



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB0251

Introduced 2/4/2009, by Sen. Terry Link

SYNOPSIS AS INTRODUCED:

205 ILCS 635/5-6
765 ILCS 77/70
765 ILCS 77/78

Amends the Residential Mortgage License Act of 1987. In provisions concerning verification, provides that stated income should be accepted only if there are mitigating factors that clearly minimize the need for direct verification of ability to repay or the licensee is originating the loan directly for a federally insured financial institution that is subject to applicable federal regulation. Amends the Residential Real Property Disclosure Act. Changes the definitions of "adjustable rate mortgage" and "interest only" to include additional specified criteria. Provides that exemptions from the Act also include (1) any loan that qualifies to be processed through the automated underwriting system of Fannie Mae or Freddie Mac and (2) any loan that is a refinance of a FHA loan which only reduces the interest rate and reduces the loan payment for the borrower without additional borrower cost.

LRB096 03561 MJR 13586 b

1 AN ACT concerning financial regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Residential Mortgage License Act of 1987 is
5 amended by changing Section 5-6 as follows:

6 (205 ILCS 635/5-6)

7 Sec. 5-6. Verification of borrower's ability to repay.

8 (a) No licensee may make, provide, or arrange for a
9 residential mortgage loan without verifying the borrower's
10 reasonable ability to pay the principal and interest on the
11 loan, real estate taxes, homeowner's insurance, assessments,
12 and mortgage insurance premiums, if applicable.

13 For residential mortgage loans in which the interest rate
14 may vary, the reasonable ability to pay the principal and
15 interest on the loan shall be determined based on a fully
16 indexed rate, which rate shall be calculated by using the index
17 rate prevailing at the time of origination of the loan plus the
18 margin that will apply when calculating the adjustable rate
19 under the terms of the loan, assuming a fully amortizing
20 repayment schedule based on the term of the loan.

21 For loans that allow for negative amortization, the
22 principal amount of the loan shall be calculated by including
23 the maximum amount the principal balance may increase due to

1 negative amortization under the terms of the loan.

2 (b) For all residential mortgage loans made by a licensee,
3 the borrower's income and financial resources must be verified
4 by tax returns, payroll receipts, bank records, or other
5 reasonably reliable methods, based upon the circumstances of
6 the proposed loan. Nothing in this Section shall be construed
7 to limit a licensee's ability to rely on criteria other than
8 the borrower's income and financial resources to establish the
9 borrower's reasonable ability to repay a residential mortgage
10 loan; however, such other criteria must be verified through
11 reasonably reliable methods and documentation. A statement by
12 the borrower to the licensee of the borrower's income and
13 resources is not sufficient to establish the existence of the
14 income or resources when verifying the reasonable ability to
15 pay. Stated income should be accepted only if there are
16 mitigating factors that clearly minimize the need for direct
17 verification of ability to repay or the licensee is originating
18 the loan directly for a federally insured financial institution
19 that is subject to applicable federal regulation.

20 (Source: P.A. 95-691, eff. 6-1-08.)

21 Section 10. The Residential Real Property Disclosure Act is
22 amended by changing Sections 70 and 78 as follows:

23 (765 ILCS 77/70)

24 Sec. 70. Predatory lending database program.

1 (a) As used in this Article:

2 "Adjustable rate mortgage" or "ARM" means a closed-end
3 mortgage transaction that allows adjustments of the loan
4 interest rate during the first 3 years of the loan term if the
5 interest rate at the date of application was 3% greater than
6 the treasury security rate of equivalent maturity as of the
7 fifteenth day of the previous month and the loan to value ratio
8 is greater than 90%.

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

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

13 "Closing agent" means an individual assigned by a title
14 insurance company or a broker or originator to ensure that the
15 execution of documents related to the closing of a real estate
16 sale or the refinancing of a real estate loan and the
17 disbursement of closing funds are in conformity with the
18 instructions of the entity financing the transaction.

19 "Counseling" means in-person counseling provided by a
20 counselor employed by a HUD-certified counseling agency to all
21 borrowers, or documented telephone counseling where a hardship
22 would be imposed on one or more borrowers. A hardship shall
23 exist in instances in which the borrower is confined to his or
24 her home due to medical conditions, as verified in writing by a
25 physician, or the borrower resides 50 miles or more from the
26 nearest participating HUD-certified housing counseling agency.

1 In instances of telephone counseling, the borrower must supply
2 all necessary documents to the counselor at least 72 hours
3 prior to the scheduled telephone counseling session.

4 "Counselor" means a counselor employed by a HUD-certified
5 housing counseling agency.

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

17 "Department" means the Department of Financial and
18 Professional Regulation.

19 "Exempt person" means that term as it is defined in
20 subsections (d)(1) and (d)(1.5) of Section 1-4 of the
21 Residential Mortgage License Act of 1987.

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

24 "HUD-certified counseling" or "counseling" means
25 counseling given to a borrower by a counselor employed by a
26 HUD-certified housing counseling agency.

1 "Interest only" means a closed-end loan that permits one or
2 more payments of interest without any reduction of the
3 principal balance of the loan, other than the first payment on
4 the loan and the interest rate on the loan at application is 4%
5 greater than treasury securities of equivalent maturities as of
6 the fifteenth day of the previous month and the loan to value
7 ratio is greater than 90%.

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

10 "Licensee" means that term as it is defined in subsection
11 (e) of Section 1-4 of the Residential Mortgage License Act of
12 1987.

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

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

20 "Originator" means a "loan originator" as defined in
21 subsection (hh) of Section 1-4 of the Residential Mortgage
22 License Act of 1987, except an exempt person.

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

25 "Prepayment penalty" means a charge imposed by a lender
26 under a mortgage note or rider when the loan is paid before the

1 expiration of the term of the loan.

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

5 "Title insurance company" means any domestic company
6 organized under the laws of this State for the purpose of
7 conducting the business of guaranteeing or insuring titles to
8 real estate and any title insurance company organized under the
9 laws of another State, the District of Columbia, or a foreign
10 government and authorized to transact the business of
11 guaranteeing or insuring titles to real estate in this State.

12 (a-5) A predatory lending database program shall be
13 established within Cook County. The program shall be
14 administered in accordance with this Article. The inception
15 date of the program shall be July 1, 2008. Until the inception
16 date, none of the duties, obligations, contingencies, or
17 consequences of or from the program shall be imposed. The
18 program shall apply to all mortgage applications that are
19 governed by this Article and that are made or taken on or after
20 the inception of the program.

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

1 the database, except as otherwise provided in this Article.
2 Information submitted by the broker or originator to the
3 Department may be used to populate the online form submitted by
4 a counselor, title insurance company, or closing agent.

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

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

5 (d) If the Department recommends counseling for the
6 borrower under subsection (c), then the Department shall notify
7 the borrower of all participating HUD-certified counseling
8 agencies located within the State and direct the borrower to
9 interview with a counselor associated with one of those
10 agencies. Within 10 days after receipt of the notice of
11 HUD-certified counseling agencies, the borrower shall select
12 one of those agencies and shall engage in an interview with a
13 counselor associated with that agency. Within 7 days after
14 interviewing the borrower, the counselor must submit to the
15 predatory lending database all of the information required
16 under Section 74 and any other information required by the
17 Department by rule. Reasonable and customary costs not to
18 exceed \$300 associated with counseling provided under the
19 program shall be paid by the broker or originator. The
20 Department shall annually calculate to the nearest dollar an
21 adjusted rate for inflation. A counselor shall not recommend or
22 suggest that a borrower contact any specific mortgage
23 origination company, financial institution, or entity that
24 deals in mortgage finance to obtain a loan, another quote, or
25 for any other reason related to the specific mortgage
26 transaction; however, a counselor may suggest that the borrower

1 seek an opinion or a quote from another mortgage origination
2 company, financial institution, or entity that deals in
3 mortgage finance. A counselor or housing counseling agency that
4 in good faith provides counseling shall not be liable to a
5 broker or originator or borrower for civil damages, except for
6 willful or wanton misconduct on the part of the counselor in
7 providing the counseling.

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

11 (1) the Department issues a determination not to
12 recommend HUD-certified counseling for the borrower in
13 accordance with subsection (c); or

14 (2) the Department issues a determination that
15 HUD-certified counseling is recommended for the borrower
16 and the counselor submits all required information to the
17 database in accordance with subsection (d).

18 (f) Within 10 days after closing, the title insurance
19 company or closing agent must submit to the predatory lending
20 database all of the information required under Section 76 and
21 any other information required by the Department by rule.

22 (g) The title insurance company or closing agent shall
23 attach to the mortgage a certificate of compliance with the
24 requirements of this Article, as generated by the database. If
25 the title insurance company or closing agent fails to attach
26 the certificate of compliance, then the mortgage is not

1 recordable. In addition, if any lis pendens for a residential
2 mortgage foreclosure is recorded on the property within the
3 program area, a certificate of service must be simultaneously
4 recorded that affirms that a copy of the lis pendens was filed
5 with the Department. If the certificate of service is not
6 recorded, then the lis pendens pertaining to the residential
7 mortgage foreclosure in question is not recordable and is of no
8 force and effect.

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

1 applicable administrative agency if the database information
2 demonstrates criminal, fraudulent, or otherwise illegal
3 activity.

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

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

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

- 15 (1) the number of loans registered with the program;
16 (2) the number of borrowers receiving counseling;
17 (3) the number of loans closed;
18 (4) the number of loans requiring counseling for each
19 of the standards set forth in Section 73;
20 (5) the number of loans requiring counseling where the
21 mortgage originator changed the loan terms subsequent to
22 counseling.

23 (Source: P.A. 94-280, eff. 1-1-06; 94-1029, eff. 7-14-06;
24 95-691, eff. 6-1-08; revised 11-6-08.)

25 (765 ILCS 77/78)

1 Sec. 78. Exemption.

2 (1) Borrowers applying for reverse mortgage financing of
3 residential real estate including under programs regulated by
4 the Federal Housing Authority (FHA) that require HUD-certified
5 counseling are exempt from the program and may submit a HUD
6 counseling certificate to comply with the program.

7 (2) Any loan that qualifies to be processed through the
8 automated underwriting system of the Federal Home Loan Mortgage
9 Corporation or the Federal National Mortgage Association.

10 (3) Any loan that is a refinance of a FHA loan which only
11 reduces the interest rate and reduces the loan payment for the
12 borrower without additional borrower cost.

13 (Source: P.A. 95-691, eff. 6-1-08.)