a federal home loan bank and if its assets are insured by the Federal Savings and Loan Insurance Corporation. The Act provides that an association so qualified shall possess

...such additional rights, powers, privileges, immunities and exceptions which the supervisor may grant...and provide for by regulations...[p]rovided...that every such additional right, power, privilege, immunity and exception so granted...and provided for by the supervisor are also possessed by federally-chartered associations at the time such regulation is promulgated. 7 N. Mex. Stat. 1953, §48-15-94 (Supp. 1975).

### D. Home Improvement Loans

Associations are authorized to make unsecured loans for the alteration, repair, improvement or equipment of residential real property, provided that such property is located in the association's regular lending area and that the loans are evidenced by notes or other written evidences of debt. The aggregate amount of all such loans made for the same property alteration, repair or improvement and the aggregate amount of the unpaid net proceeds of all loans made for the equipping of any one property may not exceed \$5,000. Such loans may not have a term in excess of ten years and 32 days and must be repayable in equal weekly, biweekly, monthly, bimonthly or quarterly installments except that the first and final payments may be made in amounts of not less than 1/2 nor more than 1-1/2 times the amount of the regular loan installment.

The aggregate amount of all loans made by an association for the equipping of residential property may not exceed an amount equal to 5% of the association's assets. The aggregate amount of all the property improvement loans (including equipping loans) made by an association may not exceed an amount equal to 20% of the association's assets. 7 N. Mex. Stat. 1953, §48-15-88(A) (Supp. 1975).

#### E. Future Advances

Although the Act authorizes the making of advances to protect the security of an association's interest in real property (7 N. Mex. Stat. 1953, §48-15-84 (Supp. 1975)), it contains no provisions concerning the making of mortgages to secure future advances for other purposes. The Uniform Mortgage Instrument for New Mexico, however, contains a non-uniform covenant providing for future advances as follows:

Upon request of Borrower, Lender at Lender's option prior to release of this Mortgage, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby.

## NEW YORK

A review of New York savings and loan association law, New York Banking Law §§375-411 (McKinney 1971) (hereinafter the "Laws") and regulations promulgated thereunder by the Banking Board of New York was undertaken to determine the availability of financial mechanisms which could be used by savings and loan associations or any corporation organized under or subject to the provisions of the above referenced law in New York to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under New York law are discussed below.

### A. Variable Rate Mortgages

Although the Laws neither expressly authorize nor prohibit the use of variable rate mortgages, the Laws do provide some obstacles to their implementation.

The Laws implicitly recognize the right of an association to increase the interest rate on loans by providing that "if any loan ... provides for an increase in the rate of interest during the term of such loan ..., the increased rate shall not exceed such rate of interest as may have been authorized by law at the time such loan ... was made." N.Y. Gen. Obl. Law §5-501(4) (McKinney Supp. 1976). It is apparent that the limitation on the amount of any increase in the interest rate is rather restrictive. The extent of the restriction is made even more apparent when one notes that the banking board has set the rate of interest on loans secured by a mortgage on real estate at 8.5% per annum. 3 Rules and Regs. N.Y. §4.1 (1975). This rate effectively discourages the use of variable rate mortgages by making the established maximum rate so low as to deny any incentive to the lender to initially agree to a lower rate.

If the banking board were to raise the interest ceiling to a rate which would encourage the use of variable rate mortgages, the variable rate might be implemented by including a clause in the mortgage contract that provides for extension of the maturity date or by originally making the final payment date of the contract later than necessary to complete the amortization. The variable rate could not be implemented by an increase in the amount of the periodic installment payment of interest and principal given the requirement that the amounts of such payments cannot be increased in the case of loans for terms not exceeding 40 years, and in the case of loans for terms not exceeding 15 years, no subsequent periodic payment can be substantially greater than any previous periodic payment. N.Y. Bank. Law §§380(1)(a)(2)-(3) (McKinney Supp. 1976).

## B. Second Mortgages

An association may make a lien upon the security of a mortgage which is not a first lien if all prior liens are owned by such association. N.Y. Bank Law §380(4)(a) (McKinney 1971)

The Laws specify that whenever loans are made upon the same real estate, the limitation of amount applicable to the loan is determined by segregating that portion of the appraised value of the premises necessary to sustain the prior mortgage. The limitation of amount applicable to the additional mortgage is then determined with reference only to the remaining portion of the appraised value. Id.

## C. Flexible Payment/Balloon Payment Mortgages

1. The partially amortized plan permitted by the Laws requires payments of principal and interest not less frequently than annually. The term of such loan may not exceed 15 years. The contract may require subsequent payments in an amount greater than any previous payment. Periodic payments of principal may be less than sufficient to effect full repayment of the principal within the term of the loan. However, at least 10% of the loan must be paid within the term of the loan and full repayment of principal and interest is required at the expiration of the loan term. N.Y. Bank Law §380(1)(a)(4) (McKinney Supp. 1976).

2. Unamortized loans secured by a mortgage upon real estate may be made for a term not exceeding 5 years. Payment of interest is required not less frequently than annually and no loan may exceed 75% of the appraised value of the real estate. Id., §380(1)(a)(4-a) (McKinney Supp. 1976).

3. Additionally, those state-chartered associations which are members of a Federal Home Loan Bank may exercise all powers and privileges, conferred upon such members by the Federal Home Loan Bank Act, which are not in conflict with state law. Id., §382(2) (McKinney 1971).

## D. Home Improvement Loans

An association may lend its funds to its members upon their notes for the purpose of financing home improvements. The amount of such loan may not exceed \$10,000 and the maturity may not exceed 121 months. The loan must be repaid in equal or substantially equal monthly installments and, regarding the interest on such loan:

[T]he maximum amount [of interest] ... shall be six dollars per annum discount per one hundred dollars of the face amount of the loan if the maturity thereof does not exceed

sixty one months and five dollars per annum discount per one hundred dollars on the face amount of the loan if the maturity thereof exceeds sixty one months, but in no event shall the interest charged as to any loan authorized by this paragraph exceed a rate of one per centum per month. N.Y. Bank Law §380(2)(b) (McKinney Supp. 1976).

**E. Other Loans**

The Laws authorize an association to engage in line of credit financing of residential real estate:

A savings and loan association is authorized to invest an amount, not exceeding the lesser of (a) ten per centum of the sum of its surplus, undivided profits, and reserves or (b) one per centum of its assets, in loans or in interests therein the principal purpose of which is to provide financing with respect to ... residential real estate within this state, where (i) the association relies substantially for repayment on the borrower's general credit standing, with or without other security, or (ii) the association relies on other assurances for repayment, including but not limited to a guaranty or similar obligation of a third party, and, in either case described in clause (i) or (ii), regardless of whether or not the association takes security. N.Y. Bank Law §380-g. (McKinney Supp. 1976).

**F. Future Advances**

Although no reference to future advances was found in the Laws, the Uniform Mortgage Instrument for New York contains a non-uniform covenant which provides for future advances as follows:

Upon request of Borrower, Lender, at Lender's option prior to release of this Mortgage, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Mortgage, not including the sums advanced in accordance herewith to protect the security of this Mortgage, exceed the original amount of the Note plus U.S. \$ \_\_\_\_\_.

## NORTH CAROLINA

A review of the North Carolina building and loan association statutes, 2B Gen. Stat. N.C. §§54-1 to 54-166 (1975), was undertaken to determine the availability of financial mechanisms which could be used by building and loan and savings and loan associations ("associations") in North Carolina to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. A discussion of these financial mechanisms and their availability under North Carolina law is set forth below:

### A. Variable Rate Mortgages

The North Carolina building and loan association statutes, while neither expressly authorizing nor prohibiting the use of variable rate mortgage instruments, contain no provisions that would substantially restrict their use by associations. Assuming that the absence of specific provisions on point does not preclude the use of such instruments, a North Carolina association using a variable rate mortgage in conjunction with a loan written on a direct reduction payment plan could implement an interest rate increase by increasing the amount of the required periodic payments. An association could also extend the term of such a loan in order to realize an increase in the interest rate, provided that the resulting loan term was not in excess of the maximum term established by the Commissioner of Insurance of North Carolina. 2B Gen. Stat. N.C. §54-20 (1975).

The interest rate that could be charged by an association on a home loan 1/ secured by a first mortgage or first deed of trust pursuant to a variable rate mortgage instrument would not be limited by North Carolina's interest and usury statutes since the parties to such loans are permitted to "... contract in writing for the payment of interest as agreed upon by the parties." 1D Gen. Stat. N.C. §24-1A (1975).

### B. Second Mortgages

An association may make a loan secured by a second mortgage or deed of trust on real estate provided that all prior liens on such real estate are owned by the association. 2B Gen. Stat. N.C. §54-19 (1975). If the association makes a second mortgage loan within a year from the date of the making of the first mortgage on the real estate securing such loan, the amount of the second mortgage loan may not exceed "... 20% of the original

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1/ The North Carolina statutes define "home" as "... real estate upon which there is located or there is to be located one or more single-family dwellings or dwelling units" for the purposes of §24-1.1A(a). 1D Gen. Stat. N.C. §24.1.1A(e) (Supp. 1975).

amount of the loan secured by the first security instrument on such real property." 1D Gen. Stat. N.C. §24-1.2(b) (Supp. 1975).

#### C. Flexible Payment/Balloon Payment Mortgages

The North Carolina building and loan association statutes contain no provisions authorizing associations to make real estate loans having either balloon or flexible payment terms. The statutes provide that an association

... may, unless specifically prohibited by [its] certificate of incorporation, constitution or bylaws ... permit borrowing members to repay their indebtedness by a direct monthly or periodical reduction of principal method (2B Gen. Stat. N.C. §54-20 (1975)),

but are otherwise silent as to permissible loan repayment terms. Section 54-21.2 of the North Carolina building and loan association statutes does provide, however, that:

Subject to such regulations and limitations as the Administrator of the Savings and Loan Division [of North Carolina] may prescribe, any such association is authorized and permitted to make any loan or investment permitted to be made by any federal savings and loan association by the Congress of the United States, Federal Home Loan Bank Board and Federal Savings and Loan Insurance Corporation. Id., §54-21.1(b) (Supp. 1975).

Thus, the regulations promulgated by the Administrator, though not available to us on this date, may permit associations chartered in North Carolina to make loans with balloon payment or flexible payment terms to the extent that such loans may be made by federally-chartered associations.

#### D. Home Improvement Loans

Associations are authorized to make loans for the improvement, alteration, repair or equipping of real property in accordance with the rules and regulations governing such loans promulgated by the Administrator of the Savings and Loan Division. Such loans may not exceed \$7,500 in amount and may be secured or unsecured. The combined total of such improvement loans and of loans secured by nonresidential real property

made by an association and outstanding at any one time may not exceed an amount equal to 19% of the association's assets. 2B Gen. Stat. N.C. §54-21.4 (1975).

E. Future Advances

1. Section 45-68 of the North Carolina mortgage statutes states that a security instrument may secure future advances if it

... shows:

- a. That it is given wholly or partly to secure future obligations which may be incurred thereunder;
- b. The amount of present obligations secured and the maximum amount, including present and future obligations, which may be secured thereby at any one time; [and]
- c. The period within which such future obligations may be incurred, which period shall not extend more than ten years beyond the date of the security instrument  
.... 2B Gen. Stat. N.C. §45-68(1) (Supp. 1975).

2. The Uniform Mortgage Instrument for North Carolina contains a non-uniform covenant providing for future advances as follows:

Upon request of Borrower, Lender, at Lender's option within ten years of the date of this Deed of Trust or any amendments thereto, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Deed of Trust when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Deed of Trust, not including sums advanced in accordance herewith to protect the security of this Deed of Trust, exceed the original amount of the note plus U.S. \$ \_\_\_\_\_.

NORTH DAKOTA

A review of North Dakota building and loan association law, North Dakota Century Code Annotated §§7-01-01 to 7-08-06 (1975) (hereinafter the "Code") was undertaken to determine the availability of financial mechanisms which could be used by savings and loan, and building and loan associations (hereinafter "association") in North Dakota to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under North Dakota law are discussed below.

A. Variable Rate Mortgages.

Although the Code neither expressly authorizes nor prohibits the use of variable rate mortgages, there are several restrictions on their use. The Code requires that amortized loans be repaid in equal installments and within the time agreed upon. N.D.C.C. §7-04-13 (1975). Although the amount of the periodic payment may not be increased, use of the variable rate could be accomplished by an extension of payments within the loan term.

The 12% per annum ceiling on interest collected on loans generally by an association facilitates the use of variable rate mortgages. Id., §7-02-04 (1975).

B. Second Mortgages.

The Code provides that:

"When an association holds a mortgage on real property which is a first and prior lien thereon, the association may increase its loan thereon and secure the same by a second or subsequent mortgage payable in installments." N.D.C.C. §7-04-13 (1975).

Regarding the permissible percentage of loan to value for real estate generally, such percentage as is permitted for federally-chartered associations is also legal for any federally insured state-chartered association. Id., §7-04-13 (1975). Any loan exceeding \$20,000 must be approved by two-thirds of the board of directors of an association. Id., §7-04-16 (1975).

C. Flexible Payment Mortgages.

Flexible payment plans are not provided for in the Code. However, powers granted federally-chartered associations are extended to state chartered associations having insurance of accounts with the Federal Savings and Loan Insurance Corporation. Id., §7-02-14 (1975). Among such powers would be the ability to grant flexible payment mortgages.

D. Balloon Payment Mortgages

Unamortized loans which are secured by a mortgage may be given for a "fixed period." The loan may not exceed 50% of the cash value of the property. No association may make straight loans on real property in excess of 10% of such association's assets. N.D.C.C. §7-04-13 (1975).

E. Home Improvement Loans.

There is no specific provision for home improvement loans in the Code. Apparently, such loans must be made on the security of a mortgage or a pledge of shares and in accordance with such mortgage payment plans and asset limitations as are imposed on general real estate loans.

F. Future Advances.

1. Any association may advance funds or make additional loans to a mortgagor up to the original amount as stated in the mortgage or \$2,500, whichever is less. N.D.C.C. §6-03-05.1 (1975).

2. The Uniform Mortgage Instrument for North Dakota contains a non-uniform covenant which provides for future advances as follows:

For the purposes permitted by applicable law and upon request of Borrower, Lender, at Lender's option prior to release of this Mortgage, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby. At no time shall Future Advances secured by this Mortgage, not including sums advanced in accordance herewith to protect the security of this Mortgage,

exceed US \$2,500 nor shall such Future Advances plus the unpaid principal balance of the Note exceed the original amount of the Note.

## OHIO

A review of Ohio building and loan association law, Ohio Rev. Code Ann. §§1151.01-1151.99, 1153.01 - 1153.99, 1155.01 - 1155.99 and 1157.01 - 1157.99 (1971) was undertaken to determine the availability of financial mechanisms which could be used by building and loan associations in Ohio to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Ohio law are discussed below.

### A. Variable Rate Mortgages

Although variable rate mortgages are not expressly authorized, Ohio building and loan association law contains nothing that would bar or substantially restrict their use by state-chartered building and loan associations. Associations could realize interest rate increases pursuant to a variable rate clause by increasing the amount of the required periodic installments on a conventional loan since the Code provision concerning such loans states that the regular periodic payments may be "equal or unequal" as long as they are sufficient to retire the debt within the contract period. Ohio Rev. Code Ann., §1151.29(D) (Supp. 1975).

Similarly, nothing in Ohio's interest and usury law would limit an association's ability to use variable rate mortgage instruments. The Ohio Code provides that a building and loan association may assess and collect such interest and premium on the loans it makes as are provided for in its constitution and by-laws and further provides that "such assessments shall not be deemed usury, although in excess of the legal rate of interest." Ohio Rev. Code Ann. §1151.21 (1971).

### B. Second Mortgages

A building and loan association is authorized to make second mortgage loans provided that

"it shall not charge, collect or receive interest, finance charges and penalties in excess of the maximum rate or amount which competing lenders, chartered, licensed or authorized to do business in this state are permitted to charge by law for the same type loan. Ohio Rev. Code Ann. §1151.343 (B) (Supp. 1975).

The maximum interest rate permitted for second mortgage loans is 8% per annum computed on the original principal amount of the loan for the full term of the loan contract. Id., §1321.57 (Supp. 1975).

The amount of a second mortgage loan may be equal to, but not in excess of, an amount that could be loaned under a first lien on real property. Id., §1151.343 (B) (2) (Supp. 1975).

The aggregate balance of all second mortgage loans and of other loans authorized under §1151.343 (e.g., lines of credit to a builder) made by an association may not exceed an amount equal to 3% of the association's total assets, if the sum of the association's permanent stock, general reserves, surplus and undivided profits is less than or equal to 5% of its total assets. If that sum is greater than 5% of its total assets, the aggregate balance of all second mortgage loans and of other loans authorized under §1153.343 made by an association may range from 3% to 10% of the association's total assets depending on the amount by which that sum exceeds the 5% level.

#### C. Flexible Payment Mortgages

The only mortgage loan plans specifically authorized by Ohio building and loan association law are conventional installment and unamortized plans. Flexible payment mortgages may be permitted by regulation, however, since the Code does authorize the superintendent of building and loan associations to permit state-chartered associations to exercise such rights, powers, privileges or benefits as Federal savings and loan associations doing business in Ohio are authorized to exercise. Ohio Rev. Code Ann. §1155.18(1971).

#### D. Balloon Payment Mortgages

An association may make a loan secured by improved residential property or a combination of business and residential property without requiring amortization of principal but requiring payment of interest not less often than semi-annually, either for a term not to exceed five years and in an amount not to exceed 60% of the appraised value of the security or for a term not to exceed two years and in an amount not to exceed 80% of the value of the security. Ohio Rev. Code Ann. §1151.29(C) (Supp. 1975).

#### E. Home Improvement Loans

A building and loan association may make a loan "secured by pledge of any negotiable evidence of debt" for property repair, alteration or improvement or for the equipping of any residential property. Such loans may not exceed \$10,000 in amount nor exceed 15 years and 32 days in term and are to be repayable in regular, periodic installments, made at least quarterly. The aggregate balance of all such loans made by an association may not exceed an amount equal to 20% of the association's assets. Within that limitation, loans made for the equipping of residential property may not exceed an amount equal to 5% of the association's assets. Ohio Rev. Code Ann. §1151.295(A) (1976 Leg. Bull. 2).

#### F. Future Advances

a. The Code provides that "... a mortgage may secure unpaid balances of loan advances made after the mortgage is delivered to the recorder for record, to the extent that the total unpaid loan indebtedness, exclusive of interest thereon, does not exceed the maximum amount of loan indebtedness which the mortgage states may be outstanding at any one time." Ohio Rev. Code Ann. §5301.232(A) (1971).

b. The Uniform Mortgage Instrument for Ohio contains a non-uniform covenant providing for future advances as follows:

Upon request of Borrower, lender, at lender's option, prior to release of this Mortgage, may make future advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Mortgage, exceed the original amount of the Note plus U.S. \$ \_\_\_\_\_.

## OKLAHOMA

A review of the Oklahoma Savings and Loan Code of 1970, as amended, 18 Okla. Stat. Ann. §§381.1-381.70 (Supp. 1975), was undertaken to determine the availability of financial mechanisms which could be used by a savings and loan or building and loan association in Oklahoma to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under the Oklahoma law are discussed below.

### A. Variable Rate Mortgages.

Although Oklahoma savings and loan association law does not expressly authorize the use of variable rate mortgage instruments, nothing in such law would bar their use or substantially restrict their implementation by a savings and loan association or building and loan association ("association"). In fact, the enabling provision regarding loans secured by mortgages on real property simply states, in relevant part, that:

[Savings and Loan Associations] shall have the power to make and invest in loans as follows:

\* \* \*

2. Loans secured by mortgage or deed of trust covering real property... 18 Okla. Stat. Ann. §381.57(2) (Supp. 1975).

The practicability of variable rate mortgages in Oklahoma is limited, however, by the 10% per annum maximum contract interest rate established by Article Fourteen, Section 2 of the Oklahoma Constitution.

### B. Second Mortgages

As noted above, 18 Okla. Stat. Ann. §381.57(2) (Supp. 1975) authorizes associations to make or invest in loans secured by a mortgage or deed of trust covering property but does not specify whether or not such mortgage or deed of trust need constitute a first lien, or the full equivalent thereof, upon the property securing the loan. Since a second mortgage loan is a loan secured by a mortgage on real property, and since there is no prohibition of such second mortgages in the savings and loan association law, a reasonable argument could be made that a savings and loan association could make such loans.

C. Balloon Payments/Flexible Payment Mortgages.

The Oklahoma savings and loan association statutes contain no requirements or specifications as to the real estate loan payment terms that may be used by associations. In addition, there are no prohibitions with respect to balloon payments or flexible payments.

D. Home Improvements Loans.

Associations are authorized to make loans for "the repair, equipping, alteration or improvement of real property, secured or unsecured. ..." Such loans may not be made in amounts in excess of \$10,000 unless they are insured or guaranteed under the provisions of the National Housing Act, as amended, or under the provisions of other laws of the United States. 18 Okla. Stat. Ann. §381.57(5) (Supp. 1975).

E. Future Advances.

Although Oklahoma savings & loan association law contains no provisions concerning the making of mortgages to secure future advances, the Uniform Mortgage Instrument for Oklahoma contains a non-uniform covenant providing for future advances as follows:

"Upon request of Borrower, Lender, at Lender's option prior to release of this Mortgage, may make future advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating said notes are secured hereby."

## OREGON

A review of the Oregon Savings Association Act, as amended, 5 Ore. Rev. Stat. §§782.002 - 782.656 (1975) was undertaken to determine the availability of financial mechanisms which could be used by savings associations in Oregon to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Oregon law are discussed below.

### A. Variable Rate Mortgages

The Oregon Savings Association Act (hereinafter "the Act") neither expressly authorizes nor prohibits the use of variable rate mortgages by savings associations (hereinafter "associations"). The Act contains no provisions that would either preclude an association from increasing the amount of the required monthly payment on a conventional installment loan or from extending the term of such a loan in order to realize interest rate increases. The interest rate charged on a loan in an amount not in excess of \$50,000 could at no time exceed a rate of 10% per annum, however, since that is the maximum rate of interest permitted under Oregon's interest and usury statutes for loans of that size. 1 Ore. Rev. Stat. §§82.010(2), 82.010(4) (1975).

### B. Second Mortgages

The Savings Association Act states that associations may make loans secured by second mortgages if either the association holds the first mortgage (which it may not sell until the second mortgage is paid in full) or if the second mortgage includes an agreement by the borrower to pay the monetary obligations of the borrower under the first mortgage and also includes a provision that the association is entitled to be subrogated to all rights of the borrower under the first mortgage. 5 Ore. Rev. Stat. §722.322(3) (1975).

The Act also provides that a mortgage shall not be subject to any prior mortgages, liens or encumbrances against the property unless the aggregate amount of such mortgages and any prior mortgages, liens, or encumbrances does not exceed 100% of the appraised value of the property. Id., §722.322(5) (1975). The Act further provides that:

A savings association shall lend no more than five percent of its total assets on the security of one property or to one person. However, an association with assets under \$500,000 may lend up to a maximum of \$40,000 in loans on one property or to one person. (Id., §722.354(1)(1975).

#### C. Flexible Payment Mortgages

The Oregon Savings Association Act does not prescribe specific loan payment terms that may be used by savings associations in connection with real estate loans. It provides generally that investments made by an association under the authority of the "real estate loans" section of the Savings Association Act must be made "in accordance with sound lending practices and the rules adopted by the supervisor to carry out ... [the real estate loans] section." 5 Ore. Rev. Stat. §722.322(1)(1975). Accordingly, if such loans are permitted by the supervisor's rules, an association may make loans secured by real estate with flexible payment terms.

#### D. Balloon Payment Mortgages

Associations may make real estate loans on the straight mortgage plan, i.e., with periodic payments of interest required and with the payment of principal to be made in a lump sum at the end of the loan term. The Savings Association Act provides that the term of such a "straight loan" may not exceed five years. 5 Ore. Rev. Stat. §722.322 (2)(1975). No loan-to-value limitations beyond those generally applicable to all real estate loans<sup>1</sup> are prescribed for straight loans in the Act.

#### E. Home Improvement Loans

An association is authorized to make loans, with or without security, for the alteration, repair or improvement of real property or for the equipping and furnishing of residential property. 5 Ore. Rev. Stat. §§722.334(1), 722.334 (2) (1975). The Savings Association Act specifies neither the maximum amount that may be loaned under the authority of the preceding sections, nor the maximum term for which such loans may be written.

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1 The Oregon Savings Association Act provides that, unless the excess is guaranteed or insured, or an excess reserve is established, an association may not make a loan upon the security of real property in excess of 80% of the appraised value thereof. 5 Ore. Rev. Stat. §722.322(7) (1975). No loan upon the security of a mortgage may exceed 100% of the appraised value of the security. Id., §722.322(2).

F. Future Advances

Although the Oregon statutes relating to savings associations and to mortgages and deeds of trust in general do not specifically provide for future advances, the Uniform Mortgage Instrument for Oregon contains a non-uniform covenant providing for future advances as follows:

Upon request of Borrower, Lender, at Lender's option prior to full reconveyance of the Property by Trustee to Borrower, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Deed of Trust when evidenced by promissory notes stating said notes are secured hereby.

## PENNSYLVANIA

A review of the Pennsylvania Savings Association Code of 1967, as amended, 7 Pa. Stat. §§6020-1 to 6020-254 (Supp. 2, 1976), and the regulations promulgated thereunder by the Department of Banking of the State of Pennsylvania was undertaken to determine the availability of financial mechanisms which could be used by savings, savings and loan and building and loan associations (hereinafter "associations") in Pennsylvania to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Pennsylvania law and regulations are discussed below.

### A. Second Mortgages

An association may make a loan which is secured by a mortgage which is not a first lien on the real estate if it owns all prior liens. 7 Pa. Stat. §6020-141 (Supp. 2, 1976). The Pennsylvania Savings Association Code (hereinafter "the Code") does not place a specific dollar limitation on the amount of such a mortgage, but does state that "[t]he total of all liens held by an association against real estate shall not exceed the maximum percentages of fair market value set forth ... in the Code for loans secured by real estate of that type. Id.

### B. Balloon Payment

1. (Straight Mortgage). An association may make a mortgage loan without requiring monthly amortization of principal, but requiring the payment of interest not less frequently than semiannually, if the amount of the loan together with the aggregate amount of all other loans held by the association on the security of the same property does not exceed an amount equal to 66 2/3 percent of the fair market value of such property. Such loans may be written for a term not in excess of 10 years. 7 Pa. Stat. §6020-155(b) (Supp. 2, 1976).

2. (Partial Amortization). Pursuant to the regulations issued by the Pennsylvania Department of Banking (hereinafter "regulations"), an association may make a mortgage loan for a term not exceeding ten years, with not less than 1 percent per year of the loan principal to be amortized within the loan term on a monthly basis and with the entire balance of the loan due and payable at the maturity date. Interest on such loans is payable monthly. 10 Pa. Code §31.5(1) (1976).

C. Flexible Payments

1. The regulations provide that an association may make a mortgage loan requiring only monthly payments of interest during the first two years; thereafter, payments on the loan are to be made on a direct reduction basis. 10 Pa. Code §31.5(2) (1976).

2. The regulations also provide that an association may make mortgage loans requiring monthly payments of interest and reduced payments of principal (not less than 1/2 of 1 percent of the principal per year) for a period of 5 years and thereafter requiring monthly payments on a direct reduction basis. Id., §31.5(3) (1976).

D. Future Advances

Although the Pennsylvania Savings Association Code contains no provisions concerning the making of mortgages to secure future advances, the Uniform Mortgage Instrument for Pennsylvania contains a non-uniform covenant providing for future advances on the following basis:

Upon request of Borrower, Lender, at Lender's option prior to release of this Mortgage, may make Future Advances to Borrower. Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Mortgage, not including sums advanced in accordance herewith to protect the security of this Mortgage, exceed the original amount of the Note.

E. Variable Rate Mortgages

Variable rate mortgages are effectively prohibited in Pennsylvania by the statutory provision relating to residential mortgage interest rates. This provision states that, "[a] contract rate within the maximum lawful interest rate applicable to a residential mortgage at the time of the loan settlement shall be the maximum lawful interest rate for the term of the residential mortgage." 41 Pa.Stat. §301(d)(Supp. 42, 1976).

F. Home Improvement Loans

Associations are authorized to make loans for property repair, alteration and improvement, other than those insured under Title I of the National Housing Act of 1934, as amended, on the following terms:

1. The principal amount may not exceed \$10,000. If the loan is in an amount in excess of \$5,000, it must be recorded or filed so as to create a lien position against the real property.

2. Such a loan may not be written for a term exceeding 15 years and 32 days.

3. The interest charged on such loans may not exceed a rate of 6% per annum on the declining balance. In addition, a premium may be charged, not in excess of 1% per annum.

4. Such loans must be paid by regular monthly installments. 7 Pa. Stat. §6020-158(b) (Supp. 2, 1976).

## RHODE ISLAND

A review of Rhode Island building and loan law, General Laws of Rhode Island §19-22-1 to §19-23-15 (1970) (hereinafter the "laws") was undertaken to determine the availability of financial mechanisms which could be used by building and loan associations (hereinafter the "association") in Rhode Island to provide financing to home-owners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Rhode Island law are discussed below.

### A. Variable Rate Mortgage

The laws neither expressly prohibit nor expressly authorize the use of variable rate mortgages. Loan repayment terms and conditions as set forth in the laws, R.I. §19-23-3 (1970), however, would permit their implementation through an increase in the amount of payments and/or an extension of payments within the loan terms.

The Rhode Island interest and usury statutes generally establish an interest ceiling on loans of 21 percent per annum, which includes interest and all other amounts for services or expenses charged to the borrower. That interest ceiling is well suited to the use of variable rate mortgages. Id., §6-26-2 (1970).

### B. Second Mortgage

The laws allow for second and subsequent mortgages where the association is the holder of the mortgage constituting the first lien and all intervening mortgages; provided that the aggregate outstanding and unpaid principal amount of all loans secured by mortgages held by the association upon the same property does not exceed the amount loaned where the mortgage constituting the first lien was made. R.I. §19-23-3 (1970). The section states further that

[N]o greater rates of interest or charges shall be charged on said second and subsequent mortgages than those currently being charged by the association upon new mortgages constituting a first lien. Id.

**C. Flexible Payments/Balloon Payments**

The laws, by requiring repayment of all loans on a direct reduction basis, preclude the use of flexible and balloon payments. However, the Director of Business Regulation may authorize state-chartered associations to lend according to any plan authorized for federally-chartered associations. R.I. §19-23-15 (1970).

**D. Home Improvement Loans**

There is no distinct provision for home improvement loans in the laws. It would appear that all loans on real estate, including those for home improvements, must adhere to the secured, direct reduction payment provisions.

**E. Future Advances**

1. Any mortgage may be made to secure future advances. The maximum amount of total indebtedness and future advances outstanding at any one time may not exceed (exclusive of sums advanced to protect the security of the mortgage) the original amount of the loan by more than \$3,000. R.I. §34-25-1 (1970).

2. The Uniform Mortgage Instrument for Rhode Island contains a non-uniform covenant which provides for future advances as follows:

Upon request of Borrower, Lender, at Lender's option prior to release of this Mortgage, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Mortgage, not including the sums advanced in accordance herewith to protect the security of this Mortgage, exceed the original amount of the Note plus U.S. \$3,000.

## SOUTH CAROLINA

A review of South Carolina building and loan association law, Code of Laws of South Carolina §§8-600 to 8-625 (1962), as amended (hereinafter the "Code") was undertaken to determine the availability of financial mechanisms which could be used by building and loan or savings and loan associations (hereinafter "association") in South Carolina to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under South Carolina law are discussed below.

### A. Variable Rate Mortgage.

Although the Code does not expressly authorize the use of variable rate mortgages, a provision of the Code covering interest charged by mortgage lenders (including associations) appears to approve the use of variable rate mortgages in a modified fashion.

"[T]he lawful initial interest rate on mortgage loans, once agreed upon, may not be raised during the life of the mortgage unless agreed to by the borrower and may not be raised in excess of one percent over and above the interest rate initially agreed upon... provided, that in any case where the interest on such a loan is permitted to be so increased the borrower shall be permitted to pay off the loan without any penalties..." S.C. §8-10(2) (Supp. 1975).

The option of an increase in the amount of periodic payment or an extension of payments within the loan term might then be used to implement the variable rate.

Regarding the interest ceiling, S.C. §8-3 (Supp. 1975), provides that, in the case of loans secured by first mortgages on real estate in an amount of not more than \$50,000, the rate of interest may not exceed 9% per annum; on loans in excess of \$50,000 but less than \$100,000 the rate of interest may not exceed 10% per annum. Additionally an initial service or origination charge not to exceed 1% of the first \$25,000 and 1.5% on any amount above \$25,000 may be charged. Such charge is not considered interest. Id. §8-10(1) (Supp. 1975).

B. Second Mortgages.

The Code authorizes associations to make direct reduction loans secured by a mortgage. S.C. §8-603 (1962). It is not specified whether or not such mortgage need constitute a first lien, or the full equivalent thereof, upon the property securing the loan. Since a second mortgage loan is a loan secured by a mortgage, and since there is no prohibition of such second mortgages in the savings and loan association law, a reasonable argument could be made that an association could make such loans.

C. Flexible Payment/Balloon Payment Mortgages.

The Code provides that direct reduction loans may be made by an association upon a resolution of the board of directors of such association. S.C. §8-603 (1962). The Code does not appear to authorize other mortgage payment plans.

However, the Board of Bank control may by regulation permit state-chartered associations to engage in any activities authorized for federally-chartered associations. Id. §8-57.1 (Supp. 1975). Among such activities is the power to grant flexible payment and unamortized mortgages.

D. Home Improvement Loans.

An association may make home improvement loans under Title I of the National Housing Act in an amount not exceeding \$3,500 per loan. However, the State Board of Bank Control may authorize loans in an amount not exceeding \$10,000. The total amount of all such loans may not exceed 15% of an association's assets. S.C. §8-603.2 (Supp. 1975). The interest ceiling on such loans is 8% per annum. Id., §8-3 (Supp. 1975).

E. Future Advances.

1. Any mortgage upon real estate may be written by an association to secure future advances. The total amount of existing indebtedness and future advances outstanding at any one time may not exceed the amount specified in the mortgage. S.C. §45-55 (1962).

2. The Uniform Mortgage Instrument for South Carolina contains a non-uniform covenant providing for future advances as follows:

"Upon request of Borrower, Lender, at Lender's option prior to release of this Mortgage, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Mortgage, not including sums advanced in accordance herewith to protect the security of this Mortgage, exceed the original amount of the Note plus US \$ \_\_\_\_\_."

## SOUTH DAKOTA

A review of South Dakota savings and loan association law, South Dakota Compiled Laws §§52-1-1 to 52-14-9 (1967) (hereinafter the "Laws"), was undertaken to determine the availability of financial mechanisms which could be used by savings and loan, or savings associations (hereinafter "association") in South Dakota to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under South Dakota law are discussed below.

### A. Variable Rate Mortgages

The Laws do not prescribe mortgage loan terms and conditions. Instead, the Laws authorize the Savings and Loan Board to promulgate rules and regulations relating thereto. S.D. §52-2-8 (1967). Such rules and regulations were not available for research. However, the Laws contain nothing that would restrict the use of variable rate mortgages. It would appear that, pursuant to the authority granted by §52-2-8 of the Laws, the Savings and Loan Board could approve a variable rate mortgage loan which would permit an increase in the amount of the periodic payment and/or an extension of payments within the loan term.

On loans generally, the rate of interest charged may not exceed 10% per annum. Id. §54-3-7 (Supp. 1976).

### B. Second Mortgages

An association which holds a first mortgage on real property may increase its loan thereon and secure the same by a second mortgage. S.D. §52-8-1 (1967). The total indebtedness to the association may not exceed 80% of the fair market value of the property. Id.

### C. Flexible Payment/Balloon Payment Mortgages

Although the Laws do not prescribe loan terms and conditions, the Laws do authorize a state-chartered association having accounts insured with the Federal Savings and Loan Insurance Corporation to make any loan which such associations could make were it incorporated or operating as a federal association. Such loans, among which are flexible payment and unamortized mortgages, require the approval of the Savings and Loan Board. S.D. §52-8-24 (Supp. 1976).

D. Home Improvement Loans

An association may make unsecured loans for real property alteration, repair or improvement provided: 1) the net proceeds of any such loan may not exceed \$5,000 on a single family dwelling and \$2,500 per unit on multi-family dwellings up to a maximum of \$15,000 on a multi-family dwelling, 2) such loans must be repayable in regular monthly installments within an 8 year period, 3) no more than 20% of an association's assets may be invested in such loans, S.D. §52-8-13(Supp. 1976), 4) the rate of interest on such loans may not exceed 8% per annum on the amount up to \$1,000 and 7% upon the excess. Id., §54-5-2(Supp. 1976).

E. Future Advances

Although no reference to future advances was found in the Laws, the Uniform Mortgage Instrument for South Dakota contains a non-uniform covenant which provides for future advances as follows:

Upon request of Borrower, Lender, at Lender's option prior to release of this Mortgage, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby.

## TENNESSEE

A review of Tennessee savings and loan association law, Tennessee Code Annotated §§45-1301 to -1719 (1964) (hereinafter the "Code"), was undertaken to determine the availability of financial mechanisms which could be used by savings and loan associations (hereinafter "associations") in Tennessee to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Tennessee law are discussed below.

### A. Variable Rate Mortgages.

The Code does not generally prescribe terms and conditions for mortgage loans, rather it provides that relevant regulations be established by the Commissioner of Insurance. Tenn. Code Ann. §§45-1410, -1411 (Supp. 1976).

Nothing contained in the Code would restrict an association in the use of a variable rate mortgage. The Commissioner's statutory authority to prescribe loan plans and an interest ceiling, on loans generally, of 10% per annum (Id., §47-14-104 (Supp. 1976)) combine to make the use of a variable rate mortgage highly feasible.

### B. Second Mortgages.

Although no reference to second mortgages is made in the Code, paragraph (a) of the section of the savings and loan association law concerning real estate loans, Tenn. Code Ann. §45-1405(a) (Supp. 1976), is titled "original real estate loans". Whether this indicates that original real estate loans are the equivalent of first mortgage real estate loans is not clear. A review of the Commissioner's rules and regulations, which were unavailable for research, might indicate whether or not second mortgages are permissible.

On real estate loans generally, the Code provides that no loan may exceed 95% of the value of the real estate security, or any such lesser percentage as the Commissioner may provide. Id., §45-1405(a)(1) (Supp. 1976).

Regarding restrictions on real estate loans to any one borrower, the Code provides that:

"No association shall make a real estate loan to one (1) borrower if the sum of (i) the amount of such loan, and (ii) the total balance of all outstanding real estate loans owed by [sic] such association by such borrower, exceeds an amount equal to ten percent (10%) of such association's deposit liability or an amount equal to the sum of such association's surplus, reserves for losses and undivided profits, whichever amount is less." Id., §45-1405(b) (Supp. 1976).

#### C. Flexible Payment/Balloon Payment Mortgages.

Although the Code does not prescribe loan terms and conditions, it does provide, subject to rules and regulations prescribed by the Commissioner, a state-chartered association with all the powers of a federally-chartered association. Tenn. Code Ann. §45-1409 (Supp. 1976). It would appear, therefore, that flexible payment and unamortized mortgages would be available to state-chartered associations.

#### D. Home Improvement Loans

An association may make a home improvement loan pursuant to the provisions of any title of the National Housing Act. Tenn. Code Ann. §45-1407(b) (Supp. 1976).

In addition, subject to rules and regulations established by the Commissioner, loans may be made, secured by a lien on real property or by "appropriate debt insurance," for purposes of repair, improvement and equipping the home. Id.

It should be noted that the Code places certain limitations on the amount of interest which may be charged on a home improvement installment loan by a federal association. (See Tenn. Code Ann. §45-1413 (Supp. 1976).)

#### E. Future Advances.

Although no reference to future advances was found in the Code, the Uniform Mortgage Instrument for Tennessee contains a non-uniform covenant which provides for future advances as follows:

"Upon request of Borrower, Lender, at Lender's option prior to release of this Deed of Trust, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Deed of Trust when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Deed

of Trust, not including sums advanced in accordance herewith to protect the security of this Deed of Trust, exceed the original amount of the Note.

## TEXAS

A review of the Texas Savings and Loan Act (1964), as amended, Texas Annotated Civil Statutes art. 852a, §81.01-11.18(1964) (hereinafter the "Statutes"), and regulations<sup>1/</sup> promulgated thereunder was undertaken to determine the availability of financial mechanisms which could be used by savings and loan associations (hereinafter "association") in Texas to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Texas law are discussed below.

### A. Variable Rate Mortgages

The Commissioner of Savings and Loan is directed by the Statutes, Texas Ann. Civ. Stat. art. 852a, §5.04(1964), to promulgate rules and regulations in respect to loans by associations.

Neither the regulations nor the Statutes prohibit the use of variable rate mortgages. However, §8.1(B)(1) of the regulations requires that all mortgage loans be repaid on a direct reduction basis and be amortized in equal, monthly installments within a period not to exceed 30 years, except that a loan may be repaid in equal annual, semi-annual or quarterly installments if the loan period does not exceed 20 years. Therefore, an increase in the rate of interest pursuant to a variable rate clause could only be realized through an extension of payments within the 30 year or 20 year maximum loan term.

Similarly, Texas interest and usury law does not restrict the use of variable rate mortgages. On loans generally, an interest rate of 10% per annum may be charged. Texas Ann. Civ. Stat. art. 5069, §1.02(1964).

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1/ The Texas Laws and Regulations for Savings and Loan Associations were current only through June, 1975. Subsequent regulations may have been promulgated which would serve to modify the contents of this memorandum.

### B. Second Mortgages

The Statutes permit an association to make a loan which is not secured by a first lien upon the property described in the mortgage if every prior lien thereon is owned by such association. Texas Ann. Civ. Stat. art. 852a, §§5.01(1964), 5.05(4)(Supp. 1976).

Although neither the Statutes nor regulations specify dollar or asset limitations on second mortgages, real estate loans generally may not exceed 80% of appraised value. Where certain conditions obtain, the loan to value ratio may be increased to a maximum of 95%. Regs. §8.1(C)(1)-(4).

In no event may an association make a real estate loan or loans to any one borrower in the aggregate in excess of \$50,000 or the sum of its loss reserves, surplus and permanent Reserve Fund Stock, if any, or within limits set by the Commissioner, whichever is greater. Texas Ann. Civ. Stat. art. 852a, §5.05(2)(Supp. 1976).

### C. Flexible Payment Mortgages

The only mortgage loan plans specifically authorized by Texas savings and loan association law are amortized and unamortized plans. However, flexible payment mortgages would appear to be authorized since art. 852a, §5.16 of the Statutes permits a state-chartered association to make any loan authorized for federally-chartered associations.

### D. Balloon Payment Mortgages

An association may make real estate loans which do not require the amortization of principal, provided the interest is paid at least semiannually. The term of such loan may not exceed 5 years. Regs. §8.1(B)(1)(i).

### E. Home Improvement Loans

An association may make property improvement loans, secured or unsecured, for repair, modernization and equipment of real estate. The net amount advanced on any such loan may not exceed \$15,000 and must be repaid in equal monthly installments of principal and interest within 144 months from the date the loan is made. Regs. §8.3.

UTAH

A review of the Utah Savings and Loan Act of 1961, as amended, Utah Code Annotated §§7-7-1 to 7-7-37.4 and §§7-13-1 to 7-13-74 (1971) (hereinafter the "Code") was undertaken to determine the availability of financial mechanisms which could be used by building and loan or savings and loan associations (hereinafter "association") in Utah to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Utah law are discussed below.

A. Variable Rate Mortgages.

Although the Code neither expressly authorizes nor prohibits the use of variable rate mortgages, mortgage loan terms and conditions as prescribed by the Code would not restrict their use. Utah Code Ann. §7-7-5(a)(2) (1971). The option of implementing the variable rate mortgage on a direct reduction plan through an increase in the amount of the periodic payment and/or by an extension of payments within the loan term would appear to be available.

Similarly, nothing in Utah interest and usury law would limit an association's ability to use the variable rate mortgage. Indeed, at the invitation of the Utah Consumer Credit Code §70B-3-601, and in the absence of savings and loan association law to the contrary, a mortgagor and mortgagee may, by agreement, subject the mortgage loan to the provisions of the Utah Consumer Credit Code. The liberal interest provisions contained therein facilitate the use of the variable rate mortgage.

B. Second Mortgages.

It appears that an association may grant a second mortgage if the effect of such mortgage is to give such association "a first claim against the real estate as security" for the loan. Utah Code Ann. §7-7-5(a)(2) (1971).

While the Code provides no specifics regarding dollar or asset limitations on second mortgages, it does provide general real estate loan limitations. No more than 80% of the appraised value of the real estate may be loaned and no loan may exceed \$35,000. Id.

C. Flexible Payment Mortgages.

The Code stipulates that any mortgage loan must be made on either an amortized or unamortized plan. Utah Code Ann. §7-7-5(a)(2) (1971).

In addition, since §7-13-74 (1971) of the Code permits state-chartered associations, which are members of a Federal Home Loan Bank, to make those mortgage loans authorized for federally-chartered associations, an approval of flexible payment mortgages is therein implicitly granted.

D. Balloon Payment Mortgages.

The unamortized loan plan approved by the Code requires payment of interest at least semiannually and full repayment of principal and interest within 5 years. Utah Code Ann. §7-7-5(a)(2) (1971).

E. Home Improvement Loans.

Unsecured loans for the improvement, alteration or repair of property, not in excess of \$2,500 per loan may be made by an association. Such loans are repayable in monthly installments within 5 years. Unsecured and uninsured home improvement loans may not exceed 15% of an association's total assets. Utah Code Ann. §7-7-5(a)(2) (1971). The provisions of the Utah Consumer Credit Code apply to consumer loans. It is not clear from Utah savings and loan association law whether property improvement loans would be considered consumer loans under the Consumer Credit Code.

F. Future Advances.

Although no reference to future advances was found in the Code, the Uniform Mortgage Instrument for Utah contains a non-uniform covenant which provides for future advances as follows:

Upon request of Borrower, Lender, at Lender's option prior to full reconveyance of the Property by Trustee to Borrower, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Deed of Trust when evidenced by promissory notes stating that said notes are secured hereby.

## VERMONT

A review of Vermont cooperative savings and loan association law, 8 Vermont Statutes Annotated §§1831-1917 (1971), (hereinafter the "Statutes") was undertaken to determine the availability of financial mechanisms which could be used by savings and loan, building and loan, and savings associations (hereinafter "associations") in Vermont to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Vermont law are discussed below.

### A. Variable Rate Mortgages.

The Statutes expressly prohibit the use of variable rate mortgages.

As to any loan...secured by a mortgage where the lender has the option to raise the interest rate above the rate then being charged, the lender agrees... not to exercise such option during the term of the mortgage. 9 Vt. Stat. Ann. §41(d) (1971).

### B. Second Mortgages.

The Statutes require that all real estate loans be secured by a "direct first lien". 8 Vt. Stat. Ann. §1843(a) (1971). While the Statutes do not provide a definition for the term "direct first lien", 8 Vt. Stat. Ann. §1851(b) (1971) suggests that the lien provided by a second mortgage would be considered a first lien for purposes of the Statutes if it is superior to all other liens. Section 1851(b) provides a means by which a second mortgagee can acquire a lien superior to the lien of a first mortgagee:

A subsequent mortgage on the same premises shall be inferior to the first mortgage unless the second mortgagee in writing notifies the first mortgagee of the incidence of his mortgage, in which case indebtedness created by the mortgagor to the first mortgagee subsequent to the notice shall be inferior to the lien of the second mortgagee.

C. Flexible Payment/Balloon Payment Mortgage

The Statutes authorize associations to make direct reduction loans. 8 Vt. Stat. Ann. §1843(a) (1971). The Statutes do not appear to authorize other mortgage payment plans, nor was any provision found in the Statutes which would authorize state-chartered associations to make such mortgage loans (among which are flexible payment and unamortized mortgages) authorized for federally-chartered associations.

D. Home Improvement Loans.

Loans for purposes of improving or equipping the home might be made in accordance with the Statutes section relating to consumer installment loans, 8 Vt. Stat. Ann. §1845 (Supp. 1976). This section states that unsecured loans may be made, not in excess of \$5,000 on any single loan. Further, no more than 15% of an association's gross assets may be invested in such loans.

E. Future Advances.

1. The Statutes provide that mortgages may be written to secure a present debt and any future advances. 8 Vt. Stat. Ann. §1851(1971).

2. The Uniform Mortgage Instrument for Vermont contains a non-uniform covenant which provides for future advances as follows:

Upon request of Borrower, Lender, at Lender's option prior to release of this Mortgage, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby.

## VIRGINIA

A review of the Virginia Savings and Loan Act of 1972, as amended, Code of Va. 1950, §§6.1-195.1 to 6.1-195.76 (1973), was undertaken to determine the availability of financial mechanisms which could be used by savings and loan associations in Virginia to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Virginia law are discussed below.

### A. Variable Rate Mortgages.

Virginia interest and usury law substantially limits the practicality of variable rate mortgage instruments in that state. Although the Virginia Code provides generally that loan contracts for loans secured by a first deed of trust or a first mortgage on real estate may be enforced at the interest rate stated therein, notwithstanding the other Code provisions that set maximum legal interest rates (Code of Va. 1950, §6.1-330.37(A) (Supp. 1976), this exemption from the usury statutes specifically does not apply to loan contracts providing for an interest rate which:

... varies with any exterior standard or which cannot be ascertained from the contract without any reference to any exterior circumstances or documents. Id., §6.1-330.37(b) (Supp. 1976).

Instead, the Code states that an interest rate which varies with regard to any exterior standard "shall not be enforceable in excess of the rate permitted by §6.1-330.11" (Id.) unless the loan is made to a corporation, partnership, professional association or REIT, or is insured by the FHA, VA or any similar federal organization or is in an initial principal amount of \$5,000 or more and is for business or investment purposes. At present, the maximum interest rate permitted by §6.1-330.11 is 8% per annum.

### B. Second Mortgages.

The Virginia Savings & Loan Act (hereinafter "the Act") provides that savings and loan associations may make "loans secured by first liens on improved real estate" but contains no

specific authorization for loans secured by second mortgages. Code of Va. 1950, §§6.1-195.34(b), 6.1-195.34(k) (Supp. 1976). The phrase "loan secured by first lien on real estate" is defined in the Code as meaning:

... a loan on the security of any instrument...which makes the interest in the real estate described therein...specific security for the payment of the obligations secured by such instrument, provided that the instrument is of such nature that in the event of default, the real estate described in such instrument could be subjected to the satisfaction with the same priority as a first mortgage or first deed of trust. Id., §6.1-195.4(23) (1973).

The Act is silent as to whether a second loan secured by a lien upon the same real property as secures the first mortgage held by the lending association would be deemed to be a "loan secured by a first lien on real estate" under the preceding definition if there were no intervening liens between the first mortgage and the lien securing the second loan.

#### C. Flexible Payment/Balloon Payment Mortgages. 1/

The Virginia Savings and Loan Act does not specifically authorize associations to make real estate loans with either flexible payment or balloon payment terms. The Act provides that at least 60% of an association's assets must be invested in loans that (a) are secured by first liens on improved real estate, (b) are in amounts within specific loan-to-value limitations, and (c) have direct reduction payment terms (Code of Va. 1950, §6.1-195.34(b) (Supp. 1976)), but also allows some flexibility in that it further provides that an association may invest up to 20% of its assets in "other loans secured by a first lien upon improved real estate." Id., §6.1-195.354(k) (Supp. 1976). No particular payment plans are prescribed for such "other loans."

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1/ The administrative regulations for Virginia savings and loan associations may well include provisions concerning real estate loans written with other than direct reduction terms since the Code provision granting the Commissioner of Banking regulatory power to amend or supplement the categories and terms of authorized loans set forth in the Code, states that its purpose is to enable the Commissioner to permit "a State Association to have powers comparable to those allowed to federal associations" by allowing such investments under such terms and conditions as he may deem necessary." Code of Va. 1950, §6.1-195.35(o) (Supp. 1976).

D. Home Improvement Loans.

An association may invest up to 20% of its assets in secured or unsecured loans for maintenance, repair, alteration, modernization or improvement of improved real estate. Such loans, if not guaranteed or insured pursuant to the National Housing Act or the Serviceman's Readjustment Act of 1944, as amended, must be payable in monthly installments, may not be for a term in excess of \$10,000. Code of Va. 1950, §6.1-195.34(i) (Supp. 1976). An association may charge interest at a rate of 7% per annum, in advance, upon the entire amount of such loans and may also impose a service charge not exceeding 2% of the amount of the loan. Id., §6.1-330.14 (Supp. 1976).

E. Future Advances.

Although the Code of Virginia contains no provisions concerning the making of mortgages to secure future advances, the Uniform Mortgage Instrument for Virginia contains a non-uniform covenant providing for future advances as follows:

"Upon request of Borrower, Lender, at Lender's option prior to release of this Deed of Trust, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Deed of Trust when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Deed of Trust, not including sums advanced in accordance herewith to protect the security of this Deed of Trust, exceed the original amount of the Note plus US \$ \_\_\_\_\_."

## WASHINGTON

A review of Washington savings and loan association law, 9 Rev. Code of Wash. §§33.04.010-33.48-250 (1975), was undertaken to determine the availability of financial mechanisms which could be used by savings and loan associations ("associations") in Washington to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Washington law are discussed below.

### A. Variable Rate Mortgages

Washington savings and loan legislation neither expressly authorizes nor prohibits the use of variable rate mortgage instruments by savings and loan associations. It contains no provisions that would preclude an association from increasing the amount of the required monthly payment on a conventional installment (direct reduction) loan in order to realize interest rate increases. The interest rate charged on a real estate loan pursuant to a variable rate provision could at no time exceed a rate of 12 percent per annum, however, since that is the maximum rate of interest permitted under Washington's interest and usury law. 9 Rev. Code of Wash. §19.52.020 (Supp. 1975).

### B. Second Mortgage

Pursuant to the Code provision stating that "notwithstanding the provisions of this section, an association may make any loan which is permitted to a federal savings and loan association doing business in this state ..." (9 Rev. Code of Wash. §33.24.100(4) (Supp. 1975)), state-chartered associations in Washington presumably could make loans secured by real property, the security interest of which is not a first lien, subject to the net worth, scheduled items and percentage of assets limitations set forth in 12 C.F.R. §545.6-26 (1976). Further, in accordance with October 22, 1971 opinion of the FHLBB General

Counsel,<sup>1/</sup> construing 12 C.F.R. §541.9,<sup>2/</sup> a state-chartered association in Washington may make a second loan secured by real estate upon which it already holds a first mortgage, provided that the association retains the first loan and that there are no intervening liens.

C. Flexible Payment Mortgages

Pursuant to the Code provision authorizing state-chartered associations to make such loans as federal savings and loan associations are permitted to make (9 Rev. Code of Wash. §33.24.100(4) (Supp. 1975)), an association in Washington may make a loan (secured by a single family dwelling) that has the following payment plan: During an initial period of the loan term (not to exceed 5 years) the borrower is required to make only payments of interest on the loan. Following such initial period, the loan payments are to be made on a direct-reduction basis with the borrower required to make regular, periodic payments in amounts sufficient to retire the debt, both interest and principal, within the balance of the loan term. 12 C.F.R. §§541.14(c), 545.6-1(a)(1) (1976).

D. Balloon Payment Mortgages ("Five Year Cycle" Mortgages)

The Code provisions concerning the operations of state-chartered savings and loan associations permit an association to

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<sup>1/</sup> FHLBB Annotated Manual of Statutes & Regulations, ¶719, n. 6 at 118 (rev. ed. 1976).

<sup>2/</sup> Section 541.9 of the FHLBB regulations defines the phrase "loans on the security of first liens" as it is used in the FHLBB regulations setting forth the requirements for real estate loans made by federal associations. The definition states that that phrase means "loans on the security of any instrument ... which makes the interest in the real estate described therein ... specific security for the payment of the obligation ... provided that the instrument is of such nature that ... the real estate described [therein] ... could be subjected to the satisfaction of such an obligation with the same priority as a first mortgage ... in the jurisdiction where the real estate is located." 12 C.F.R. §545.9 (1976).

make a loan secured by improved real estate that does not require payments in reduction of principal provided that the amount of such a loan does not exceed 50 percent of the value of the security. This loan plan differs from a standard balloon payment loan plan in that no date certain is established for the retirement of the debt by a lump sum payment of principal. Instead, the Code provides that:

...

No loan upon which payments in reduction of principal are not being made at least annually shall continue for more than five years, unless, at the expiration of each five year period it shall be reappraised and the loan reduced to an amount not in excess of fifty percent of the new appraised value. 9 Rev. Code of Wash. §33.24.100(1) (Supp. 1975).

The above described loan plan has been termed a "five year cycle mortgage."

#### E. Future Advances

Although the Revised Code of Washington contains no provisions specifically providing for future advances, the Uniform Mortgage Instrument for Washington contains a non-uniform covenant providing for future advances as follows:

Upon request of Borrower, Lender, at Lender's option prior to full reconveyance of the property by Trustee to Borrower, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Deed of Trust when evidenced by promissory notes stating that said Notes are secured hereby.

#### F. Home Improvement Loans

An association may invest up to five percent of its assets in secured or unsecured loans for home or property repairs, alterations, additions or improvements, subject to the following terms and limitations:

1. The principal amount of the loan may not exceed \$5,000;
2. The loan is repayable in equal monthly installments; and
3. The term of the loan may not exceed 7 years. 9 Rev. Code of Wash. §33.24.240 (Supp. 1975).

## WEST VIRGINIA

A review of West Virginia building and loan association law, West Virginia Code §§31-6-1 to 31-6-43 (1975) (hereinafter the "Code") was undertaken to determine the availability of financial mechanisms which could be used by building and loan associations in West Virginia to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under West Virginia law are discussed below.

### A. Variable Rate Mortgages

West Virginia building and loan association law neither expressly authorizes nor prohibits the use of variable rate mortgage instruments. However, the Code exempts associations from the operation of the general law in relation to usury. W. Va. §31-6-17(1975). Additionally, the Code provides that mortgage loans repaid on a direct reduction basis may be made in "consecutive monthly installments, equal or unequal" within 30 years. Id., §31-6-19(1975). Under such favorable circumstances, an association could implement a variable rate mortgage by increasing the amount of the required periodic payment.

### B. Second Mortgages

The Code stipulates that no association may take a mortgage (first or otherwise) or deed of trust upon real estate unless at least two members of such association's appraisal committee affirm that such mortgage or deed of trust affords adequate security. W. Va. §31-6-21(1975). Further, no association may take a mortgage or deed of trust upon improved real estate if the amount secured "by such mortgage or deed of trust, plus any prior liens," exceeds 95% of appraised value thereof. Id. The portion of §31-6-19 quoted implicitly recognizes the right of West Virginia associations to make loans secured by second mortgages.

### C. Flexible Payment/Balloon Payment Mortgages

The Code provides only for the repayment of mortgage loans on a direct reduction basis. W. Va. §31-6-19(1975). However, state-chartered associations whose accounts are insured by the Federal Savings and Loan Insurance Corporation are authorized to make any loan permitted to be made by any federally-chartered association. Among loans authorized for federal associations are flexible payment and unamortized mortgages. Id., §31-6-43(1975).

#### D. Home Improvement Loans

There is no specific provision for home improvement loans in the Code. Apparently, such loans must be made on the security of a mortgage or a pledge of shares and in accordance with repayment terms and conditions thereof. (See W. Va. §31-6-19(1975)).

#### E. Future Advances

1. Although no specific provision regarding future advances was found in the Code, the Code does appear to acknowledge the advancement of sums by an association for general purposes:

Any loan made by a building and loan association...may be repaid at any time: Provided, that the member shall pay... all sums advanced by the association for taxes...repairs, or other purposes...  
W. Va. §31-6-22(1975).

2. The Uniform Mortgage Instrument for West Virginia contains a non-uniform covenant which provides for future advances as follows:

Upon request of Borrower, Lender, at Lender's option prior to release of this Deed of Trust, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Deed of Trust when evidenced by promissory notes stating that said notes are secured hereby.

F. Future Advances

Although no reference to future advances was found in the Statutes or regulations, the Uniform Mortgage Instrument for Texas contains a non-uniform covenant which provides for future advances as follows:

Upon request of Borrower, Lender, at Lender's option prior to release of this Deed of Trust, may make Future Advances to Borrower if the Property is not the homestead of Borrower. Such Future Advances, with interest thereon, shall be secured by this Deed of Trust when evidenced by promissory notes stating that said notes are secured hereby.

## WISCONSIN

A review of Wisconsin savings and loan association law, 26 Wisc. Stat. Ann. §§215.01-215.88 (Supp. 1975), was undertaken to determine the availability of financial mechanisms which could be used by savings associations, savings and loan associations or building and loan associations ("associations") in Wisconsin to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Wisconsin law are discussed below.

### A. Variable Rate Mortgages.

Under Wisconsin law, savings and loan associations are expressly permitted to use variable rate clauses in loan contracts secured by first lien real estate mortgages on owner-occupied residential property containing not more than four dwelling units. If a variable rate clause is to be used, the provisions of the loan contract, the disclosures made prior to the execution of the loan contract and the content and timing of notices of interest rate adjustments issued pursuant to the contract must all be as specified in §138.055 of the Wisconsin Statutes. Wisc. Laws 1975, ch. 387, §1 (1976 Wisc. Sess. L. Serv. 3).

The index used by an association to determine changes in the interest rate pursuant to a variable rate clause must be either the index published by the federal home loan bank of Chicago based on the cost of all funds to Wisconsin member institutions or an index approved by the commissioner of savings and loans. Id.

Changes in the interest rate pursuant to a variable rate clause are subject to the following limitations:

1. The rate may not be changed during the first semiannual period of the loan and may be changed not more than once during any subsequent six-month period;

2. Any singular change in the interest rate may not exceed the rate of \$1 per \$200 for one year computed upon the declining principal balance and the total variance in such rate may at no time exceed a rate equal to \$2.50 per \$100 for one year computed upon the declining principal balance, greater or lesser than the rate originally in effect; and

3. Decreases required by a downward movement of the prescribed index shall be mandatory; increases permitted by an upward movement of such index shall be optional with the lender. Changes in the interest rate may be made only when the prescribed index changes a minimum of one-tenth of one percent. Id.

In addition, the borrower under a loan contract containing a variable rate clause must be given the right to repay the loan, in whole or in part, within 90 days of notification of any increase in the rate of interest, without a prepayment penalty. Id.

B. Second Mortgages.

An association may make a loan secured by a second mortgage on real estate provided that the association also holds the first mortgage on such real estate and provided that there have been no intervening liens. The Attorney General of Wisconsin has found that a second mortgage under such conditions would constitute a security interest equivalent to that created by a first lien for the purposes of the statutory provision authorizing savings and loan associations to make loans on the security of first liens on real estate. 40D Wisc. Stat. Ann. §428.100, n. 1 (Supp. 1975).

The amount that an association may loan on the security of a mortgage on real estate is subject to the limits prescribed by the savings and loan commissioner.

C. Flexible Payment Mortgages.

The only real estate loan plans authorized by Wisconsin's savings and loan association law are straight mortgage (balloon payment) and direct reduction. 26 Wisc. Stat. Ann. §215.21 (Supp. 1975).

D. Balloon Payment Mortgages.

Associations may make mortgage loans on existing structures without requiring monthly amortization of principal but requiring the payment of interest either monthly or semi-annually, provided that the aggregate amount of all such loans made by an association does not exceed an amount equal to 10% of the association's assets. Such loans may be written either for a term not to exceed five years and in an amount not to exceed 50% of the appraised value.

of the security, or for a term not to exceed three years and for an amount not to exceed 60% of the appraised value of the security. At maturity, all such loans may be extended for like periods. 26 Wis. Stat. Ann. §215.21(6)(b) (Supp. 1975).

**E. Home Improvement Loans.**

Associations may make loans for the repair, modernization, alteration or improvement of real estate and/or the structure upon it, in such individual and aggregate amounts and upon such terms as the savings and loan commissioner may by rule prescribe, within the limitations applicable to federal savings and loan associations. 26 Wis. Stat. Ann. §215.20 (Supp. 1975).

**F. Future Advances.**

1. An association may make additional advances to a borrower (mortgagor) provided that the mortgage and mortgage notes provide for such additional advances and provided that the amount of such additional advances does not exceed that specified in the mortgage. 26 Wis. Stat. Ann. §215.21(4)(b) (Supp. 1975).

2. The Uniform Mortgage Instrument for Wisconsin contains a non-uniform covenant providing for future advances as follows:

Upon request of Borrower, Lender, at Lender's option prior to release of this Mortgage, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Mortgage, not including sums advanced in accordance herewith to protect the security of this Mortgage, exceed the original amount of the Note.

WYOMING

A review of the Wyoming Guaranty Capital Savings and Loan Association Act (1959), 5 Wyoming Statutes §§13-279.01 to 279.1(h) (1965) (hereinafter the "Statutes") and related building and loan association law<sup>1/</sup> was undertaken to determine the availability of financial mechanisms which could be used by guaranty capital savings and loan associations (hereinafter "association") in Wyoming to provide financing to homeowners wishing to take energy conservation measures at a cost lower or with more payment flexibility than would be afforded by a conventional home or consumer loan. Various categories of such financial mechanisms and their availability under Wyoming law are discussed below.

**A. Variable Rate Mortgages**

The Statutes neither expressly authorize nor prohibit the use of variable rate mortgages. However, Wyoming guaranty capital savings and loan associations, pursuant to §13-279.1 (g) of the Statutes, have the same powers permitted federally-chartered associations under loan regulations promulgated by the Federal Home Loan Bank Board.<sup>2/</sup> (It should be noted that the Statutes invest the State Examiner with ultimate authority to limit or restrict those powers. *Id.*) Board regulations prohibit subsequent payments on mortgage loans in an amount greater than any previous payment. This precludes the implementation of a variable rate through an increase in the amount of the periodic payment. However, an association might realize an increase in the variable rate through an extension of payments within the 30 year maximum loan term prescribed by Board regulations.

<sup>1/</sup> 5 Wyoming Statutes §§13-212 to 279 (1965) contain provisions generally applicable to building and loan associations and specifically applicable to permanent plan and domestic serial plan associations. However, in a conversation with the Wyoming State Examiner, it was revealed that there are presently only 5 state-chartered associations operating in Wyoming, all pursuant to the Guaranty Capital Savings and Loan Act. In light of the above information, the fact that no association is operating as a permanent plan or domestic serial plan association and the inability of an association to henceforth organize as such (see 5 Wyo. Stat. §§13-212, 213 (1965)), it was decided to review laws applicable to existing associations, i.e., guaranty capital savings and loan associations. While §13-279.1(h) of the Statutes provides guaranty capital savings and loan associations with all powers authorized pursuant to §§13-212 to 279 of the Statutes, §13-279.1(g) of the Statutes provides such associations with all powers permitted federally-chartered associations, which powers are less restrictive than the former.

<sup>2/</sup> See Memo re Federal Savings and Loan Associations.

Wyoming usury law was repealed by Wyoming Laws 1971, ch. 191, §9-103. There is, therefore, no interest ceiling on loans generally. However, interest exceeding 18 percent per annum on a loan "primarily secured by an interest in land" subjects the loan to provisions of the Wyoming Consumer Credit Code. 5 Wyo. Stat. §40-3-105 (Supp. 1975).

**B. Second Mortgages**

As noted in part A of this memorandum, a state-chartered association is subject to regulations of the Federal Home Loan Bank Board. Such regulations permit an association to make a second loan secured by the same real estate which secures a first mortgage or deed of trust held and owned by the association, if there are no intervening liens.

The Guaranty Capital Savings and Loan Association Act authorizes an association to "lend 80 percent of the value of improved real estate upon which secured loans shall be made as security." 5 Wyo. Stat. §13-279.1(g) (1965).

**C. Flexible Payment/Balloon Payment Mortgages**

The Statutes do not provide for flexible payment or balloon payment mortgages. However, pursuant to an association's authority to exercise all powers of a federal association (5 Wyo. Stat. §13-279.1(g) (1965)), an association could make flexible payment and balloon payment mortgages.

**D. Home Improvement Loans**

Although the Statutes do not specifically provide for home improvement loans, an association, pursuant to its authority to exercise all powers of a federal association, could make loans for property alteration, repair or improvement in accordance with federal regulations.

**E. Future Advances**

No reference to future advances was found in the Statutes. However, the Uniform Mortgage Instrument for Wyoming contains a non-uniform covenant which provides for future advances as follows:

Upon request of Borrower, Lender, at Lender's option prior to release of this Mortgage, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby.

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**ENERGY  
SAVER'S  
LOAN**

**Now you can get a preferred interest rate on loans  
for home improvements that conserve energy**

**NOW IS  
THE TIME.**

Conserve energy,  
conserve money,  
improve your home,  
and increase its value  
—save all the way  
around.

First Federal is offering preferred  
rate loans for home improvements to  
make your home more energy-efficient.  
This is our way of helping the energy  
conservation effort—a vital priority for  
Pittsburgh and for the nation.

For the homeowner, it's just plain  
common sense. Why pay for expensive,  
wasted energy when you can use the  
same money to improve your own  
home?

**HERE'S HOW IT WORKS.**

First, get estimates on the energy-saving  
improvements your home could use:



Additional insulation,  
double-glazed win-  
dows, weather strip-  
ping, storm windows  
and doors, possibly  
a more efficient heat-  
ing system. Then bring the estimates to  
your nearby First Federal office.

**ASK ABOUT AN  
ENERGY SAVER'S LOAN.**

It's special. It carries a lower interest rate  
than our regular home improvement  
loans, and you can take up to twelve  
years to repay. Meantime, the  
improvements add value to your home,  
and they save you money on utility bills.

That's a much better way to use  
your money than to waste it on wasted  
energy at today's rising fuel costs.

*Your family comes first at First Federal*



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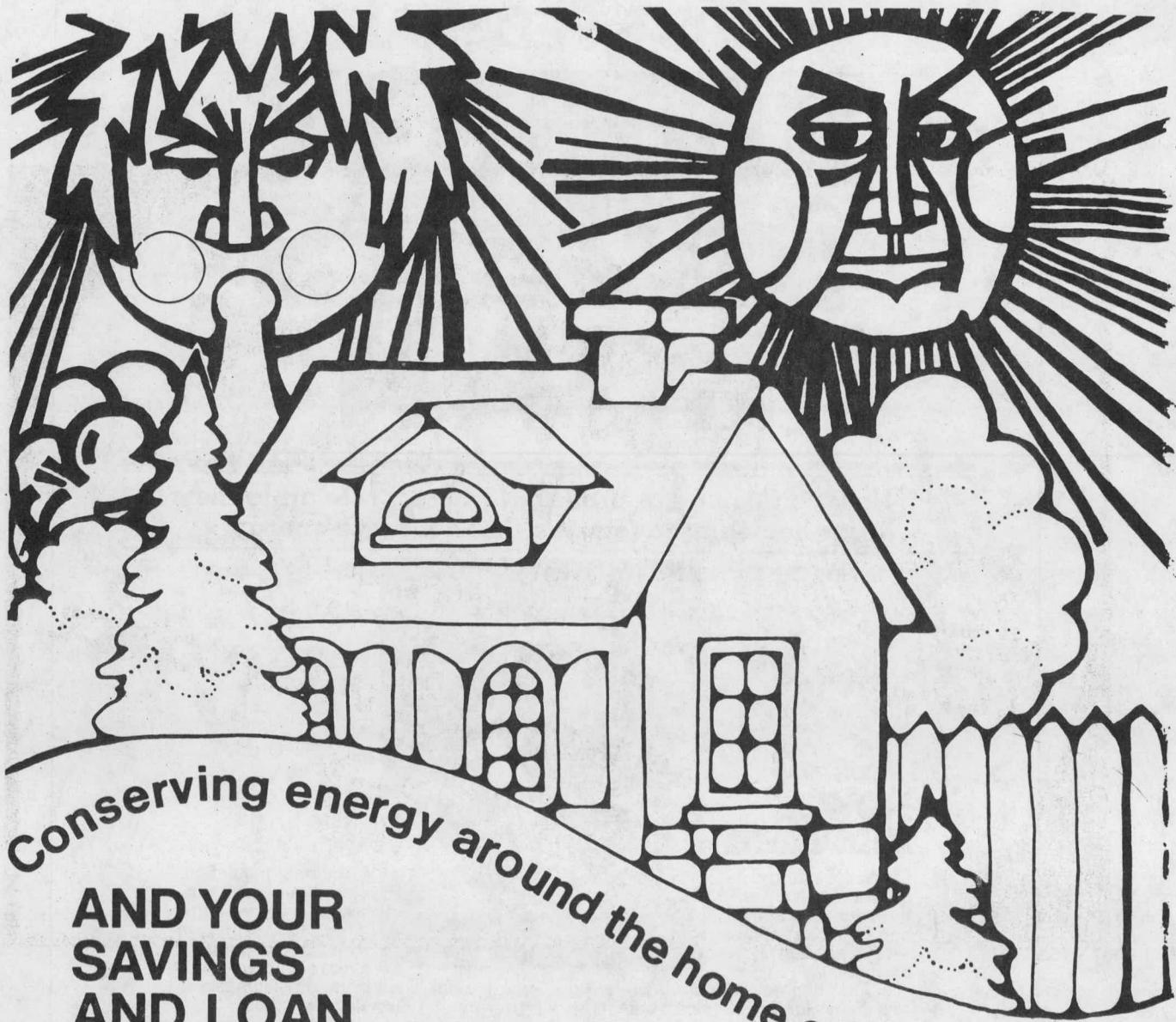
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The President's energy program is vital to the nation and to all of us. Homeowners are urged to save energy. So make a list of improvements that will save energy in your home, reduce your utility bills, air conditioning and heating costs. Then stop in your nearby Savings & Loan. We'll gladly show you how to arrange financing on sensible terms.

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**SUMMARY OF POTENTIAL SAVINGS  
TO BE REALIZED FROM VARIOUS  
RESIDENTIAL RETROFIT ENERGY CONSERVATION MEASURES**

**INTRODUCTION**

The following is a summary of various residential retrofit energy conserving measures along with approximate calculated savings that might be realized if such measures were undertaken.

The projected savings which are calculated are based upon average year round temperature, wind conditions, home construction and house age. Exact home location, wind conditions and protection, home construction, heating system efficiency and proper use of material can all have an effect of these typical savings. However, the savings which are calculated should be representative of average conditions in the Allegheny County area.

The calculated savings are for heating only. If a home is also air conditioned, additional savings over and above those derived will be realized.

The five costs used were those which were in use in the Allegheny County area as of May 1, 1977. The calculated annual savings are based upon present energy costs, but no effort was made to incorporate future increase in the cost of energy. Such projected increases should be taken into account, however, in any cost savings analysis.

Also included in each section is an approximate cost for performing the particular energy conserving measure in question. These figures are rough approximations of installed costs. Actual costs will vary from house to house.

When warranted, comments on the pros and cons of the measure under consideration will also be listed.

### Fuel Costs

The fuel costs used in each analysis were those in existence in Allegheny County as of May 1, 1977. They were:

Natural Gas	--	\$2.37	MCF
Fuel Oil		0.48	GALLON
Electricity		0.054	KWH

### Heating System Efficiencies

The following calculations were performed using the heating system efficiencies listed below. The efficiency for electric heat is based upon electric resistance heating. Electric heat pumps would perform considerably better.

<u>Heating System</u>	<u>Efficiency</u>
Natural Gas	65%
Fuel Oil	65%
Electric Resistance	95%

### Energy Saving Calculations

The anticipated average savings calculated for each of the various measures was deviced from the following basic formulas:

$$\text{Annual Savings ($/yr)} = \text{Area or Unit} \times \text{Heating Factor}$$
$$\text{Heating Factor} = \frac{\text{Number of Degree Days} \times 24 \times \text{Cost of Fuel}}{\text{Energy Content of Fuel} \times \text{System Efficiency}}$$

Using the cost and efficiencies listed above, the following heating factors can be calculated:

	<u>Heating Factor</u>
Natural Gas	0.50
Fuel Oil	0.76
Electric	2.40

### Air Conditioning Savings

Although air conditioning savings are not considered in the following calculations, they would represent an additional approximate savings over and above the heating savings calculated:

15% over Natural Gas Heat

10% over Fuel Oil Heat

4% over Electric Resistance Heat

## ATTIC INSULATION

The savings calculated below are for a regular unfinished attic with no floor. Savings are costs would vary somewhat for unfinished attics with floors or finished attics depending upon their size and type of retrofit insulating method used.

For an attic with no insulation, the average U-Value would be 0.45.

### A. Adding R-19 Insulation to Uninsulated Attics

The improved insulating capabilities realized by adding R-19 fiberglass insulation.

$$U_{R\ 19} = 0.050$$

$$\begin{aligned}\Delta U &= U_o - U_{R19} \\ &= 0.45 - 0.05 \\ \Delta U &= 0.40\end{aligned}$$

Based upon the annual savings on a per square foot basis for each energy source would be:

Natural Gas -- \$0.20 / year / sq. ft.

Fuel Oil -- \$0.30 / year / sq. ft.

Electric -- \$0.96 / year / sq. ft.

The approximate installed cost of such an energy savings measure would be \$0.30 per square foot.

### B. Adding R-30 Insulation to an Uninsulated Attic

The improved insulating capabilities to be realized by adding R-30 fiberglass insulation.

$$U_{R30} = 0.037$$

$$\begin{aligned}\Delta U &= U_o - U_{R30} \\ &= 0.45 - 0.037 \\ \Delta U &= 0.413\end{aligned}$$

Natural Gas -- \$0.21 / year / sq. ft.

Fuel Oil -- \$0.31 / year / sq. ft.

Electric -- \$0.99 / year / sq. ft.

The approximate installed cost of such an energy savings measure would be \$0.45 per square foot.

**C. Adding R-11 Insulation to a Partially Insulated Attic**

For a partially insulated attic with 2" or less of insulation, the existing U-Value of the attic would be approximately 0.14.

The improved insulating capabilities to be realized by adding additional insulation with a resistance value of approximately R-11.

$$U_{+R11} = 0.055$$

$$\Delta U = U_o - U_{+R11}$$

$$= 0.14 - 0.55$$

$$\Delta U = 0.085$$

Based upon this, the annual savings on a per square foot basis realized by adding insulation in a partially insulated attic would be:

Natural Gas -- \$0.042 / year / sq. ft.

Fuel Oil -- 0.065 / year / sq. ft.

Electric -- 0.204 / year / sq. ft.

The approximate installed cost of such an energy savings measure would be \$0.18 per square foot.

**D. Adding R-11 Insulation to a Marginally Insulated Attic**

For a marginally insulated attic with from 2" to 4" of insulation, the existing U-Value of the attic would be approximately 0.008.

Savings to be realized by adding additional insulation with a resistance value of approximately R-11

$$U_{+R11} = 0.045$$

$$\begin{aligned}\Delta U &= U_o - U_{+R11} \\ &= 0.08 - 0.045 \\ &= 0.035\end{aligned}$$

Based upon this, the annual savings on a per square foot basis realized by adding insulation to a marginally insulated attic would be.

Natural Gas -- \$0.017 / year / sq. ft.

Fuel Oil -- 0.026 / year / sq. ft.

Electric -- 0.084 / year / sq. ft.

#### IMPROVEMENT OF WINDOW AREAS

The savings calculated below are for improving a single glazed window with a leakage rate of 1.45 CFM/foot of crack perimeter (Based upon recent AAMA Report to the Federal Energy Administration). Savings are on a per window basis for an average three foot wide by four and one half foot high double hung window.

The average U-Value of such a window would be approximately 1.56.

##### A. Adding a Good Quality Storm Window or Door

Adding a good quality storm window which would also cut the air leakage through the window area in half would improve the U-Value of the window to 0.81. Therefore;

$$\begin{aligned}\Delta U &= U_o - U_{ws} \\ &= 1.56 - 0.81 \\ &= 0.75\end{aligned}$$

Based upon this, the annual energy savings on a per window basis for each energy source would be approximately:

Natural Gas -- \$5.06 / year / window

Fuel Oil -- 7.70 / year / window

Electric -- 24.30 / year / window

The approximate installed cost of a storm window would be \$30 to \$50 a unit depending upon the quality of the unit.

The potential drawback of a storm window is that it should not be used over an existing window that has deteriorated beyond its useful life. The adding of storm windows to a home where basic window units are close to or beyond the wearing out point is really not going to help as much as it should. Also, it still leaves a window with the old sash still on the inside where you have to put up with their poor operation, their poor appearance and the annual touching of glazing, putty or paint.

#### B. Installation of a Replacement Window

The replacement of the old deteriorated window with a good quality insulating replacement window would change the U-Value of the window opening to 0.65 (based upon recent AAMA Report to the Federal Energy Administration).

Therefore, the improvement in thermal efficiency would be:

$$\begin{aligned}\Delta U &= U_o - U_{wr} \\ &= 1.56 - 0.65 \\ \Delta U &= 0.91\end{aligned}$$

Based upon this, the annual energy savings on a per window basis for each energy source would be approximately:

Natural Gas -- \$6.15 / year / window

Fuel Oil -- 9.35 / year / window

Electric -- 29.52 / year / window

The approximate installed cost of a replacement window would be approximately \$100 to \$200 a unit depending upon the quality of the unit.

In addition to the energy savings, the installation of a replacement window would also yield a painting maintenance savings of approximately \$5.00 / year / window.

Replacement windows also have other advantages over their energy saving capabilities. In replacement windows, you can obtain all of the benefits provided by modern well engineered prime windows; insulating properties, smooth operation, factory finishes that go years with minimal upkeep, improved resistance to condensation and for cleaning ease, units are available with removable tilt-in sash permitting cleaning from inside the home.

#### SIDEWALL INSULATION

The savings calculated below are representative of the approximate savings that should be realized under the various conditions and retrofit measures cited.

In the Allegheny County area, a typical home with non-insulated walls would have a U-Value of approximately 0.242.

##### A. Adding Blown-In or Foamed-in-Place Insulation Inside a Non-insulated Wall

There are three basic types of insulation that can be used for improving the thermal resistance of the cavity in a non-insulated wall. They are mineral fiber (glass fiber or rock wool), cellulosic fiber and ureaformaldehyde foam. Adding these materials would improve the U-Value of the above non-insulated wall to:

Mineral Fiber : Umf = 0.083

Cellulosic Fiber : Ucf = 0.080

Ureaformaldehyde : Uuf = 0.069

The improved insulating capabilities to be realized by the use of any of these products in a non-insulated wall would be

Mineral Fiber;

$$U = U_w - U_{mf} = 0.242 - 0.083 = 0.159$$

Cellulosic Fiber;

$$U = U_w - U_{cf} = 0.242 - 0.080 = 0.162$$

Ureaformaldehyde Foam;

$$U = U_w - U_{uf} = 0.242 - 0.069 = 0.173$$

Based upon these figures, the annual energy savings on a per square foot of wall area basis for each of these materials and each energy source would be:

Annual Energy Savings Per Square Foot  
of Wall Area

	Mineral Fiber	Cellulosic Fiber	Ureaformaldehyde Foam
Natural Gas	\$0.079	\$0.081	\$0.086
Fuel Oil	0.121	0.123	0.131
Electric	0.381	0.389	0.415

The approximate installed cost of each of these materials would be:

Mineral Fiber	\$0.50 to \$0.60/ sq. ft.
Cellulosic Fiber	0.55 to 0.65/ sq. ft.
Ureaformaldehyde	0.75 to 0.90/ sq. ft.

The one drawback to either of these systems is the possibility of having holes in the exterior which may have to be plugged.

B. Adding Insulated Aluminum Siding in Conjunction With Blown-In or Foamed-in-Place Insulation Inside a Non-Insulated Wall

Insulated aluminum siding with a polystyrene backerboard has an R Value of approximately 2.5. Adding this product to a non-insulated wall to which one of the three internal wall insulating materials was being added would improve the U-Value of the wall, to:

Mineral Fiber	+ Insulated Siding : Umfs = 0.069
Cellulosic Fiber	+ Insulated Siding : Ucfs = 0.067
Ureaformaldehyde Foam	+ Insulated Siding : Uufts = 0.059

The improved insulating capabilities to be realized by the use of any of these systems on a non-insulated wall would be:

Mineral Fiber + Insulated Siding;  
 $U = U_w - U_{mfs} = 0.242 - 0.069 = 0.173$

Cellulosic Fiber + Insulated Siding;  
 $U = U_w - U_{cfs} = 0.242 - 0.067 = 0.175$

Ureaformaldehyde Foam + Insulated Siding;  
 $U = U_w - U_{ufts} = 0.242 - 0.059 = 0.183$

Based upon these figures, the annual energy savings on a per square foot basis for each of these systems and each energy source would be:

		<u>Annual Energy Savings Per Square Foot</u>		<u>Ureaformalde- hyde Foam and Insulated Siding</u>
		<u>Mineral Fiber + Insulated Siding</u>	<u>Cellulosic Fiber Insulated Siding</u>	
Natural Gas	\$0.086		\$0.087	\$0.097
Fuel Oil	0.131		0.133	0.139
Electric	0.415		0.420	0.440

The approximate installed cost per square foot of each of these systems would be:

Mineral Fiber	+ Insulated Siding -- \$1.60-\$1.70/sq. ft.
Cellulosic Fiber	+ Insulated Siding -- 1,65- 1.75/sq. ft.
Ureaformaldehyde Foam + Insulated Siding	-- 1.85- 1,95/sq. ft.

The above costs apply only if both the installation of the insulation materials and insulated siding are done simultaneously. Doing the insulating operation in such a manner reduces the overall cost of installation.

In addition to the above savings, an additional annual maintenance savings of \$0.08 per square foot would be realized by the application of aluminum siding (per AAMA recent report to the Federal Energy Administration). This would bring the total potential savings realized by using one of these systems to:

TOTAL ANNUAL SAVINGS  
PER SQUARE FOOT OF  
WALL AREA

	<u>Mineral Fiber + Insulated Siding</u>	<u>Cellulosic Fiber + Insulated Fiber</u>	<u>Ureaformaldehyde Foam + Insulated Siding</u>
Natural Gas	\$0.166	\$0.167	\$0.177
Fuel Oil	0.211	0.213	0.219
Electric	0.495	0.500	0.520

Add to these savings the fact that the home's appearance would be improved and its resale value would be higher. The combination of the wall insulation and insulated aluminum siding makes a significant overall advantage.

Adding Insulated Aluminum Siding and Insulating  
Sheathed to a Partially Insulated Wall

There is really no good efficient economical way to add insulation to a partially insulated wall. Any improvement must be made by adding some insulating materials to the exterior surface of the wall.

Assuming a wall to be partially insulated with 2" of fiberglass. The U-Value of the wall would be approximately 0.131.

The improved insulating capabilities to be realized by the addition of a 1" insulated sheathing board (R-5.4) and insulated aluminum siding (R-2.5) to such a home's exterior wall would be:

$$U_{s+s} = 0.062$$

$$U = U_o - U_{s+s}$$

$$= 0.131 - 0.062$$

$$U = 0.069$$

Based upon these figures, the annual energy savings on a per square foot of wall area bases for each energy source would be:

Annual Energy Savings Per Square Foot of Wall Area

Natural Gas	\$0.035
Fuel Oil	0.052
Electric	0.166

The approximate installed cost of such an installation would be about \$1.65 to \$1.75 a square foot.

Adding to these savings the \$0.08 a square foot repainting savings, the total annual square foot savings would be:

Total Annual Savings Per Square Foot of Wall Area

Natural Gas	\$0.115
Fuel Oil	0.132
Electric	0.246

Such an installation would also have the appearance and increased home value advantages presented above.

## OTHER AREAS FOR ENERGY CONSERVATION

In addition to the three major areas mentioned, there are many other areas of potential residential energy conservation such as:

- A. Other Area to Where Improved Insulation Should be Considered:
  - 1. Floors over unheated areas;
  - 2. Basement walls
  - 3. Crawl space wall
  - 4. Duct work in unheated areas
  - 5. Walls of homes of masonry construction
  - 6. Weatherstripping if replacement windows are not used
  - 7. Caulking and Putty--if storm or replacement windows are not used
- B. Servicing, repair or replacement of a home's heating system to improve its efficiency
- C. Conservation measures such as reduced thermostat settings, reduced lighting, closing off unused space, etc.

## PUBLICATIONS OF INTEREST

- A. In the Bank . . . On Up The Chimney

A Dollar and Cents Guide to Energy Saving Home Improvements. Department of Housing and Urban Development.

- B. Making the Most of Your Energy Dollars in Home Heating and Cooling

U.S. Department of Commerce, National Bureau of Standards.

C. Retrofitting Existing Housing For Energy Conservation:  
An Economic Analysis

Building Science Service, U.S. Department of Commerce,  
National Bureau of Standards

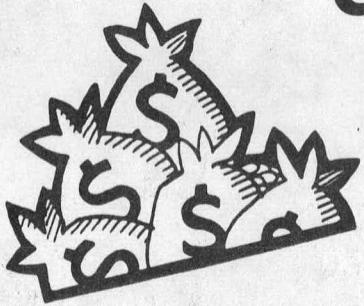
D. How to Save Money by Insulating Your Home

National Mineral Wool Association

E. Insulation Manual, Homes/Apartments

National Association of Home Builders Research Foundation.

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