



Rep. Margaret Croke

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10300HB5231ham002

LRB103 37487 JRC 71040 a

1 AMENDMENT TO HOUSE BILL 5231

2 AMENDMENT NO. _____. Amend House Bill 5231, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Residential Mortgage License Act of 1987
6 is amended by changing Section 1-4 and by adding Section
7 5-12.5 as follows:

8 (205 ILCS 635/1-4)

9 Sec. 1-4. Definitions. The following words and phrases
10 have the meanings given to them in this Section:

11 (a) "Residential real property" or "residential real
12 estate" shall mean any real property located in Illinois, upon
13 which is constructed or intended to be constructed a dwelling.
14 Those terms include a manufactured home as defined in
15 subdivision (53) of Section 9-102 of the Uniform Commercial
16 Code which is real property as defined in Section 5-35 of the

1 Conveyance and Encumbrance of Manufactured Homes as Real
2 Property and Severance Act.

3 (b) "Making a residential mortgage loan" or "funding a
4 residential mortgage loan" shall mean for compensation or
5 gain, either directly or indirectly, advancing funds or making
6 a commitment to advance funds to a loan applicant for a
7 residential mortgage loan.

8 (c) "Soliciting, processing, placing, or negotiating a
9 residential mortgage loan" shall mean for compensation or
10 gain, either directly or indirectly, accepting or offering to
11 accept an application for a residential mortgage loan,
12 assisting or offering to assist in the processing of an
13 application for a residential mortgage loan on behalf of a
14 borrower, or negotiating or offering to negotiate the terms or
15 conditions of a residential mortgage loan with a lender on
16 behalf of a borrower including, but not limited to, the
17 submission of credit packages for the approval of lenders, the
18 preparation of residential mortgage loan closing documents,
19 including a closing in the name of a broker.

20 (d) "Exempt person or entity" shall mean the following:

21 (1) (i) Any banking organization or foreign banking
22 corporation licensed by the Illinois Commissioner of Banks
23 and Real Estate or the United States Comptroller of the
24 Currency to transact business in this State; (ii) any
25 national bank, federally chartered savings and loan
26 association, federal savings bank, federal credit union;

1 (iii) (blank); (iv) any bank, savings and loan
2 association, savings bank, or credit union organized under
3 the laws of this or any other state; (v) any Illinois
4 Consumer Installment Loan Act licensee; (vi) any insurance
5 company authorized to transact business in this State;
6 (vii) any entity engaged solely in commercial mortgage
7 lending; (viii) any service corporation of a savings and
8 loan association or savings bank organized under the laws
9 of this State or the service corporation of a federally
10 chartered savings and loan association or savings bank
11 having its principal place of business in this State,
12 other than a service corporation licensed or entitled to
13 reciprocity under the Real Estate License Act of 2000; or
14 (ix) any first tier subsidiary of a bank, the charter of
15 which is issued under the Illinois Banking Act by the
16 Illinois Commissioner of Banks and Real Estate, or the
17 first tier subsidiary of a bank chartered by the United
18 States Comptroller of the Currency and that has its
19 principal place of business in this State, provided that
20 the first tier subsidiary is regularly examined by the
21 Illinois Commissioner of Banks and Real Estate or the
22 Comptroller of the Currency, or a consumer compliance
23 examination is regularly conducted by the Federal Reserve
24 Board.

25 (1.5) Any employee of a person or entity mentioned in
26 item (1) of this subsection, when acting for such person

1 or entity, or any registered mortgage loan originator when
2 acting for an entity described in subsection (tt) of this
3 Section.

4 (1.8) Any person or entity that does not originate
5 mortgage loans in the ordinary course of business, but
6 makes or acquires residential mortgage loans with his or
7 her own funds for his or her or its own investment without
8 intent to make, acquire, or resell more than 3 residential
9 mortgage loans in any one calendar year.

10 (2) (Blank).

11 (2.1) A bona fide nonprofit organization.

12 (2.2) An employee of a bona fide nonprofit
13 organization when acting on behalf of that organization.

14 (3) Any person employed by a licensee to assist in the
15 performance of the residential mortgage licensee's
16 activities regulated by this Act who is compensated in any
17 manner by only one licensee.

18 (4) (Blank).

19 (5) Any individual, corporation, partnership, or other
20 entity that originates, services, or brokers residential
21 mortgage loans, as these activities are defined in this
22 Act, and who or which receives no compensation for those
23 activities, subject to the Commissioner's regulations and
24 the federal Secure and Fair Enforcement for Mortgage
25 Licensing Act of 2008 and the rules promulgated under that
26 Act with regard to the nature and amount of compensation.

1 (6) (Blank).

2 (7) Any entity engaged solely in providing loan
3 processing services through the sponsoring of individuals
4 acting pursuant to subsection (d) of Section 7-1A of this
5 Act.

6 (e) "Licensee" or "residential mortgage licensee" shall
7 mean a person, partnership, association, corporation, or any
8 other entity who or which is licensed pursuant to this Act to
9 engage in the activities regulated by this Act.

10 (f) "Mortgage loan", "residential mortgage loan", or "home
11 mortgage loan" shall mean any loan primarily for personal,
12 family, or household use that is secured by a mortgage, deed of
13 trust, or other equivalent consensual security interest on a
14 dwelling as defined in Section 103(v) of the federal Truth in
15 Lending Act, or residential real estate upon which is
16 constructed or intended to be constructed a dwelling.
17 "Mortgage loan", "residential mortgage loan", or "home
18 mortgage loan" includes a loan in which funds are advanced
19 through a shared appreciation agreement.

20 (g) "Lender" shall mean any person, partnership,
21 association, corporation, or any other entity who either lends
22 or invests money in residential mortgage loans.

23 (h) "Ultimate equitable owner" shall mean a person who,
24 directly or indirectly, owns or controls an ownership interest
25 in a corporation, foreign corporation, alien business
26 organization, trust, or any other form of business

1 organization regardless of whether the person owns or controls
2 the ownership interest through one or more persons or one or
3 more proxies, powers of attorney, nominees, corporations,
4 associations, partnerships, trusts, joint stock companies, or
5 other entities or devices, or any combination thereof.

6 (i) "Residential mortgage financing transaction" shall
7 mean the negotiation, acquisition, sale, or arrangement for or
8 the offer to negotiate, acquire, sell, or arrange for, a
9 residential mortgage loan or residential mortgage loan
10 commitment.

11 (j) "Personal residence address" shall mean a street
12 address and shall not include a post office box number.

13 (k) "Residential mortgage loan commitment" shall mean a
14 contract for residential mortgage loan financing.

15 (l) "Party to a residential mortgage financing
16 transaction" shall mean a borrower, lender, or loan broker in
17 a residential mortgage financing transaction.

18 (m) "Payments" shall mean payment of all or any of the
19 following: principal, interest and escrow reserves for taxes,
20 insurance and other related reserves, and reimbursement for
21 lender advances.

22 (n) "Commissioner" shall mean the Commissioner of Banks
23 and Real Estate, except that, beginning on April 6, 2009 (the
24 effective date of Public Act 95-1047), all references in this
25 Act to the Commissioner of Banks and Real Estate are deemed, in
26 appropriate contexts, to be references to the Secretary of

1 Financial and Professional Regulation, or his or her designee,
2 including the Director of the Division of Banking of the
3 Department of Financial and Professional Regulation.

4 (n-1) "Director" shall mean the Director of the Division
5 of Banking of the Department of Financial and Professional
6 Regulation, except that, beginning on July 31, 2009 (the
7 effective date of Public Act 96-112), all references in this
8 Act to the Director are deemed, in appropriate contexts, to be
9 the Secretary of Financial and Professional Regulation, or his
10 or her designee, including the Director of the Division of
11 Banking of the Department of Financial and Professional
12 Regulation.

13 (o) "Loan brokering", "brokering", or "brokerage service"
14 shall mean the act of helping to obtain from another entity,
15 for a borrower, a loan secured by residential real estate
16 situated in Illinois or assisting a borrower in obtaining a
17 loan secured by residential real estate situated in Illinois
18 in return for consideration to be paid by either the borrower
19 or the lender including, but not limited to, contracting for
20 the delivery of residential mortgage loans to a third party
21 lender and soliciting, processing, placing, or negotiating
22 residential mortgage loans.

23 (p) "Loan broker" or "broker" shall mean a person,
24 partnership, association, corporation, or limited liability
25 company, other than those persons, partnerships, associations,
26 corporations, or limited liability companies exempted from

1 licensing pursuant to Section 1-4, subsection (d), of this
2 Act, who performs the activities described in subsections (c),
3 (o), and (yy) of this Section.

4 (q) "Servicing" shall mean the collection or remittance
5 for or the right or obligation to collect or remit for any
6 lender, noteowner, noteholder, or for a licensee's own
7 account, of payments, interests, principal, and trust items
8 such as hazard insurance and taxes on a residential mortgage
9 loan in accordance with the terms of the residential mortgage
10 loan; and includes loan payment follow-up, delinquency loan
11 follow-up, loan analysis and any notifications to the borrower
12 that are necessary to enable the borrower to keep the loan
13 current and in good standing. "Servicing" includes management
14 of third-party entities acting on behalf of a residential
15 mortgage licensee for the collection of delinquent payments
16 and the use by such third-party entities of said licensee's
17 servicing records or information, including their use in
18 foreclosure.

19 (r) "Full service office" shall mean an office, provided
20 by the licensee and not subleased from the licensee's
21 employees or independent contractors, and staff in Illinois
22 reasonably adequate to handle efficiently communications,
23 questions, and other matters relating to any application for,
24 or an existing home mortgage secured by residential real
25 estate situated in Illinois with respect to which the licensee
26 is brokering, funding originating, purchasing, or servicing.

1 The management and operation of each full service office must
2 include observance of good business practices such as proper
3 signage; adequate, organized, and accurate books and records;
4 ample phone lines, hours of business, staff training and
5 supervision, and provision for a mechanism to resolve consumer
6 inquiries, complaints, and problems. The Commissioner shall
7 issue regulations with regard to these requirements and shall
8 include an evaluation of compliance with this Section in his
9 or her periodic examination of each licensee. "Full service
10 office" does not include a remote location.

11 (s) "Purchasing" shall mean the purchase of conventional
12 or government-insured mortgage loans secured by residential
13 real estate situated in Illinois from either the lender or
14 from the secondary market.

15 (t) "Borrower" shall mean the person or persons who seek
16 the services of a loan broker, originator, or lender.

17 (u) "Originating" shall mean the issuing of commitments
18 for and funding of residential mortgage loans.

19 (v) "Loan brokerage agreement" shall mean a written
20 agreement in which a broker or loan broker agrees to do either
21 of the following:

22 (1) obtain a residential mortgage loan for the
23 borrower or assist the borrower in obtaining a residential
24 mortgage loan; or

25 (2) consider making a residential mortgage loan to the
26 borrower.

1 (w) "Advertisement" shall mean the attempt by publication,
2 dissemination, or circulation to induce, directly or
3 indirectly, any person to enter into a residential mortgage
4 loan agreement or residential mortgage loan brokerage
5 agreement relative to a mortgage secured by residential real
6 estate situated in Illinois.

7 (x) (Blank).

8 (y) "Government-insured mortgage loan" shall mean any
9 mortgage loan made on the security of residential real estate
10 insured by the Department of Housing and Urban Development or
11 Farmers Home Loan Administration, or guaranteed by the
12 Veterans Administration.

13 (z) "Annual audit" shall mean a certified audit of the
14 licensee's books and records and systems of internal control
15 performed by a certified public accountant in accordance with
16 generally accepted accounting principles and generally
17 accepted auditing standards.

18 (aa) "Financial institution" shall mean a savings and loan
19 association, savings bank, credit union, or a bank organized
20 under the laws of Illinois or a savings and loan association,
21 savings bank, credit union or a bank organized under the laws
22 of the United States and headquartered in Illinois.

23 (bb) "Escrow agent" shall mean a third party, individual
24 or entity charged with the fiduciary obligation for holding
25 escrow funds on a residential mortgage loan pending final
26 payout of those funds in accordance with the terms of the

1 residential mortgage loan.

2 (cc) "Net worth" shall have the meaning ascribed thereto
3 in Section 3-5 of this Act.

4 (dd) "Affiliate" shall mean:

5 (1) any entity that directly controls or is controlled
6 by the licensee and any other company that is directly
7 affecting activities regulated by this Act that is
8 controlled by the company that controls the licensee;

9 (2) any entity:

10 (A) that is controlled, directly or indirectly, by
11 a trust or otherwise, by or for the benefit of
12 shareholders who beneficially or otherwise control,
13 directly or indirectly, by trust or otherwise, the
14 licensee or any company that controls the licensee; or

15 (B) a majority of the directors or trustees of
16 which constitute a majority of the persons holding any
17 such office with the licensee or any company that
18 controls the licensee;

19 (3) any company, including a real estate investment
20 trust, that is sponsored and advised on a contractual
21 basis by the licensee or any subsidiary or affiliate of
22 the licensee.

23 (ee) "First tier subsidiary" shall be defined by
24 regulation incorporating the comparable definitions used by
25 the Office of the Comptroller of the Currency and the Illinois
26 Commissioner of Banks and Real Estate.

1 (ff) "Gross delinquency rate" means the quotient
2 determined by dividing (1) the sum of (i) the number of
3 government-insured residential mortgage loans funded or
4 purchased by a licensee in the preceding calendar year that
5 are delinquent and (ii) the number of conventional residential
6 mortgage loans funded or purchased by the licensee in the
7 preceding calendar year that are delinquent by (2) the sum of
8 (i) the number of government-insured residential mortgage
9 loans funded or purchased by the licensee in the preceding
10 calendar year and (ii) the number of conventional residential
11 mortgage loans funded or purchased by the licensee in the
12 preceding calendar year.

13 (gg) "Delinquency rate factor" means the factor set by
14 rule of the Commissioner that is multiplied by the average
15 gross delinquency rate of licensees, determined annually for
16 the immediately preceding calendar year, for the purpose of
17 determining which licensees shall be examined by the
18 Commissioner pursuant to subsection (b) of Section 4-8 of this
19 Act.

20 (hh) (Blank).

21 (ii) "Confidential supervisory information" means any
22 report of examination, visitation, or investigation prepared
23 by the Commissioner under this Act, any report of examination
24 visitation, or investigation prepared by the state regulatory
25 authority of another state that examines a licensee, any
26 document or record prepared or obtained in connection with or

1 relating to any examination, visitation, or investigation, and
2 any record prepared or obtained by the Commissioner to the
3 extent that the record summarizes or contains information
4 derived from any report, document, or record described in this
5 subsection. "Confidential supervisory information" does not
6 include any information or record routinely prepared by a
7 licensee and maintained in the ordinary course of business or
8 any information or record that is required to be made publicly
9 available pursuant to State or federal law or rule.

10 (jj) "Mortgage loan originator" means an individual who
11 for compensation or gain or in the expectation of compensation
12 or gain:

13 (i) takes a residential mortgage loan application; or

14 (ii) offers or negotiates terms of a residential
15 mortgage loan.

16 "Mortgage loan originator" includes an individual engaged
17 in loan modification activities as defined in subsection (yy)
18 of this Section. A mortgage loan originator engaged in loan
19 modification activities shall report those activities to the
20 Department of Financial and Professional Regulation in the
21 manner provided by the Department; however, the Department
22 shall not impose a fee for reporting, nor require any
23 additional qualifications to engage in those activities beyond
24 those provided pursuant to this Act for mortgage loan
25 originators.

26 "Mortgage loan originator" does not include an individual

1 engaged solely as a loan processor or underwriter except as
2 otherwise provided in subsection (d) of Section 7-1A of this
3 Act.

4 "Mortgage loan originator" does not include a person or
5 entity that only performs real estate brokerage activities and
6 is licensed in accordance with the Real Estate License Act of
7 2000, unless the person or entity is compensated by a lender, a
8 mortgage broker, or other mortgage loan originator, or by any
9 agent of that lender, mortgage broker, or other mortgage loan
10 originator.

11 "Mortgage loan originator" does not include a person or
12 entity solely involved in extensions of credit relating to
13 timeshare plans, as that term is defined in Section 101(53D)
14 of Title 11, United States Code.

15 (kk) "Depository institution" has the same meaning as in
16 Section 3 of the Federal Deposit Insurance Act, and includes
17 any credit union.

18 (ll) "Dwelling" means a residential structure or mobile
19 home which contains one to 4 family housing units, or
20 individual units of condominiums or cooperatives.

21 (mm) "Immediate family member" means a spouse, child,
22 sibling, parent, grandparent, or grandchild, and includes
23 step-parents, step-children, step-siblings, or adoptive
24 relationships.

25 (nn) "Individual" means a natural person.

26 (oo) "Loan processor or underwriter" means an individual

1 who performs clerical or support duties as an employee at the
2 direction of and subject to the supervision and instruction of
3 a person licensed, or exempt from licensing, under this Act.
4 "Clerical or support duties" includes subsequent to the
5 receipt of an application:

6 (i) the receipt, collection, distribution, and
7 analysis of information common for the processing or
8 underwriting of a residential mortgage loan; and

9 (ii) communicating with a consumer to obtain the
10 information necessary for the processing or underwriting
11 of a loan, to the extent that the communication does not
12 include offering or negotiating loan rates or terms, or
13 counseling consumers about residential mortgage loan rates
14 or terms. An individual engaging solely in loan processor
15 or underwriter activities shall not represent to the
16 public, through advertising or other means of
17 communicating or providing information, including the use
18 of business cards, stationery, brochures, signs, rate
19 lists, or other promotional items, that the individual can
20 or will perform any of the activities of a mortgage loan
21 originator.

22 (pp) "Nationwide Multistate Licensing System and Registry"
23 means a mortgage licensing system developed and maintained by
24 the Conference of State Bank Supervisors and the American
25 Association of Residential Mortgage Regulators for the
26 licensing and registration of licensed mortgage loan

1 originators.

2 (qq) "Nontraditional mortgage product" means any mortgage
3 product other than a 30-year fixed rate mortgage.

4 (rr) "Person" means a natural person, corporation,
5 company, limited liability company, partnership, or
6 association.

7 (ss) "Real estate brokerage activity" means any activity
8 that involves offering or providing real estate brokerage
9 services to the public, including:

10 (1) acting as a real estate agent or real estate
11 broker for a buyer, seller, lessor, or lessee of real
12 property;

13 (2) bringing together parties interested in the sale,
14 purchase, lease, rental, or exchange of real property;

15 (3) negotiating, on behalf of any party, any portion
16 of a contract relating to the sale, purchase, lease,
17 rental, or exchange of real property, other than in
18 connection with providing financing with respect to any
19 such transaction;

20 (4) engaging in any activity for which a person
21 engaged in the activity is required to be registered or
22 licensed as a real estate agent or real estate broker
23 under any applicable law; or

24 (5) offering to engage in any activity, or act in any
25 capacity, described in this subsection (ss).

26 (tt) "Registered mortgage loan originator" means any

1 individual that:

2 (1) meets the definition of mortgage loan originator
3 and is an employee of:

4 (A) a depository institution;

5 (B) a subsidiary that is:

6 (i) owned and controlled by a depository
7 institution; and

8 (ii) regulated by a federal banking agency; or

9 (C) an institution regulated by the Farm Credit
10 Administration; and

11 (2) is registered with, and maintains a unique
12 identifier through, the Nationwide Multistate Licensing
13 System and Registry.

14 (uu) "Unique identifier" means a number or other
15 identifier assigned by protocols established by the Nationwide
16 Multistate Licensing System and Registry.

17 (vv) "Residential mortgage license" means a license issued
18 pursuant to Section 1-3, 2-2, or 2-6 of this Act.

19 (ww) "Mortgage loan originator license" means a license
20 issued pursuant to Section 7-1A, 7-3, or 7-6 of this Act.

21 (xx) "Secretary" means the Secretary of the Department of
22 Financial and Professional Regulation, or a person authorized
23 by the Secretary or by this Act to act in the Secretary's
24 stead.

25 (yy) "Loan modification" means, for compensation or gain,
26 either directly or indirectly offering or negotiating on

1 behalf of a borrower or homeowner to adjust the terms of a
2 residential mortgage loan in a manner not provided for in the
3 original or previously modified mortgage loan.

4 (zz) "Short sale facilitation" means, for compensation or
5 gain, either directly or indirectly offering or negotiating on
6 behalf of a borrower or homeowner to facilitate the sale of
7 residential real estate subject to one or more residential
8 mortgage loans or debts constituting liens on the property in
9 which the proceeds from selling the residential real estate
10 will fall short of the amount owed and the lien holders are
11 contacted to agree to release their lien on the residential
12 real estate and accept less than the full amount owed on the
13 debt.

14 (aaa) "Bona fide nonprofit organization" means an
15 organization that is described in Section 501(c)(3) of the
16 Internal Revenue Code, is exempt from federal income tax under
17 Section 501(a) of the Internal Revenue Code, does not operate
18 in a commercial context, and does all of the following:

19 (1) Promotes affordable housing or provides home
20 ownership education or similar services.

21 (2) Conducts its activities in a manner that serves
22 public or charitable purposes.

23 (3) Receives funding and revenue and charges fees in a
24 manner that does not create an incentive for itself or its
25 employees to act other than in the best interests of its
26 clients.

1 (4) Compensates its employees in a manner that does
2 not create an incentive for its employees to act other
3 than in the best interests of its clients.

4 (5) Provides to, or identifies for, the borrower
5 residential mortgage loans with terms favorable to the
6 borrower and comparable to residential mortgage loans and
7 housing assistance provided under government housing
8 assistance programs.

9 (bbb) "Remote location" means a location other than a
10 principal place of business or a full service office at which a
11 mortgage loan originator of a licensee may conduct business.

12 (ccc) "Shared appreciation agreement" means a writing
13 evidencing a transaction or any option, future, or any other
14 derivative between a person and a consumer where the consumer
15 receives money or any other item of value in exchange for an
16 interest or future interest in a dwelling or residential real
17 estate or a future obligation to repay a sum on the occurrence
18 of an event, such as:

19 (1) the transfer of ownership;

20 (2) a repayment maturity date;

21 (3) the death of the consumer; or

22 (4) any other event contemplated by the writing.

23 The Commissioner may define by rule and regulation any
24 terms used in this Act for the efficient and clear
25 administration of this Act.

26 (Source: P.A. 103-156, eff. 1-1-24.)

1 (205 ILCS 635/5-12.5 new)

2 Sec. 5-12.5. Shared appreciation agreement consumer
3 counseling and disclosures.

4 (a) Notwithstanding any provision in this Act to the
5 contrary, before taking any legally binding action on a shared
6 appreciation agreement, the borrower or borrowers shall be
7 provided counseling. The borrower may not waive counseling.

8 (b) The Secretary may adopt rules relating to shared
9 appreciation agreements, including, but not limited to, rules
10 defining statutory terms; relating to disclosures to help
11 consumers understand the cost, duration, and fees of the
12 agreement, as well as potential alternatives; on the limits on
13 the interest or other fees that may be charged to a borrower;
14 and relating to counseling under subsection (a).

15 Section 10. The Residential Real Property Disclosure Act
16 is amended by changing Section 70 as follows:

17 (765 ILCS 77/70)

18 Sec. 70. Predatory lending database program.

19 (a) As used in this Article:

20 "Adjustable rate mortgage" or "ARM" means a closed-end
21 mortgage transaction that allows adjustments of the loan
22 interest rate during the first 3 years of the loan term.

23 "Borrower" means a person seeking a mortgage loan.

1 "Broker" means a "broker" or "loan broker", as defined in
2 subsection (p) of Section 1-4 of the Residential Mortgage
3 License Act of 1987.

4 "Closing agent" means an individual assigned by a title
5 insurance company or a broker or originator to ensure that the
6 execution of documents related to the closing of a real estate
7 sale or the refinancing of a real estate loan and the
8 disbursement of closing funds are in conformity with the
9 instructions of the entity financing the transaction.

10 "Counseling" means ~~in-person~~ counseling provided by a
11 counselor employed by a HUD-approved counseling agency to all
12 borrowers. Counseling must be provided in the following
13 manner:

14 (i) in person; or

15 (ii) by remote electronic or telephonic means, with
16 the permission of all borrowers, where the session can be
17 conducted in privacy, the counselor is able to verify the
18 identity of each borrower, and the counseling is
19 documented by the counselor, subject to any rules that may
20 be enacted by the Department ~~, or documented telephone~~
21 ~~counseling where a hardship would be imposed on one or~~
22 ~~more borrowers. A hardship shall exist in instances in~~
23 ~~which the borrower is confined to his or her home due to~~
24 ~~medical conditions, as verified in writing by a physician,~~
25 ~~or the borrower resides 50 miles or more from the nearest~~
26 ~~participating HUD approved housing counseling agency.~~

1 "Counselor" means a counselor employed by a HUD-approved
2 housing counseling agency.

3 "Credit score" means a credit risk score as defined by the
4 Fair Isaac Corporation, or its successor, and reported under
5 such names as "BEACON", "EMPIRICA", and "FAIR ISAAC RISK
6 SCORE" by one or more of the following credit reporting
7 agencies or their successors: Equifax, Inc., Experian
8 Information Solutions, Inc., and TransUnion LLC. If the
9 borrower's credit report contains credit scores from 2
10 reporting agencies, then the broker or loan originator shall
11 report the lower score. If the borrower's credit report
12 contains credit scores from 3 reporting agencies, then the
13 broker or loan originator shall report the middle score.

14 "Department" means the Department of Financial and
15 Professional Regulation.

16 "Exempt person or entity" means that term as it is defined
17 in subsection ~~subsections (d) (1), (d) (1.5), and (d) (1.8)~~ of
18 Section 1-4 of the Residential Mortgage License Act of 1987.

19 "First-time homebuyer" means a borrower who has not held
20 an ownership interest in residential property.

21 "HUD-approved counseling" or "counseling" means counseling
22 given to a borrower by a counselor employed by a HUD-approved
23 housing counseling agency.

24 "Interest only" means a closed-end loan that permits one
25 or more payments of interest without any reduction of the
26 principal balance of the loan, other than the first payment on

1 the loan.

2 "Lender" means that term as it is defined in subsection
3 (g) of Section 1-4 of the Residential Mortgage License Act of
4 1987.

5 "Licensee" means that term as it is defined in subsection
6 (e) of Section 1-4 of the Residential Mortgage License Act of
7 1987.

8 "Mortgage loan" means that term as it is defined in
9 subsection (f) of Section 1-4 of the Residential Mortgage
10 License Act of 1987.

11 "Negative amortization" means an amortization method under
12 which the outstanding balance may increase at any time over
13 the course of the loan because the regular periodic payment
14 does not cover the full amount of interest due.

15 "Originator" means a "mortgage loan originator" as defined
16 in subsection (jj) of Section 1-4 of the Residential Mortgage
17 License Act of 1987, except an exempt person.

18 "Points and fees" has the meaning ascribed to that term in
19 Section 10 of the High Risk Home Loan Act.

20 "Prepayment penalty" means a charge imposed by a lender
21 under a mortgage note or rider when the loan is paid before the
22 expiration of the term of the loan.

23 "Refinancing" means a loan secured by the borrower's or
24 borrowers' primary residence where the proceeds are not used
25 as purchase money for the residence.

26 "Title insurance company" means any domestic company

1 organized under the laws of this State for the purpose of
2 conducting the business of guaranteeing or insuring titles to
3 real estate and any title insurance company organized under
4 the laws of another State, the District of Columbia, or a
5 foreign government and authorized to transact the business of
6 guaranteeing or insuring titles to real estate in this State.

7 (a-5) A predatory lending database program shall be
8 established within Cook County. The program shall be
9 administered in accordance with this Article. The inception
10 date of the program shall be July 1, 2008. A predatory lending
11 database program shall be expanded to include Kane, Peoria,
12 and Will counties. The inception date of the expansion of the
13 program as it applies to Kane, Peoria, and Will counties shall
14 be July 1, 2010. Until the inception date, none of the duties,
15 obligations, contingencies, or consequences of or from the
16 program shall be imposed. The program shall apply to all
17 mortgage applications that are governed by this Article and
18 that are made or taken on or after the inception of the
19 program.

20 (b) The database created under this program shall be
21 maintained and administered by the Department. The database
22 shall be designed to allow brokers, originators, counselors,
23 title insurance companies, and closing agents to submit
24 information to the database online. The database shall not be
25 designed to allow those entities to retrieve information from
26 the database, except as otherwise provided in this Article.

1 Information submitted by the broker or originator to the
2 Department may be used to populate the online form submitted
3 by a counselor, title insurance company, or closing agent.

4 (c) Within 10 business days after taking a mortgage
5 application, the broker or originator for any mortgage on
6 residential property within the program area must submit to
7 the predatory lending database all of the information required
8 under Section 72 and any other information required by the
9 Department by rule. Within 7 business days after receipt of
10 the information, the Department shall compare that information
11 to the housing counseling standards in Section 73 and issue to
12 the borrower and the broker or originator a determination of
13 whether counseling is recommended for the borrower. The
14 borrower may not waive counseling. If at any time after
15 submitting the information required under Section 72 the
16 broker or originator (i) changes the terms of the loan or (ii)
17 issues a new commitment to the borrower, then, within 5
18 business days thereafter, the broker or originator shall
19 re-submit all of the information required under Section 72
20 and, within 4 business days after receipt of the information
21 re-submitted by the broker or originator, the Department shall
22 compare that information to the housing counseling standards
23 in Section 73 and shall issue to the borrower and the broker or
24 originator a new determination of whether re-counseling is
25 recommended for the borrower based on the information
26 re-submitted by the broker or originator. The Department shall

1 require re-counseling if the loan terms have been modified to
2 meet another counseling standard in Section 73, or if the
3 broker has increased the interest rate by more than 200 basis
4 points.

5 (d) If the Department recommends counseling for the
6 borrower under subsection (c), then the Department shall
7 notify the borrower of all participating HUD-approved
8 counseling agencies located within the State and, where
9 applicable, nationally HUD-approved counseling agencies, and
10 direct the borrower to interview with a counselor associated
11 with one of those agencies. Within 10 business days after
12 receipt of the notice of HUD-approved counseling agencies, it
13 is the borrower's responsibility to select one of those
14 agencies and shall engage in an interview with a counselor
15 associated with that agency. The borrower must supply all
16 necessary documents, as set forth by the counselor, at least
17 72 hours before the scheduled interview. The selection must
18 take place and the appointment for the interview must be set
19 within 10 business days, although the interview may take place
20 beyond the 10 business day period. Within 7 business days
21 after interviewing the borrower, the counselor must submit to
22 the predatory lending database all of the information required
23 under Section 74 and any other information required by the
24 Department by rule. Reasonable and customary costs not to
25 exceed \$300 associated with counseling provided under the
26 program shall be paid by the broker or originator and shall not

1 be charged back to, or recovered from, the borrower. The
2 Department shall annually calculate to the nearest dollar an
3 adjusted rate for inflation. A counselor shall not recommend
4 or suggest that a borrower contact any specific mortgage
5 origination company, financial institution, or entity that
6 deals in mortgage finance to obtain a loan, another quote, or
7 for any other reason related to the specific mortgage
8 transaction; however, a counselor may suggest that the
9 borrower seek an opinion or a quote from another mortgage
10 origination company, financial institution, or entity that
11 deals in mortgage finance. A counselor or housing counseling
12 agency that in good faith provides counseling shall not be
13 liable to a broker or originator or borrower for civil
14 damages, except for willful or wanton misconduct on the part
15 of the counselor in providing the counseling.

16 (e) The broker or originator and the borrower may not take
17 any legally binding action concerning the loan transaction
18 until the later of the following:

19 (1) the Department issues a determination not to
20 recommend HUD-approved counseling for the borrower in
21 accordance with subsection (c); or

22 (2) the Department issues a determination that
23 HUD-approved counseling is recommended for the borrower
24 and the counselor submits all required information to the
25 database in accordance with subsection (d).

26 (f) Within 10 business days after closing, the title

1 insurance company or closing agent must submit to the
2 predatory lending database all of the information required
3 under Section 76 and any other information required by the
4 Department by rule.

5 (g) The title insurance company or closing agent shall
6 attach to the mortgage a certificate of compliance with the
7 requirements of this Article, as generated by the database. If
8 the transaction is exempt, the title insurance company or
9 closing agent shall attach to the mortgage a certificate of
10 exemption, as generated by the database. Each certificate of
11 compliance or certificate of exemption must contain, at a
12 minimum, one of the borrower's names on the mortgage loan and
13 the property index number for the subject property. If the
14 title insurance company or closing agent fails to attach the
15 certificate of compliance or exemption, whichever is required,
16 then the mortgage is not recordable. In addition, if any lis
17 pendens for a residential mortgage foreclosure is recorded on
18 the property within the program area, a certificate of service
19 must be simultaneously recorded that affirms that a copy of
20 the lis pendens was filed with the Department. A lis pendens
21 filed after July 1, 2016 shall be filed with the Department
22 electronically. If the certificate of service is not recorded,
23 then the lis pendens pertaining to the residential mortgage
24 foreclosure in question is not recordable and is of no force
25 and effect.

26 (h) All information provided to the predatory lending

1 database under the program is confidential and is not subject
2 to disclosure under the Freedom of Information Act, except as
3 otherwise provided in this Article. Information or documents
4 obtained by employees of the Department in the course of
5 maintaining and administering the predatory lending database
6 are deemed confidential. Employees are prohibited from making
7 disclosure of such confidential information or documents. Any
8 request for production of information from the predatory
9 lending database, whether by subpoena, notice, or any other
10 source, shall be referred to the Department of Financial and
11 Professional Regulation. Any borrower may authorize in writing
12 the release of database information. The Department may use
13 the information in the database without the consent of the
14 borrower: (i) for the purposes of administering and enforcing
15 the program; (ii) to provide relevant information to a
16 counselor providing counseling to a borrower under the
17 program; or (iii) to the appropriate law enforcement agency or
18 the applicable administrative agency if the database
19 information demonstrates criminal, fraudulent, or otherwise
20 illegal activity.

21 (i) Nothing in this Article is intended to prevent a
22 borrower from making his or her own decision as to whether to
23 proceed with a transaction.

24 (j) Any person who violates any provision of this Article
25 commits an unlawful practice within the meaning of the
26 Consumer Fraud and Deceptive Business Practices Act.

1 (j-1) A violation of any provision of this Article by a
2 mortgage banking licensee or licensed mortgage loan originator
3 shall constitute a violation of the Residential Mortgage
4 License Act of 1987.

5 (j-2) A violation of any provision of this Article by a
6 title insurance company, title agent, or escrow agent shall
7 constitute a violation of the Title Insurance Act.

8 (j-3) A violation of any provision of this Article by a
9 housing counselor shall be referred to the Department of
10 Housing and Urban Development.

11 (k) During the existence of the program, the Department
12 shall submit semi-annual reports to the Governor and to the
13 General Assembly by May 1 and November 1 of each year detailing
14 its findings regarding the program. The report shall include,
15 by county, at least the following information for each
16 reporting period:

17 (1) the number of loans registered with the program;

18 (2) the number of borrowers receiving counseling;

19 (3) the number of loans closed;

20 (4) the number of loans requiring counseling for each
21 of the standards set forth in Section 73;

22 (5) the number of loans requiring counseling where the
23 mortgage originator changed the loan terms subsequent to
24 counseling;

25 (6) the number of licensed mortgage brokers and loan
26 originators entering information into the database;

1 (7) the number of investigations based on information
2 obtained from the database, including the number of
3 licensees fined, the number of licenses suspended, and the
4 number of licenses revoked;

5 (8) a summary of the types of non-traditional mortgage
6 products being offered; and

7 (9) a summary of how the Department is actively
8 utilizing the program to combat mortgage fraud.

9 (Source: P.A. 99-660, eff. 7-28-16; 100-509, eff. 9-15-17.)".