



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB5331

by Rep. Michael J. Zalewski

SYNOPSIS AS INTRODUCED:

See Index

Amends the Residential Mortgage License Act of 1987. From the definition of "exempt person or entity", deletes pension trusts, bank trusts, and bank trust companies. Provides that an applicant for a residential mortgage license that is a subsidiary may submit audited consolidated financial statements of its parent, intermediary parent, or ultimate parent as long as the consolidated statements are supported by consolidating statements. Provides that the applicant's chief financial officer shall attest to the applicant's financial statements disclosed in the consolidating statements. Makes changes concerning which financial statements are required under the Act. Makes other changes. Amends the Residential Real Property Disclosure Act. Throughout the Act, changes references to "HUD-certified counseling" to "HUD-approved counseling". Provides that certain deadlines are counted by business days rather than calendar days. Provides that it is the borrower's responsibility to (rather than "the borrower shall") select a HUD-approved counseling agency. Provides that the selection must take place and the appointment for the interview must be set within 10 business days, although the interview may take place beyond the 10 business day period. Provides that if a lis pendens is recorded, it may be filed with the Department of Financial and Professional Regulation either electronically or by filing a hard copy. Provides that all information entered into the predatory lending database must be true and correct to the best of the originator's knowledge. Provides that the originator shall, prior to closing, correct, update, or amend the data as necessary. Provides that if any corrections become necessary after the file has been accessed by the closing agent or housing counselor, a new file must be entered. Changes the predatory lending database pilot program to the predatory lending database program. Provides if certain exemptions to certain filing and reporting requirements apply, a certificate of exemption is required. Adds to the list of exemptions to the predatory lending database program mortgages secured by certain types of property and mortgages originated by an exempt person or entity. Effective immediately.

LRB098 17462 HEP 54768 b

1 AN ACT concerning 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 Sections 1-4, 2-2, 2-4, and 3-2 as follows:

6 (205 ILCS 635/1-4)

7 Sec. 1-4. Definitions.

8 (a) "Residential real property" or "residential real
9 estate" shall mean any real property located in Illinois, upon
10 which is constructed or intended to be constructed a dwelling.

11 (b) "Making a residential mortgage loan" or "funding a
12 residential mortgage loan" shall mean for compensation or gain,
13 either directly or indirectly, advancing funds or making a
14 commitment to advance funds to a loan applicant for a
15 residential mortgage loan.

16 (c) "Soliciting, processing, placing, or negotiating a
17 residential mortgage loan" shall mean for compensation or gain,
18 either directly or indirectly, accepting or offering to accept
19 an application for a residential mortgage loan, assisting or
20 offering to assist in the processing of an application for a
21 residential mortgage loan on behalf of a borrower, or
22 negotiating or offering to negotiate the terms or conditions of
23 a residential mortgage loan with a lender on behalf of a

1 borrower including, but not limited to, the submission of
2 credit packages for the approval of lenders, the preparation of
3 residential mortgage loan closing documents, including a
4 closing in the name of a broker.

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

6 (1) (i) Any banking organization or foreign banking
7 corporation licensed by the Illinois Commissioner of Banks
8 and Real Estate or the United States Comptroller of the
9 Currency to transact business in this State; (ii) any
10 national bank, federally chartered savings and loan
11 association, federal savings bank, federal credit union;
12 (iii) (blank); ~~any pension trust, bank trust, or bank trust~~
13 ~~company;~~ (iv) any bank, savings and loan association,
14 savings bank, or credit union organized under the laws of
15 this or any other state; (v) any Illinois Consumer
16 Installment Loan Act licensee; (vi) any insurance company
17 authorized to transact business in this State; (vii) any
18 entity engaged solely in commercial mortgage lending;
19 (viii) any service corporation of a savings and loan
20 association or savings bank organized under the laws of
21 this State or the service corporation of a federally
22 chartered savings and loan association or savings bank
23 having its principal place of business in this State, other
24 than a service corporation licensed or entitled to
25 reciprocity under the Real Estate License Act of 2000; or
26 (ix) any first tier subsidiary of a bank, the charter of

1 which is issued under the Illinois Banking Act by the
2 Illinois Commissioner of Banks and Real Estate, or the
3 first tier subsidiary of a bank chartered by the United
4 States Comptroller of the Currency and that has its
5 principal place of business in this State, provided that
6 the first tier subsidiary is regularly examined by the
7 Illinois Commissioner of Banks and Real Estate or the
8 Comptroller of the Currency, or a consumer compliance
9 examination is regularly conducted by the Federal Reserve
10 Board.

11 (1.5) Any employee of a person or entity mentioned in
12 item (1) of this subsection, when acting for such person or
13 entity, or any registered mortgage loan originator when
14 acting for an entity described in subsection (tt) of this
15 Section.

16 (1.8) Any person or entity that does not originate
17 mortgage loans in the ordinary course of business, but
18 makes or acquires residential mortgage loans with his or
19 her own funds for his or her or its own investment without
20 intent to make, acquire, or resell more than 3 residential
21 mortgage loans in any one calendar year.

22 (2) (Blank).

23 (3) Any person employed by a licensee to assist in the
24 performance of the residential mortgage licensee's
25 activities regulated by this Act who is compensated in any
26 manner by only one licensee.

1 (4) (Blank).

2 (5) Any individual, corporation, partnership, or other
3 entity that originates, services, or brokers residential
4 mortgage loans, as these activities are defined in this
5 Act, and who or which receives no compensation for those
6 activities, subject to the Commissioner's regulations and
7 the federal Secure and Fair Enforcement for Mortgage
8 Licensing Act of 2008 and the rules promulgated under that
9 Act with regard to the nature and amount of compensation.

10 (6) (Blank).

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

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

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

25 (h) "Ultimate equitable owner" shall mean a person who,
26 directly or indirectly, owns or controls an ownership interest

1 in a corporation, foreign corporation, alien business
2 organization, trust, or any other form of business organization
3 regardless of whether the person owns or controls the ownership
4 interest through one or more persons or one or more proxies,
5 powers of attorney, nominees, corporations, associations,
6 partnerships, trusts, joint stock companies, or other entities
7 or devices, or any combination thereof.

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

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

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

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

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

24 (n) "Commissioner" shall mean the Commissioner of Banks and
25 Real Estate, except that, beginning on April 6, 2009 (the
26 effective date of Public Act 95-1047), all references in this

1 Act to the Commissioner of Banks and Real Estate are deemed, in
2 appropriate contexts, to be references to the Secretary of
3 Financial and Professional Regulation, or his or her designee,
4 including the Director of the Division of Banking of the
5 Department of Financial and Professional Regulation.

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

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

25 (p) "Loan broker" or "broker" shall mean a person,
26 partnership, association, corporation, or limited liability

1 company, other than those persons, partnerships, associations,
2 corporations, or limited liability companies exempted from
3 licensing pursuant to Section 1-4, subsection (d), of this Act,
4 who performs the activities described in subsections (c), (o),
5 and (yy) of this Section.

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

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

1 purchasing, or servicing. The management and operation of each
2 full service office must include observance of good business
3 practices such as proper signage; adequate, organized, and
4 accurate books and records; ample phone lines, hours of
5 business, staff training and supervision, and provision for a
6 mechanism to resolve consumer inquiries, complaints, and
7 problems. The Commissioner shall issue regulations with regard
8 to these requirements and shall include an evaluation of
9 compliance with this Section in his or her periodic examination
10 of each licensee.

11 (s) "Purchasing" shall mean the purchase of conventional or
12 government-insured mortgage loans secured by residential real
13 estate situated in Illinois from either the lender or from the
14 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 for
18 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 borrower
23 or assist the borrower in obtaining a residential mortgage
24 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) "Residential Mortgage Board" shall mean the
8 Residential Mortgage Board created in Section 1-5 of this Act.

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

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

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

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

1 those funds in accordance with the terms of the residential
2 mortgage loan.

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

5 (dd) "Affiliate" shall mean:

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

10 (2) any entity:

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

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

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

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

1 (ee) "First tier subsidiary" shall be defined by regulation
2 incorporating the comparable definitions used by the Office of
3 the Comptroller of the Currency and the Illinois Commissioner
4 of Banks and Real Estate.

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

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

24 (hh) "Loan originator" means any natural person who, for
25 compensation or in the expectation of compensation, either
26 directly or indirectly makes, offers to make, solicits, places,

1 or negotiates a residential mortgage loan. This definition
2 applies only to Section 7-1 of this Act.

3 (ii) "Confidential supervisory information" means any
4 report of examination, visitation, or investigation prepared
5 by the Commissioner under this Act, any report of examination
6 visitation, or investigation prepared by the state regulatory
7 authority of another state that examines a licensee, any
8 document or record prepared or obtained in connection with or
9 relating to any examination, visitation, or investigation, and
10 any record prepared or obtained by the Commissioner to the
11 extent that the record summarizes or contains information
12 derived from any report, document, or record described in this
13 subsection. "Confidential supervisory information" does not
14 include any information or record routinely prepared by a
15 licensee and maintained in the ordinary course of business or
16 any information or record that is required to be made publicly
17 available pursuant to State or federal law or rule.

18 (jj) "Mortgage loan originator" means an individual who for
19 compensation or gain or in the expectation of compensation or
20 gain:

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

22 (ii) offers or negotiates terms of a residential
23 mortgage loan.

24 "Mortgage loan originator" includes an individual engaged
25 in loan modification activities as defined in subsection (yy)
26 of this Section. A mortgage loan originator engaged in loan

1 modification activities shall report those activities to the
2 Department of Financial and Professional Regulation in the
3 manner provided by the Department; however, the Department
4 shall not impose a fee for reporting, nor require any
5 additional qualifications to engage in those activities beyond
6 those provided pursuant to this Act for mortgage loan
7 originators.

8 "Mortgage loan originator" does not include an individual
9 engaged solely as a loan processor or underwriter except as
10 otherwise provided in subsection (d) of Section 7-1A of this
11 Act.

12 "Mortgage loan originator" does not include a person or
13 entity that only performs real estate brokerage activities and
14 is licensed in accordance with the Real Estate License Act of
15 2000, unless the person or entity is compensated by a lender, a
16 mortgage broker, or other mortgage loan originator, or by any
17 agent of that lender, mortgage broker, or other mortgage loan
18 originator.

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

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

26 (ll) "Dwelling" means a residential structure or mobile

1 home which contains one to 4 family housing units, or
2 individual units of condominiums or cooperatives.

3 (mm) "Immediate family member" means a spouse, child,
4 sibling, parent, grandparent, or grandchild, and includes
5 step-parents, step-children, step-siblings, or adoptive
6 relationships.

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

8 (oo) "Loan processor or underwriter" means an individual
9 who performs clerical or support duties as an employee at the
10 direction of and subject to the supervision and instruction of
11 a person licensed, or exempt from licensing, under this Act.
12 "Clerical or support duties" includes subsequent to the receipt
13 of an application:

14 (i) the receipt, collection, distribution, and
15 analysis of information common for the processing or
16 underwriting of a residential mortgage loan; and

17 (ii) communicating with a consumer to obtain the
18 information necessary for the processing or underwriting
19 of a loan, to the extent that the communication does not
20 include offering or negotiating loan rates or terms, or
21 counseling consumers about residential mortgage loan rates
22 or terms. An individual engaging solely in loan processor
23 or underwriter activities shall not represent to the
24 public, through advertising or other means of
25 communicating or providing information, including the use
26 of business cards, stationery, brochures, signs, rate

1 lists, or other promotional items, that the individual can
2 or will perform any of the activities of a mortgage loan
3 originator.

4 (pp) "Nationwide Mortgage Licensing System and Registry"
5 means a mortgage licensing system developed and maintained by
6 the Conference of State Bank Supervisors and the American
7 Association of Residential Mortgage Regulators for the
8 licensing and registration of licensed mortgage loan
9 originators.

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

12 (rr) "Person" means a natural person, corporation,
13 company, limited liability company, partnership, or
14 association.

15 (ss) "Real estate brokerage activity" means any activity
16 that involves offering or providing real estate brokerage
17 services to the public, including:

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

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

22 (3) negotiating, on behalf of any party, any portion of
23 a contract relating to the sale, purchase, lease, rental,
24 or exchange of real property, other than in connection with
25 providing financing with respect to any such transaction;

26 (4) engaging in any activity for which a person engaged

1 in the activity is required to be registered or licensed as
2 a real estate agent or real estate broker under any
3 applicable law; or

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

6 (tt) "Registered mortgage loan originator" means any
7 individual that:

8 (1) meets the definition of mortgage loan originator
9 and is an employee of:

10 (A) a depository institution;

11 (B) a subsidiary that is:

12 (i) owned and controlled by a depository
13 institution; and

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

15 (C) an institution regulated by the Farm Credit
16 Administration; and

17 (2) is registered with, and maintains a unique
18 identifier through, the Nationwide Mortgage Licensing
19 System and Registry.

20 (uu) "Unique identifier" means a number or other identifier
21 assigned by protocols established by the Nationwide Mortgage
22 Licensing System and Registry.

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

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

1 (xx) "Secretary" means the Secretary of the Department of
2 Financial and Professional Regulation, or a person authorized
3 by the Secretary or by this Act to act in the Secretary's
4 stead.

5 (yy) "Loan modification" means, for compensation or gain,
6 either directly or indirectly offering or negotiating on behalf
7 of a borrower or homeowner to adjust the terms of a residential
8 mortgage loan in a manner not provided for in the original or
9 previously modified mortgage loan.

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

20 (Source: P.A. 96-112, eff. 7-31-09; 96-1000, eff. 7-2-10;
21 96-1216, eff. 1-1-11; 97-143, eff. 7-14-11; 97-891, eff.
22 8-3-12.)

23 (205 ILCS 635/2-2)

24 Sec. 2-2. Application process; investigation; fee.

25 (a) The Secretary shall issue a license upon completion of

1 all of the following:

2 (1) The filing of an application for license with the
3 Director or the Nationwide Mortgage Licensing System and
4 Registry as approved by the Director.

5 (2) The filing with the Secretary of a listing of
6 judgments entered against, and bankruptcy petitions by,
7 the license applicant for the preceding 10 years.

8 (3) The payment, in certified funds, of investigation
9 and application fees, the total of which shall be in an
10 amount equal to \$2,700 annually. To comply with the common
11 renewal date and requirements of the Nationwide Mortgage
12 Licensing System and Registry, the term of initial licenses
13 may be extended or shortened with applicable fees prorated
14 or combined accordingly.

15 (4) Except for a broker applying to renew a license,
16 the filing of an audited balance sheet including all
17 footnotes prepared by a certified public accountant in
18 accordance with generally accepted accounting principles
19 and generally accepted auditing standards ~~principles~~ which
20 evidences that the applicant meets the net worth
21 requirements of Section 3-5. Notwithstanding the
22 requirements of this subsection, an applicant that is a
23 subsidiary may submit audited consolidated financial
24 statements of its parent, intermediary parent, or ultimate
25 parent as long as the consolidated statements are supported
26 by consolidating statements which include the applicant's

1 financial statement. If the consolidating statements are
2 unaudited, the applicant's chief financial officer shall
3 attest to the applicant's financial statements disclosed
4 in the consolidating statements.

5 (5) The filing of proof satisfactory to the
6 Commissioner that the applicant, the members thereof if the
7 applicant is a partnership or association, the members or
8 managers thereof that retain any authority or
9 responsibility under the operating agreement if the
10 applicant is a limited liability company, or the officers
11 thereof if the applicant is a corporation have 3 years
12 experience preceding application in real estate finance.
13 Instead of this requirement, the applicant and the
14 applicant's officers or members, as applicable, may
15 satisfactorily complete a program of education in real
16 estate finance and fair lending, as approved by the
17 Commissioner, prior to receiving the initial license. The
18 Commissioner shall promulgate rules regarding proof of
19 experience requirements and educational requirements and
20 the satisfactory completion of those requirements. The
21 Commissioner may establish by rule a list of duly licensed
22 professionals and others who may be exempt from this
23 requirement.

24 (6) An investigation of the averments required by
25 Section 2-4, which investigation must allow the
26 Commissioner to issue positive findings stating that the

1 financial responsibility, experience, character, and
2 general fitness of the license applicant and of the members
3 thereof if the license applicant is a partnership or
4 association, of the officers and directors thereof if the
5 license applicant is a corporation, and of the managers and
6 members that retain any authority or responsibility under
7 the operating agreement if the license applicant is a
8 limited liability company are such as to command the
9 confidence of the community and to warrant belief that the
10 business will be operated honestly, fairly and efficiently
11 within the purpose of this Act. If the Commissioner shall
12 not so find, he or she shall not issue such license, and he
13 or she shall notify the license applicant of the denial.

14 The Commissioner may impose conditions on a license if the
15 Commissioner determines that the conditions are necessary or
16 appropriate. These conditions shall be imposed in writing and
17 shall continue in effect for the period prescribed by the
18 Commissioner.

19 (b) All licenses shall be issued to the license applicant.

20 Upon receipt of such license, a residential mortgage
21 licensee shall be authorized to engage in the business
22 regulated by this Act. Such license shall remain in full force
23 and effect until it expires without renewal, is surrendered by
24 the licensee or revoked or suspended as hereinafter provided.

25 (Source: P.A. 96-112, eff. 7-31-09; 96-1000, eff. 7-2-10;
26 97-891, eff. 8-3-12.)

1 (205 ILCS 635/2-4) (from Ch. 17, par. 2322-4)

2 Sec. 2-4. Averments of Licensee. Each application for
3 license ~~or for the renewal of a license~~ shall be accompanied by
4 the following averments stating that the applicant:

5 (a) Will maintain at least one full service office
6 within the State of Illinois pursuant to Section 3-4 of
7 this Act;

8 (b) Will maintain staff reasonably adequate to meet the
9 requirements of Section 3-4 of this Act;

10 (c) Will keep and maintain for 36 months the same
11 written records as required by the federal Equal Credit
12 Opportunity Act, and any other information required by
13 regulations of the Commissioner regarding any home
14 mortgage in the course of the conduct of its residential
15 mortgage business;

16 (d) Will file with the Commissioner or Nationwide
17 Mortgage Licensing System and Registry as applicable, when
18 due, any report or reports which it is required to file
19 under any of the provisions of this Act;

20 (e) Will not engage, whether as principal or agent, in
21 the practice of rejecting residential mortgage
22 applications without reasonable cause, or varying terms or
23 application procedures without reasonable cause, for home
24 mortgages on real estate within any specific geographic
25 area from the terms or procedures generally provided by the

1 licensee within other geographic areas of the State;

2 (f) Will not engage in fraudulent home mortgage
3 underwriting practices;

4 (g) Will not make payment, whether directly or
5 indirectly, of any kind to any in house or fee appraiser of
6 any government or private money lending agency with which
7 an application for a home mortgage has been filed for the
8 purpose of influencing the independent judgment of the
9 appraiser with respect to the value of any real estate
10 which is to be covered by such home mortgage;

11 (h) Has filed tax returns (State and Federal) for the
12 past 3 years or filed with the Commissioner an accountant's
13 or attorney's statement as to why no return was filed;

14 (i) Will not engage in any discrimination or redlining
15 activities prohibited by Section 3-8 of this Act;

16 (j) Will not knowingly make any false promises likely
17 to influence or persuade, or pursue a course of
18 misrepresentation and false promises through agents,
19 solicitors, advertising or otherwise;

20 (k) Will not knowingly misrepresent, circumvent or
21 conceal, through whatever subterfuge or device, any of the
22 material particulars or the nature thereof, regarding a
23 transaction to which it is a party to the injury of another
24 party thereto;

25 (l) Will disburse funds in accordance with its
26 agreements;

1 (m) Has not committed a crime against the law of this
2 State, any other state or of the United States, involving
3 moral turpitude, fraudulent or dishonest dealing, and that
4 no final judgment has been entered against it in a civil
5 action upon grounds of fraud, misrepresentation or deceit
6 which has not been previously reported to the Commissioner;

7 (n) Will account or deliver to the owner upon request
8 any personal property such as money, fund, deposit, check,
9 draft, mortgage, other document or thing of value which it
10 is not in law or equity entitled to retain under the
11 circumstances;

12 (o) Has not engaged in any conduct which would be cause
13 for denial of a license;

14 (p) Has not become insolvent;

15 (q) Has not submitted an application for a license
16 under this Act which contains a material misstatement;

17 (r) Has not demonstrated by course of conduct,
18 negligence or incompetence in performing any act for which
19 it is required to hold a license under this Act;

20 (s) Will advise the Commissioner in writing, or the
21 Nationwide Mortgage Licensing System and Registry as
22 applicable, of any changes to the information submitted on
23 the most recent application for license or averments of
24 record within 30 days of said change. The written notice
25 must be signed in the same form as the application for
26 license being amended;

1 (t) Will comply with the provisions of this Act, or
2 with any lawful order, rule or regulation made or issued
3 under the provisions of this Act;

4 (u) Will submit to periodic examination by the
5 Commissioner as required by this Act;

6 (v) Will advise the Commissioner in writing of
7 judgments entered against, and bankruptcy petitions by,
8 the license applicant within 5 days of occurrence;

9 (w) Will advise the Commissioner in writing within 30
10 days of any request made to a licensee under this Act to
11 repurchase a loan in a manner that completely and clearly
12 identifies to whom the request was made, the loans
13 involved, and the reason therefor;

14 (x) Will advise the Commissioner in writing within 30
15 days of any request from any entity to repurchase a loan in
16 a manner that completely and clearly identifies to whom the
17 request was made, the loans involved, and the reason for
18 the request;

19 (y) Will at all times act in a manner consistent with
20 subsections (a) and (b) of Section 1-2 of this Act;

21 (z) Will not knowingly hire or employ a loan originator
22 who is not registered, or mortgage loan originator who is
23 not licensed, with the Commissioner as required under
24 Section 7-1 or Section 7-1A, as applicable, of this Act;

25 (aa) Will not charge or collect advance payments from
26 borrowers or homeowners for engaging in loan modification;

1 and

2 (bb) Will not structure activities or contracts to
3 evade provisions of this Act.

4 A licensee who fails to fulfill obligations of an averment,
5 to comply with averments made, or otherwise violates any of the
6 averments made under this Section shall be subject to the
7 penalties in Section 4-5 of this Act.

8 (Source: P.A. 96-112, eff. 7-31-09; 97-891, eff. 8-3-12.)

9 (205 ILCS 635/3-2) (from Ch. 17, par. 2323-2)

10 Sec. 3-2. Annual audit.

11 (a) At the licensee's fiscal year-end, but in no case more
12 than 12 months after the last audit conducted pursuant to this
13 Section, except as otherwise provided in this Section, it shall
14 be mandatory for each residential mortgage licensee to cause
15 its books and accounts to be audited by a certified public
16 accountant not connected with such licensee. The books and
17 records of all licensees under this Act shall be maintained on
18 an accrual basis. The audit must be sufficiently comprehensive
19 in scope to permit the expression of an opinion on the
20 financial statements, which must be prepared in accordance with
21 generally accepted accounting principles, and must be
22 performed in accordance with generally accepted auditing
23 standards. Notwithstanding the requirements of this
24 subsection, a licensee that is a ~~first-tier~~ subsidiary may
25 submit audited consolidated financial statements of its

1 parent, intermediary parent, or ultimate parent as long as the
2 consolidated statements are supported by consolidating
3 statements which include the licensee's financial statement.
4 If the consolidating statements are unaudited, the ~~The~~
5 licensee's chief financial officer shall attest to the
6 licensee's financial statements disclosed in the consolidating
7 statements.

8 (b) As used herein, the term "expression of opinion"
9 includes either (1) an unqualified opinion, (2) a qualified
10 opinion, (3) a disclaimer of opinion, or (4) an adverse
11 opinion.

12 (c) If a qualified or adverse opinion is expressed or if an
13 opinion is disclaimed, the reasons therefore must be fully
14 explained. An opinion, qualified as to a scope limitation,
15 shall not be acceptable.

16 (d) The most recent audit report shall be filed with the
17 Commissioner within 90 days after the end of the licensee's
18 fiscal year, or with the Nationwide Mortgage Licensing System
19 and Registry, if applicable, pursuant to Mortgage Call Report
20 requirements. The report filed with the Commissioner shall be
21 certified by the certified public accountant conducting the
22 audit. The Commissioner may promulgate rules regarding late
23 audit reports.

24 (e) If any licensee required to make an audit shall fail to
25 cause an audit to be made, the Commissioner shall cause the
26 same to be made by a certified public accountant at the

1 licensee's expense. The Commissioner shall select such
2 certified public accountant by advertising for bids or by such
3 other fair and impartial means as he or she establishes by
4 regulation.

5 (f) In lieu of the audit or compilation financial statement
6 required by this Section, a licensee shall submit and the
7 Commissioner may accept any audit made in conformance with the
8 audit requirements of the U.S. Department of Housing and Urban
9 Development.

10 (g) With respect to licensees who solely broker residential
11 mortgage loans as defined in subsection (o) of Section 1-4,
12 instead of the audit required by this Section, the Commissioner
13 may accept compilation financial statements prepared at least
14 every 12 months, and the compilation financial statement must
15 be submitted within 90 days after the end of the licensee's
16 fiscal year, or with the Nationwide Mortgage Licensing System
17 and Registry, if applicable, pursuant to Mortgage Call Report
18 requirements. If a licensee under this Section fails to file a
19 compilation as required, the Commissioner shall cause an audit
20 of the licensee's books and accounts to be made by a certified
21 public accountant at the licensee's expense. The Commissioner
22 shall select the certified public accountant by advertising for
23 bids or by such other fair and impartial means as he or she
24 establishes by rule. A licensee who files false or misleading
25 compilation financial statements is guilty of a business
26 offense and shall be fined not less than \$5,000.

1 (h) The workpapers of the certified public accountants
2 employed by each licensee for purposes of this Section are to
3 be made available to the Commissioner or the Commissioner's
4 designee upon request and may be reproduced by the Commissioner
5 or the Commissioner's designee to enable to the Commissioner to
6 carry out the purposes of this Act.

7 (i) Notwithstanding any other provision of this Section, if
8 a licensee relying on subsection (g) of this Section causes its
9 books to be audited at any other time or causes its financial
10 statements to be reviewed, a complete copy of the audited or
11 reviewed financial statements shall be delivered to the
12 Commissioner at the time of the annual license renewal payment
13 following receipt by the licensee of the audited or reviewed
14 financial statements. All workpapers shall be made available to
15 the Commissioner upon request. The financial statements and
16 workpapers may be reproduced by the Commissioner or the
17 Commissioner's designee to carry out the purposes of this Act.

18 (Source: P.A. 97-813, eff. 7-13-12; 97-891, eff. 8-3-12;
19 98-463, eff. 8-16-13.)

20 Section 10. The Residential Real Property Disclosure Act is
21 amended by changing Sections 70, 72, 74, 76, 78, and 80 as
22 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.

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

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

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

15 "Counseling" means in-person counseling provided by a
16 counselor employed by a HUD-approved ~~HUD-certified~~ counseling
17 agency to all borrowers, or documented telephone counseling
18 where a hardship would be imposed on one or more borrowers. A
19 hardship shall exist in instances in which the borrower is
20 confined to his or her home due to medical conditions, as
21 verified in writing by a physician, or the borrower resides 50
22 miles or more from the nearest participating HUD-approved
23 ~~HUD-certified~~ housing counseling agency. In instances of
24 telephone counseling, the borrower must supply all necessary
25 documents to the counselor at least 72 hours prior to the
26 scheduled telephone counseling session.

1 "Counselor" means a counselor employed by a HUD-approved
2 ~~HUD-certified~~ 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 SCORE"
6 by one or more of the following credit reporting agencies or
7 their successors: Equifax, Inc., Experian Information
8 Solutions, Inc., and TransUnion LLC. If the borrower's credit
9 report contains credit scores from 2 reporting agencies, then
10 the broker or loan originator shall report the lower score. If
11 the borrower's credit report contains credit scores from 3
12 reporting agencies, then the broker or loan originator shall
13 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 subsections (d)(1), (d)(1.5), and (d)(1.8) of Section 1-4 of
18 the Residential Mortgage License Act of 1987.

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

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

24 "Interest only" means a closed-end loan that permits one or
25 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 (g)
3 of Section 1-4 of the Residential Mortgage License Act of 1987.

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

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

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

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

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

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

25 "Refinancing" means a loan secured by the borrower's or
26 borrowers' primary residence where the proceeds are not used as

1 purchase money for the residence.

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

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

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

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

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

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

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

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

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

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

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

25 (f) Within 10 business days after closing, the title
26 insurance company or closing agent must submit to the predatory

1 lending database all of the information required under Section
2 76 and any other information required by the Department by
3 rule.

4 (g) The title insurance company or closing agent shall
5 attach to the mortgage a certificate of compliance with the
6 requirements of this Article, as generated by the database. If
7 the transaction is exempt, the title insurance company or
8 closing agent shall attach to the mortgage a certificate of
9 exemption, as generated by the database. If the title insurance
10 company or closing agent fails to attach the certificate of
11 compliance or exemption, whichever is required, then the
12 mortgage is not recordable. In addition, if any lis pendens for
13 a residential mortgage foreclosure is recorded on the property
14 within the program area, a certificate of service must be
15 simultaneously recorded that affirms that a copy of the lis
16 pendens was filed with the Department. The lis pendens may be
17 filed with the Department either electronically or by filing a
18 hard copy. If the certificate of service is not recorded, then
19 the lis pendens pertaining to the residential mortgage
20 foreclosure in question is not recordable and is of no force
21 and effect.

22 (h) All information provided to the predatory lending
23 database under the program is confidential and is not subject
24 to disclosure under the Freedom of Information Act, except as
25 otherwise provided in this Article. Information or documents
26 obtained by employees of the Department in the course of

1 maintaining and administering the predatory lending database
2 are deemed confidential. Employees are prohibited from making
3 disclosure of such confidential information or documents. Any
4 request for production of information from the predatory
5 lending database, whether by subpoena, notice, or any other
6 source, shall be referred to the Department of Financial and
7 Professional Regulation. Any borrower may authorize in writing
8 the release of database information. The Department may use the
9 information in the database without the consent of the
10 borrower: (i) for the purposes of administering and enforcing
11 the program; (ii) to provide relevant information to a
12 counselor providing counseling to a borrower under the program;
13 or (iii) to the appropriate law enforcement agency or the
14 applicable administrative agency if the database information
15 demonstrates criminal, fraudulent, or otherwise illegal
16 activity.

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

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

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

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

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

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

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

14 (2) the number of borrowers receiving counseling;

15 (3) the number of loans closed;

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

18 (5) the number of loans requiring counseling where the
19 mortgage originator changed the loan terms subsequent to
20 counseling;

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

23 (7) the number of investigations based on information
24 obtained from the database, including the number of
25 licensees fined, the number of licenses suspended, and the
26 number of licenses revoked;

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

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

5 (Source: P.A. 96-328, eff. 8-11-09; 96-856, eff. 12-31-09;
6 97-891, eff. 1-1-13.)

7 (765 ILCS 77/72)

8 Sec. 72. Originator; required information. As part of the
9 predatory lending database program, the broker or originator
10 must submit all of the following information for inclusion in
11 the predatory lending database for each loan for which the
12 originator takes an application:

13 (1) The borrower's name, address, social security
14 number or taxpayer identification number, date of birth,
15 and income and expense information, including total
16 monthly consumer debt, ~~contained in the mortgage~~
17 ~~application.~~

18 (2) The address, permanent index number, and a
19 description of the collateral and information about the
20 loan or loans being applied for and the loan terms,
21 including the amount of the loan, the rate and whether the
22 rate is fixed or adjustable, amortization or loan period
23 terms, and any other material terms.

24 (3) The borrower's credit score at the time of
25 application.

1 (4) Information about the originator and the company
2 the originator works for, including the originator's
3 license number and address, fees being charged, whether the
4 fees are being charged as points up front, the yield spread
5 premium payable outside closing, and other charges made or
6 remuneration required by the broker or originator or its
7 affiliates or the broker's or originator's employer or its
8 affiliates for the mortgage loans.

9 (5) Information about affiliated or third party
10 service providers, including the names and addresses of
11 appraisers, title insurance companies, closing agents,
12 attorneys, and realtors who are involved with the
13 transaction and the broker or originator and any moneys
14 received from the broker or originator in connection with
15 the transaction.

16 (6) All information indicated on the Good Faith
17 Estimate and Truth in Lending statement disclosures given
18 to the borrower by the broker or originator.

19 (7) Annual real estate taxes for the property, together
20 with any assessments payable in connection with the
21 property to be secured by the collateral and the proposed
22 monthly principal and interest charge of all loans to be
23 taken by the borrower and secured by the property of the
24 borrower.

25 (8) Information concerning how the broker or
26 originator obtained the client and the name of its referral

1 source, if any.

2 (9) Information concerning the notices provided by the
3 broker or originator to the borrower as required by law and
4 the date those notices were given.

5 (10) Information concerning whether a sale and
6 leaseback is contemplated and the names of the lessor and
7 lessee, seller, and purchaser.

8 (11) Any and all financing by the borrower for the
9 subject property within 12 months prior to the date of
10 application.

11 (12) Loan information, including interest rate, term,
12 purchase price, down payment, and closing costs.

13 (13) Whether the buyer is a first-time homebuyer or
14 refinancing a primary residence.

15 (14) Whether the loan permits interest only payments.

16 (15) Whether the loan may result in negative
17 amortization.

18 (16) Whether the total points and fees payable by the
19 borrowers at or before closing will exceed 5%.

20 (17) Whether the loan includes a prepayment penalty,
21 and, if so, the terms of the penalty.

22 (18) Whether the loan is an ARM.

23 All information entered into the predatory lending
24 database must be true and correct to the best of the
25 originator's knowledge. The originator shall, prior to
26 closing, correct, update, or amend the data as necessary. If

1 any corrections become necessary after the file has been
2 accessed by the closing agent or housing counselor, a new file
3 must be entered.

4 (Source: P.A. 97-891, eff. 1-1-13.)

5 (765 ILCS 77/74)

6 Sec. 74. Counselor; required information. As part of the
7 predatory lending database program, a counselor must submit all
8 of the following information for inclusion in the predatory
9 lending database:

10 (1) The information called for in items (1), (6), (9),
11 (11), (12), (13), (14), (15), (16), (17), and (18) of
12 Section 72.

13 (2) Any information from the borrower that confirms or
14 contradicts the information called for under item (1) of
15 this Section.

16 (3) The name of the counselor and address of the
17 HUD-approved ~~HUD-certified~~ housing counseling agency that
18 employs the counselor.

19 (4) Information pertaining to the borrower's monthly
20 expenses that assists the counselor in determining whether
21 the borrower can afford the loans or loans for which the
22 borrower is applying.

23 (5) A list of the disclosures furnished to the
24 borrower, as seen and reviewed by the counselor, and a
25 comparison of that list to all disclosures required by law.

1 (6) Whether the borrower provided tax returns to the
2 broker or originator or to the counselor, and, if so, who
3 prepared the tax returns.

4 (7) A statement of the recommendations of the counselor
5 that indicates the counselor's response to each of the
6 following statements:

7 (A) The loan should not be approved due to indicia
8 of fraud.

9 (B) The loan should be approved; no material
10 problems noted.

11 (C) The borrower cannot afford the loan.

12 (D) The borrower does not understand the
13 transaction.

14 (E) The borrower does not understand the costs
15 associated with the transaction.

16 (F) The borrower's monthly income and expenses
17 have been reviewed and disclosed.

18 (G) The rate of the loan is above market rate.

19 (H) The borrower should seek a competitive bid from
20 another broker or originator.

21 (I) There are discrepancies between the borrower's
22 verbal understanding and the originator's completed
23 form.

24 (J) The borrower is precipitously close to not
25 being able to afford the loan.

26 (K) The borrower understands the true cost of debt

1 consolidation and the need for credit card discipline.

2 (L) The information that the borrower provided the
3 originator has been amended by the originator.

4 (Source: P.A. 97-813, eff. 7-13-12.)

5 (765 ILCS 77/76)

6 Sec. 76. Title insurance company or closing agent; required
7 information. As part of the predatory lending database ~~pilot~~
8 program, a title insurance company or closing agent must submit
9 all of the following information for inclusion in the predatory
10 lending database:

11 (1) The borrower's name, address, social security
12 number or taxpayer identification number, date of birth,
13 and income and expense information contained in the
14 mortgage application.

15 (2) The address, permanent index number, and a
16 description of the collateral and information about the
17 loan or loans being applied for and the loan terms,
18 including the amount of the loan, the rate and whether the
19 rate is fixed or adjustable, amortization or loan period
20 terms, and any other material terms.

21 (3) Annual real estate taxes for the property, together
22 with any assessments payable in connection with the
23 property to be secured by the collateral and the proposed
24 monthly principal and interest charge of all loans to be
25 taken by the borrower and secured by the property of the

1 borrower as well as any required escrows and the amounts
2 paid monthly for those escrows.

3 (4) All itemizations and descriptions set forth in the
4 RESPA settlement statement including items to be
5 disbursed, payable outside closing "POC" items noted on the
6 statement, and a list of payees and the amounts of their
7 checks.

8 (5) The name and license number of the title insurance
9 company or closing agent together with the name of the
10 agent actually conducting the closing.

11 (6) The names and addresses of all originators,
12 brokers, appraisers, sales persons, attorneys, and
13 surveyors that are present at the closing.

14 (7) The date of closing, a detailed list of all notices
15 provided to the borrower at closing and the date of those
16 notices, and all information indicated on the Truth in
17 Lending statement and Good Faith Estimate disclosures.

18 (Source: P.A. 94-280, eff. 1-1-06.)

19 (765 ILCS 77/78)

20 Sec. 78. Exemption. Borrowers applying for reverse
21 mortgage financing of residential real estate including under
22 programs regulated by the Federal Housing Administration (FHA)
23 that require HUD-approved ~~HUD-certified~~ counseling are exempt
24 from the program and may submit a HUD counseling certificate to
25 comply with the program. A certificate of exemption is required

1 for recording.

2 Mortgages secured by non-owner occupied property,
3 commercial property, residential property consisting of more
4 than 4 units, and government property are exempt but require a
5 certificate of exemption for recording.

6 Mortgages originated by an exempt person or entity are
7 exempt but require a certificate of exemption for recording.

8 (Source: P.A. 98-463, eff. 8-16-13.)

9 (765 ILCS 77/80)

10 Sec. 80. Predatory Lending Database Program Fund. The
11 Predatory Lending Database Program Fund is created as a special
12 fund in the State treasury. Subject to appropriation, moneys in
13 the Fund shall be appropriated to the Illinois Housing
14 Development Authority for the purpose of making grants for
15 HUD-approved ~~HUD-certified~~ counseling agencies participating
16 in the Predatory Lending Database Program to assist with
17 implementation and development of the Predatory Lending
18 Database Program.

19 (Source: P.A. 95-707, eff. 1-11-08.)

20 Section 99. Effective date. This Act takes effect upon
21 becoming law.

1	INDEX	
2	Statutes amended in order of appearance	
3	205 ILCS 635/1-4	
4	205 ILCS 635/2-2	
5	205 ILCS 635/2-4	from Ch. 17, par. 2322-4
6	205 ILCS 635/3-2	from Ch. 17, par. 2323-2
7	765 ILCS 77/70	
8	765 ILCS 77/72	
9	765 ILCS 77/74	
10	765 ILCS 77/76	
11	765 ILCS 77/78	
12	765 ILCS 77/80	