



Sen. Jacqueline Y. Collins

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LRB098 17498 HEP 59809 a

1 AMENDMENT TO HOUSE BILL 5685

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 5685 on page 23,  
3 line 5, by changing "Section" to "Sections 1-4, 2-2, 2-4, 3-2,  
4 and"; and

5 on page 23, by inserting immediately below line 6 the  
6 following:

7 "(205 ILCS 635/1-4)

8 Sec. 1-4. Definitions.

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

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

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

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

14 (1) (i) Any banking organization or foreign banking  
15 corporation licensed by the Illinois Commissioner of Banks  
16 and Real Estate or the United States Comptroller of the  
17 Currency to transact business in this State; (ii) any  
18 national bank, federally chartered savings and loan  
19 association, federal savings bank, federal credit union;  
20 (iii) (blank); ~~any pension trust, bank trust, or bank trust~~  
21 ~~company;~~ (iv) any bank, savings and loan association,  
22 savings bank, or credit union organized under the laws of  
23 this or any other state; (v) any Illinois Consumer  
24 Installment Loan Act licensee; (vi) any insurance company  
25 authorized to transact business in this State; (vii) any  
26 entity engaged solely in commercial mortgage lending;

1 (viii) any service corporation of a savings and loan  
2 association or savings bank organized under the laws of  
3 this State or the service corporation of a federally  
4 chartered savings and loan association or savings bank  
5 having its principal place of business in this State, other  
6 than a service corporation licensed or entitled to  
7 reciprocity under the Real Estate License Act of 2000; or  
8 (ix) any first tier subsidiary of a bank, the charter of  
9 which is issued under the Illinois Banking Act by the  
10 Illinois Commissioner of Banks and Real Estate, or the  
11 first tier subsidiary of a bank chartered by the United  
12 States Comptroller of the Currency and that has its  
13 principal place of business in this State, provided that  
14 the first tier subsidiary is regularly examined by the  
15 Illinois Commissioner of Banks and Real Estate or the  
16 Comptroller of the Currency, or a consumer compliance  
17 examination is regularly conducted by the Federal Reserve  
18 Board.

19 (1.5) Any employee of a person or entity mentioned in  
20 item (1) of this subsection, when acting for such person or  
21 entity, or any registered mortgage loan originator when  
22 acting for an entity described in subsection (tt) of this  
23 Section.

24 (1.8) Any person or entity that does not originate  
25 mortgage loans in the ordinary course of business, but  
26 makes or acquires residential mortgage loans with his or

1 her own funds for his or her or its own investment without  
2 intent to make, acquire, or resell more than 3 residential  
3 mortgage loans in any one calendar year.

4 (2) (Blank).

5 (3) Any person employed by a licensee to assist in the  
6 performance of the residential mortgage licensee's  
7 activities regulated by this Act who is compensated in any  
8 manner by only one licensee.

9 (4) (Blank).

10 (5) Any individual, corporation, partnership, or other  
11 entity that originates, services, or brokers residential  
12 mortgage loans, as these activities are defined in this  
13 Act, and who or which receives no compensation for those  
14 activities, subject to the Commissioner's regulations and  
15 the federal Secure and Fair Enforcement for Mortgage  
16 Licensing Act of 2008 and the rules promulgated under that  
17 Act with regard to the nature and amount of compensation.

18 (6) (Blank).

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

23 (f) "Mortgage loan" "residential mortgage loan" or "home  
24 mortgage loan" shall mean any loan primarily for personal,  
25 family, or household use that is secured by a mortgage, deed of  
26 trust, or other equivalent consensual security interest on a

1 dwelling as defined in Section 103(v) of the federal Truth in  
2 Lending Act, or residential real estate upon which is  
3 constructed or intended to be constructed a dwelling.

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

7 (h) "Ultimate equitable owner" shall mean a person who,  
8 directly or indirectly, owns or controls an ownership interest  
9 in a corporation, foreign corporation, alien business  
10 organization, trust, or any other form of business organization  
11 regardless of whether the person owns or controls the ownership  
12 interest through one or more persons or one or more proxies,  
13 powers of attorney, nominees, corporations, associations,  
14 partnerships, trusts, joint stock companies, or other entities  
15 or devices, or any combination thereof.

16 (i) "Residential mortgage financing transaction" shall  
17 mean the negotiation, acquisition, sale, or arrangement for or  
18 the offer to negotiate, acquire, sell, or arrange for, a  
19 residential mortgage loan or residential mortgage loan  
20 commitment.

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

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

25 (l) "Party to a residential mortgage financing  
26 transaction" shall mean a borrower, lender, or loan broker in a

1 residential mortgage financing transaction.

2 (m) "Payments" shall mean payment of all or any of the  
3 following: principal, interest and escrow reserves for taxes,  
4 insurance and other related reserves, and reimbursement for  
5 lender advances.

6 (n) "Commissioner" shall mean the Commissioner of Banks and  
7 Real Estate, except that, beginning on April 6, 2009 (the  
8 effective date of Public Act 95-1047), all references in this  
9 Act to the Commissioner of Banks and Real Estate are deemed, in  
10 appropriate contexts, to be references to the Secretary of  
11 Financial and Professional Regulation, or his or her designee,  
12 including the Director of the Division of Banking of the  
13 Department of Financial and Professional Regulation.

14 (n-1) "Director" shall mean the Director of the Division of  
15 Banking of the Department of Financial and Professional  
16 Regulation, except that, beginning on July 31, 2009 (the  
17 effective date of Public Act 96-112), all references in this  
18 Act to the Director are deemed, in appropriate contexts, to be  
19 the Secretary of Financial and Professional Regulation, or his  
20 or her designee, including the Director of the Division of  
21 Banking of the Department of Financial and Professional  
22 Regulation.

23 (o) "Loan brokering", "brokering", or "brokerage service"  
24 shall mean the act of helping to obtain from another entity,  
25 for a borrower, a loan secured by residential real estate  
26 situated in Illinois or assisting a borrower in obtaining a

1 loan secured by residential real estate situated in Illinois in  
2 return for consideration to be paid by either the borrower or  
3 the lender including, but not limited to, contracting for the  
4 delivery of residential mortgage loans to a third party lender  
5 and soliciting, processing, placing, or negotiating  
6 residential mortgage loans.

7 (p) "Loan broker" or "broker" shall mean a person,  
8 partnership, association, corporation, or limited liability  
9 company, other than those persons, partnerships, associations,  
10 corporations, or limited liability companies exempted from  
11 licensing pursuant to Section 1-4, subsection (d), of this Act,  
12 who performs the activities described in subsections (c), (o),  
13 and (yy) of this Section.

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

1 records or information, including their use in foreclosure.

2 (r) "Full service office" shall mean an office, provided by  
3 the licensee and not subleased from the licensee's employees,  
4 and staff in Illinois reasonably adequate to handle efficiently  
5 communications, questions, and other matters relating to any  
6 application for, or an existing home mortgage secured by  
7 residential real estate situated in Illinois with respect to  
8 which the licensee is brokering, funding originating,  
9 purchasing, or servicing. The management and operation of each  
10 full service office must include observance of good business  
11 practices such as proper signage; adequate, organized, and  
12 accurate books and records; ample phone lines, hours of  
13 business, staff training and supervision, and provision for a  
14 mechanism to resolve consumer inquiries, complaints, and  
15 problems. The Commissioner shall issue regulations with regard  
16 to these requirements and shall include an evaluation of  
17 compliance with this Section in his or her periodic examination  
18 of each licensee.

19 (s) "Purchasing" shall mean the purchase of conventional or  
20 government-insured mortgage loans secured by residential real  
21 estate situated in Illinois from either the lender or from the  
22 secondary market.

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

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



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

4           (1) obtain a residential mortgage loan for the borrower  
5 or assist the borrower in obtaining a residential mortgage  
6 loan; or

7           (2) consider making a residential mortgage loan to the  
8 borrower.

9           (w) "Advertisement" shall mean the attempt by publication,  
10 dissemination, or circulation to induce, directly or  
11 indirectly, any person to enter into a residential mortgage  
12 loan agreement or residential mortgage loan brokerage  
13 agreement relative to a mortgage secured by residential real  
14 estate situated in Illinois.

15           (x) "Residential Mortgage Board" shall mean the  
16 Residential Mortgage Board created in Section 1-5 of this Act.

17           (y) "Government-insured mortgage loan" shall mean any  
18 mortgage loan made on the security of residential real estate  
19 insured by the Department of Housing and Urban Development or  
20 Farmers Home Loan Administration, or guaranteed by the Veterans  
21 Administration.

22           (z) "Annual audit" shall mean a certified audit of the  
23 licensee's books and records and systems of internal control  
24 performed by a certified public accountant in accordance with  
25 generally accepted accounting principles and generally  
26 accepted auditing standards.

1           (aa) "Financial institution" shall mean a savings and loan  
2 association, savings bank, credit union, or a bank organized  
3 under the laws of Illinois or a savings and loan association,  
4 savings bank, credit union or a bank organized under the laws  
5 of the United States and headquartered in Illinois.

6           (bb) "Escrow agent" shall mean a third party, individual or  
7 entity charged with the fiduciary obligation for holding escrow  
8 funds on a residential mortgage loan pending final payout of  
9 those funds in accordance with the terms of the residential  
10 mortgage loan.

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

13           (dd) "Affiliate" shall mean:

14           (1) any entity that directly controls or is controlled  
15 by the licensee and any other company that is directly  
16 affecting activities regulated by this Act that is  
17 controlled by the company that controls the licensee;

18           (2) any entity:

19           (A) that is controlled, directly or indirectly, by  
20 a trust or otherwise, by or for the benefit of  
21 shareholders who beneficially or otherwise control,  
22 directly or indirectly, by trust or otherwise, the  
23 licensee or any company that controls the licensee; or

24           (B) a majority of the directors or trustees of  
25 which constitute a majority of the persons holding any  
26 such office with the licensee or any company that

1 controls the licensee;

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

6 The Commissioner may define by rule and regulation any  
7 terms used in this Act for the efficient and clear  
8 administration of this Act.

9 (ee) "First tier subsidiary" shall be defined by regulation  
10 incorporating the comparable definitions used by the Office of  
11 the Comptroller of the Currency and the Illinois Commissioner  
12 of Banks and Real Estate.

13 (ff) "Gross delinquency rate" means the quotient  
14 determined by dividing (1) the sum of (i) the number of  
15 government-insured residential mortgage loans funded or  
16 purchased by a licensee in the preceding calendar year that are  
17 delinquent and (ii) the number of conventional residential  
18 mortgage loans funded or purchased by the licensee in the  
19 preceding calendar year that are delinquent by (2) the sum of  
20 (i) the number of government-insured residential mortgage  
21 loans funded or purchased by the licensee in the preceding  
22 calendar year and (ii) the number of conventional residential  
23 mortgage loans funded or purchased by the licensee in the  
24 preceding calendar year.

25 (gg) "Delinquency rate factor" means the factor set by rule  
26 of the Commissioner that is multiplied by the average gross

1 delinquency rate of licensees, determined annually for the  
2 immediately preceding calendar year, for the purpose of  
3 determining which licensees shall be examined by the  
4 Commissioner pursuant to subsection (b) of Section 4-8 of this  
5 Act.

6 (hh) "Loan originator" means any natural person who, for  
7 compensation or in the expectation of compensation, either  
8 directly or indirectly makes, offers to make, solicits, places,  
9 or negotiates a residential mortgage loan. This definition  
10 applies only to Section 7-1 of this Act.

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

26 (jj) "Mortgage loan originator" means an individual who for

1 compensation or gain or in the expectation of compensation or  
2 gain:

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

4 (ii) offers or negotiates terms of a residential  
5 mortgage loan.

6 "Mortgage loan originator" includes an individual engaged  
7 in loan modification activities as defined in subsection (yy)  
8 of this Section. A mortgage loan originator engaged in loan  
9 modification activities shall report those activities to the  
10 Department of Financial and Professional Regulation in the  
11 manner provided by the Department; however, the Department  
12 shall not impose a fee for reporting, nor require any  
13 additional qualifications to engage in those activities beyond  
14 those provided pursuant to this Act for mortgage loan  
15 originators.

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

20 "Mortgage loan originator" does not include a person or  
21 entity that only performs real estate brokerage activities and  
22 is licensed in accordance with the Real Estate License Act of  
23 2000, unless the person or entity is compensated by a lender, a  
24 mortgage broker, or other mortgage loan originator, or by any  
25 agent of that lender, mortgage broker, or other mortgage loan  
26 originator.

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

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

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

11 (mm) "Immediate family member" means a spouse, child,  
12 sibling, parent, grandparent, or grandchild, and includes  
13 step-parents, step-children, step-siblings, or adoptive  
14 relationships.

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

16 (oo) "Loan processor or underwriter" means an individual  
17 who performs clerical or support duties as an employee at the  
18 direction of and subject to the supervision and instruction of  
19 a person licensed, or exempt from licensing, under this Act.  
20 "Clerical or support duties" includes subsequent to the receipt  
21 of an application:

22 (i) the receipt, collection, distribution, and  
23 analysis of information common for the processing or  
24 underwriting of a residential mortgage loan; and

25 (ii) communicating with a consumer to obtain the  
26 information necessary for the processing or underwriting

1 of a loan, to the extent that the communication does not  
2 include offering or negotiating loan rates or terms, or  
3 counseling consumers about residential mortgage loan rates  
4 or terms. An individual engaging solely in loan processor  
5 or underwriter activities shall not represent to the  
6 public, through advertising or other means of  
7 communicating or providing information, including the use  
8 of business cards, stationery, brochures, signs, rate  
9 lists, or other promotional items, that the individual can  
10 or will perform any of the activities of a mortgage loan  
11 originator.

12 (pp) "Nationwide Mortgage Licensing System and Registry"  
13 means a mortgage licensing system developed and maintained by  
14 the Conference of State Bank Supervisors and the American  
15 Association of Residential Mortgage Regulators for the  
16 licensing and registration of licensed mortgage loan  
17 originators.

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

20 (rr) "Person" means a natural person, corporation,  
21 company, limited liability company, partnership, or  
22 association.

23 (ss) "Real estate brokerage activity" means any activity  
24 that involves offering or providing real estate brokerage  
25 services to the public, including:

26 (1) acting as a real estate agent or real estate broker

1 for a buyer, seller, lessor, or lessee of real property;

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

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

8 (4) engaging in any activity for which a person engaged  
9 in the activity is required to be registered or licensed as  
10 a real estate agent or real estate broker under any  
11 applicable law; or

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

14 (tt) "Registered mortgage loan originator" means any  
15 individual that:

16 (1) meets the definition of mortgage loan originator  
17 and is an employee of:

18 (A) a depository institution;

19 (B) a subsidiary that is:

20 (i) owned and controlled by a depository  
21 institution; and

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

23 (C) an institution regulated by the Farm Credit  
24 Administration; and

25 (2) is registered with, and maintains a unique  
26 identifier through, the Nationwide Mortgage Licensing



1 System and Registry.

2 (uu) "Unique identifier" means a number or other identifier  
3 assigned by protocols established by the Nationwide Mortgage  
4 Licensing System and Registry.

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

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

9 (xx) "Secretary" means the Secretary of the Department of  
10 Financial and Professional Regulation, or a person authorized  
11 by the Secretary or by this Act to act in the Secretary's  
12 stead.

13 (yy) "Loan modification" means, for compensation or gain,  
14 either directly or indirectly offering or negotiating on behalf  
15 of a borrower or homeowner to adjust the terms of a residential  
16 mortgage loan in a manner not provided for in the original or  
17 previously modified mortgage loan.

18 (zz) "Short sale facilitation" means, for compensation or  
19 gain, either directly or indirectly offering or negotiating on  
20 behalf of a borrower or homeowner to facilitate the sale of  
21 residential real estate subject to one or more residential  
22 mortgage loans or debts constituting liens on the property in  
23 which the proceeds from selling the residential real estate  
24 will fall short of the amount owed and the lien holders are  
25 contacted to agree to release their lien on the residential  
26 real estate and accept less than the full amount owed on the

1 debt.

2 (Source: P.A. 96-112, eff. 7-31-09; 96-1000, eff. 7-2-10;  
3 96-1216, eff. 1-1-11; 97-143, eff. 7-14-11; 97-891, eff.  
4 8-3-12.)

5 (205 ILCS 635/2-2)

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

7 (a) The Secretary shall issue a license upon completion of  
8 all of the following:

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

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

15 (3) The payment, in certified funds, of investigation  
16 and application fees, the total of which shall be in an  
17 amount equal to \$2,700 annually. To comply with the common  
18 renewal date and requirements of the Nationwide Mortgage  
19 Licensing System and Registry, the term of initial licenses  
20 may be extended or shortened with applicable fees prorated  
21 or combined accordingly.

22 (4) Except for a broker applying to renew a license,  
23 the filing of an audited balance sheet including all  
24 footnotes prepared by a certified public accountant in  
25 accordance with generally accepted accounting principles

1 and generally accepted auditing standards ~~principles~~ which  
2 evidences that the applicant meets the net worth  
3 requirements of Section 3-5. Notwithstanding the  
4 requirements of this subsection, an applicant that is a  
5 subsidiary may submit audited consolidated financial  
6 statements of its parent, intermediary parent, or ultimate  
7 parent as long as the consolidated statements are supported  
8 by consolidating statements which include the applicant's  
9 financial statement. If the consolidating statements are  
10 unaudited, the applicant's chief financial officer shall  
11 attest to the applicant's financial statements disclosed  
12 in the consolidating statements.

13 (5) The filing of proof satisfactory to the  
14 Commissioner that the applicant, the members thereof if the  
15 applicant is a partnership or association, the members or  
16 managers thereof that retain any authority or  
17 responsibility under the operating agreement if the  
18 applicant is a limited liability company, or the officers  
19 thereof if the applicant is a corporation have 3 years  
20 experience preceding application in real estate finance.  
21 Instead of this requirement, the applicant and the  
22 applicant's officers or members, as applicable, may  
23 satisfactorily complete a program of education in real  
24 estate finance and fair lending, as approved by the  
25 Commissioner, prior to receiving the initial license. The  
26 Commissioner shall promulgate rules regarding proof of

1 experience requirements and educational requirements and  
2 the satisfactory completion of those requirements. The  
3 Commissioner may establish by rule a list of duly licensed  
4 professionals and others who may be exempt from this  
5 requirement.

6 (6) An investigation of the averments required by  
7 Section 2-4, which investigation must allow the  
8 Commissioner to issue positive findings stating that the  
9 financial responsibility, experience, character, and  
10 general fitness of the license applicant and of the members  
11 thereof if the license applicant is a partnership or  
12 association, of the officers and directors thereof if the  
13 license applicant is a corporation, and of the managers and  
14 members that retain any authority or responsibility under  
15 the operating agreement if the license applicant is a  
16 limited liability company are such as to command the  
17 confidence of the community and to warrant belief that the  
18 business will be operated honestly, fairly and efficiently  
19 within the purpose of this Act. If the Commissioner shall  
20 not so find, he or she shall not issue such license, and he  
21 or she shall notify the license applicant of the denial.

22 The Commissioner may impose conditions on a license if the  
23 Commissioner determines that the conditions are necessary or  
24 appropriate. These conditions shall be imposed in writing and  
25 shall continue in effect for the period prescribed by the  
26 Commissioner.

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

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

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

9 (205 ILCS 635/2-4) (from Ch. 17, par. 2322-4)

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

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

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

18 (c) Will keep and maintain for 36 months the same  
19 written records as required by the federal Equal Credit  
20 Opportunity Act, and any other information required by  
21 regulations of the Commissioner regarding any home  
22 mortgage in the course of the conduct of its residential  
23 mortgage business;

24 (d) Will file with the Commissioner or Nationwide  
25 Mortgage Licensing System and Registry as applicable, when

1 due, any report or reports which it is required to file  
2 under any of the provisions of this Act;

3 (e) Will not engage, whether as principal or agent, in  
4 the practice of rejecting residential mortgage  
5 applications without reasonable cause, or varying terms or  
6 application procedures without reasonable cause, for home  
7 mortgages on real estate within any specific geographic  
8 area from the terms or procedures generally provided by the  
9 licensee within other geographic areas of the State;

10 (f) Will not engage in fraudulent home mortgage  
11 underwriting practices;

12 (g) Will not make payment, whether directly or  
13 indirectly, of any kind to any in house or fee appraiser of  
14 any government or private money lending agency with which  
15 an application for a home mortgage has been filed for the  
16 purpose of influencing the independent judgment of the  
17 appraiser with respect to the value of any real estate  
18 which is to be covered by such home mortgage;

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

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

24 (j) Will not knowingly make any false promises likely  
25 to influence or persuade, or pursue a course of  
26 misrepresentation and false promises through agents,

1 solicitors, advertising or otherwise;

2 (k) Will not knowingly misrepresent, circumvent or  
3 conceal, through whatever subterfuge or device, any of the  
4 material particulars or the nature thereof, regarding a  
5 transaction to which it is a party to the injury of another  
6 party thereto;

7 (l) Will disburse funds in accordance with its  
8 agreements;

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

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

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

22 (p) Has not become insolvent;

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

25 (r) Has not demonstrated by course of conduct,  
26 negligence or incompetence in performing any act for which

1 it is required to hold a license under this Act;

2 (s) Will advise the Commissioner in writing, or the  
3 Nationwide Mortgage Licensing System and Registry as  
4 applicable, of any changes to the information submitted on  
5 the most recent application for license or averments of  
6 record within 30 days of said change. The written notice  
7 must be signed in the same form as the application for  
8 license being amended;

9 (t) Will comply with the provisions of this Act, or  
10 with any lawful order, rule or regulation made or issued  
11 under the provisions of this Act;

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

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

17 (w) Will advise the Commissioner in writing within 30  
18 days of any request made to a licensee under this Act to  
19 repurchase a loan in a manner that completely and clearly  
20 identifies to whom the request was made, the loans  
21 involved, and the reason therefor;

22 (x) Will advise the Commissioner in writing within 30  
23 days of any request from any entity to repurchase a loan in  
24 a manner that completely and clearly identifies to whom the  
25 request was made, the loans involved, and the reason for  
26 the request;



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

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

7           (aa) Will not charge or collect advance payments from  
8 borrowers or homeowners for engaging in loan modification;  
9 and

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

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

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

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

18           Sec. 3-2. Annual audit.

19           (a) At the licensee's fiscal year-end, but in no case more  
20 than 12 months after the last audit conducted pursuant to this  
21 Section, except as otherwise provided in this Section, it shall  
22 be mandatory for each residential mortgage licensee to cause  
23 its books and accounts to be audited by a certified public  
24 accountant not connected with such licensee. The books and  
25 records of all licensees under this Act shall be maintained on

1 an accrual basis. The audit must be sufficiently comprehensive  
2 in scope to permit the expression of an opinion on the  
3 financial statements, which must be prepared in accordance with  
4 generally accepted accounting principles, and must be  
5 performed in accordance with generally accepted auditing  
6 standards. Notwithstanding the requirements of this  
7 subsection, a licensee that is a ~~first-tier~~ subsidiary may  
8 submit audited consolidated financial statements of its  
9 parent, intermediary parent, or ultimate parent as long as the  
10 consolidated statements are supported by consolidating  
11 statements which include the licensee's financial statement.  
12 If the consolidating statements are unaudited, the. ~~The~~  
13 licensee's chief financial officer shall attest to the  
14 licensee's financial statements disclosed in the consolidating  
15 statements.

16 (b) As used herein, the term "expression of opinion"  
17 includes either (1) an unqualified opinion, (2) a qualified  
18 opinion, (3) a disclaimer of opinion, or (4) an adverse  
19 opinion.

20 (c) If a qualified or adverse opinion is expressed or if an  
21 opinion is disclaimed, the reasons therefore must be fully  
22 explained. An opinion, qualified as to a scope limitation,  
23 shall not be acceptable.

24 (d) The most recent audit report shall be filed with the  
25 Commissioner within 90 days after the end of the licensee's  
26 fiscal year, or with the Nationwide Mortgage Licensing System

1 and Registry, if applicable, pursuant to Mortgage Call Report  
2 requirements. The report filed with the Commissioner shall be  
3 certified by the certified public accountant conducting the  
4 audit. The Commissioner may promulgate rules regarding late  
5 audit reports.

6 (e) If any licensee required to make an audit shall fail to  
7 cause an audit to be made, the Commissioner shall cause the  
8 same to be made by a certified public accountant at the  
9 licensee's expense. The Commissioner shall select such  
10 certified public accountant by advertising for bids or by such  
11 other fair and impartial means as he or she establishes by  
12 regulation.

13 (f) In lieu of the audit or compilation financial statement  
14 required by this Section, a licensee shall submit and the  
15 Commissioner may accept any audit made in conformance with the  
16 audit requirements of the U.S. Department of Housing and Urban  
17 Development.

18 (g) With respect to licensees who solely broker residential  
19 mortgage loans as defined in subsection (o) of Section 1-4,  
20 instead of the audit required by this Section, the Commissioner  
21 may accept compilation financial statements prepared at least  
22 every 12 months, and the compilation financial statement must  
23 be submitted within 90 days after the end of the licensee's  
24 fiscal year, or with the Nationwide Mortgage Licensing System  
25 and Registry, if applicable, pursuant to Mortgage Call Report  
26 requirements. If a licensee under this Section fails to file a

1 compilation as required, the Commissioner shall cause an audit  
2 of the licensee's books and accounts to be made by a certified  
3 public accountant at the licensee's expense. The Commissioner  
4 shall select the certified public accountant by advertising for  
5 bids or by such other fair and impartial means as he or she  
6 establishes by rule. A licensee who files false or misleading  
7 compilation financial statements is guilty of a business  
8 offense and shall be fined not less than \$5,000.

9 (h) The workpapers of the certified public accountants  
10 employed by each licensee for purposes of this Section are to  
11 be made available to the Commissioner or the Commissioner's  
12 designee upon request and may be reproduced by the Commissioner  
13 or the Commissioner's designee to enable to the Commissioner to  
14 carry out the purposes of this Act.

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

26 (Source: P.A. 97-813, eff. 7-13-12; 97-891, eff. 8-3-12;

1 98-463, eff. 8-16-13.)"; and

2 on page 29, by inserting immediately below line 12 the  
3 following:

4 "Section 40. The Residential Real Property Disclosure Act  
5 is amended by changing Sections 70, 72, 74, 76, 78, and 80 as  
6 follows:

7 (765 ILCS 77/70)

8 Sec. 70. Predatory lending database program.

9 (a) As used in this Article:

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

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

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

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

23 "Counseling" means in-person counseling provided by a

1 counselor employed by a HUD-approved ~~HUD-certified~~ counseling  
2 agency to all borrowers, or documented telephone counseling  
3 where a hardship would be imposed on one or more borrowers. A  
4 hardship shall exist in instances in which the borrower is  
5 confined to his or her home due to medical conditions, as  
6 verified in writing by a physician, or the borrower resides 50  
7 miles or more from the nearest participating HUD-approved  
8 ~~HUD-certified~~ housing counseling agency. In instances of  
9 telephone counseling, the borrower must supply all necessary  
10 documents to the counselor at least 72 hours prior to the  
11 scheduled telephone counseling session.

12 "Counselor" means a counselor employed by a HUD-approved  
13 ~~HUD-certified~~ housing counseling agency.

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

25 "Department" means the Department of Financial and  
26 Professional Regulation.

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

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

6           "HUD-approved ~~HUD-certified~~ counseling" or "counseling"  
7 means counseling given to a borrower by a counselor employed by  
8 a HUD-approved ~~HUD-certified~~ housing counseling agency.

9           "Interest only" means a closed-end loan that permits one or  
10 more payments of interest without any reduction of the  
11 principal balance of the loan, other than the first payment on  
12 the loan.

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

15           "Licensee" means that term as it is defined in subsection  
16 (e) of Section 1-4 of the Residential Mortgage License Act of  
17 1987.

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

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

25           "Originator" means a "loan originator" as defined in  
26 subsection (hh) of Section 1-4 of the Residential Mortgage

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

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

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

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

13 "Title insurance company" means any domestic company  
14 organized under the laws of this State for the purpose of  
15 conducting the business of guaranteeing or insuring titles to  
16 real estate and any title insurance company organized under the  
17 laws of another State, the District of Columbia, or a foreign  
18 government and authorized to transact the business of  
19 guaranteeing or insuring titles to real estate in this State.

20 (a-5) A predatory lending database program shall be  
21 established within Cook County. The program shall be  
22 administered in accordance with this Article. The inception  
23 date of the program shall be July 1, 2008. A predatory lending  
24 database program shall be expanded to include Kane, Peoria, and  
25 Will counties. The inception date of the expansion of the  
26 program as it applies to Kane, Peoria, and Will counties shall



1 be July 1, 2010. Until the inception date, none of the duties,  
2 obligations, contingencies, or consequences of or from the  
3 program shall be imposed. The program shall apply to all  
4 mortgage applications that are governed by this Article and  
5 that are made or taken on or after the inception of the  
6 program.

7 (b) The database created under this program shall be  
8 maintained and administered by the Department. The database  
9 shall be designed to allow brokers, originators, counselors,  
10 title insurance companies, and closing agents to submit  
11 information to the database online. The database shall not be  
12 designed to allow those entities to retrieve information from  
13 the database, except as otherwise provided in this Article.  
14 Information submitted by the broker or originator to the  
15 Department may be used to populate the online form submitted by  
16 a counselor, title insurance company, or closing agent.

17 (c) Within 10 business days after taking a mortgage  
18 application, the broker or originator for any mortgage on  
19 residential property within the program area must submit to the  
20 predatory lending database all of the information required  
21 under Section 72 and any other information required by the  
22 Department by rule. Within 7 business days after receipt of the  
23 information, the Department shall compare that information to  
24 the housing counseling standards in Section 73 and issue to the  
25 borrower and the broker or originator a determination of  
26 whether counseling is recommended for the borrower. The

1 borrower may not waive counseling. If at any time after  
2 submitting the information required under Section 72 the broker  
3 or originator (i) changes the terms of the loan or (ii) issues  
4 a new commitment to the borrower, then, within 5 business days  
5 thereafter, the broker or originator shall re-submit all of the  
6 information required under Section 72 and, within 4 business  
7 days after receipt of the information re-submitted by the  
8 broker or originator, the Department shall compare that  
9 information to the housing counseling standards in Section 73  
10 and shall issue to the borrower and the broker or originator a  
11 new determination of whether re-counseling is recommended for  
12 the borrower based on the information re-submitted by the  
13 broker or originator. The Department shall require  
14 re-counseling if the loan terms have been modified to meet  
15 another counseling standard in Section 73, or if the broker has  
16 increased the interest rate by more than 200 basis points.

17 (d) If the Department recommends counseling for the  
18 borrower under subsection (c), then the Department shall notify  
19 the borrower of all participating HUD-approved ~~HUD-certified~~  
20 counseling agencies located within the State and direct the  
21 borrower to interview with a counselor associated with one of  
22 those agencies. Within 10 business days after receipt of the  
23 notice of HUD-approved ~~HUD-certified~~ counseling agencies, it  
24 is the borrower's responsibility to ~~borrower shall~~ select one  
25 of those agencies and shall engage in an interview with a  
26 counselor associated with that agency. The selection must take

1 place and the appointment for the interview must be set within  
2 10 business days, although the interview may take place beyond  
3 the 10 business day period. Within 7 business days after  
4 interviewing the borrower, the counselor must submit to the  
5 predatory lending database all of the information required  
6 under Section 74 and any other information required by the  
7 Department by rule. Reasonable and customary costs not to  
8 exceed \$300 associated with counseling provided under the  
9 program shall be paid by the broker or originator and shall not  
10 be charged back to, or recovered from, the borrower. The  
11 Department shall annually calculate to the nearest dollar an  
12 adjusted rate for inflation. A counselor shall not recommend or  
13 suggest that a borrower contact any specific mortgage  
14 origination company, financial institution, or entity that  
15 deals in mortgage finance to obtain a loan, another quote, or  
16 for any other reason related to the specific mortgage  
17 transaction; however, a counselor may suggest that the borrower  
18 seek an opinion or a quote from another mortgage origination  
19 company, financial institution, or entity that deals in  
20 mortgage finance. A counselor or housing counseling agency that  
21 in good faith provides counseling shall not be liable to a  
22 broker or originator or borrower for civil damages, except for  
23 willful or wanton misconduct on the part of the counselor in  
24 providing the counseling.

25 (e) The broker or originator and the borrower may not take  
26 any legally binding action concerning the loan transaction

1 until the later of the following:

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

5 (2) the Department issues a determination that  
6 HUD-approved ~~HUD-certified~~ counseling is recommended for  
7 the borrower and the counselor submits all required  
8 information to the database in accordance with subsection  
9 (d).

10 (f) Within 10 business days after closing, the title  
11 insurance company or closing agent must submit to the predatory  
12 lending database all of the information required under Section  
13 76 and any other information required by the Department by  
14 rule.

15 (g) The title insurance company or closing agent shall  
16 attach to the mortgage a certificate of compliance with the  
17 requirements of this Article, as generated by the database. If  
18 the transaction is exempt, the title insurance company or  
19 closing agent shall attach to the mortgage a certificate of  
20 exemption, as generated by the database. If the title insurance  
21 company or closing agent fails to attach the certificate of  
22 compliance or exemption, whichever is required, then the  
23 mortgage is not recordable. In addition, if any lis pendens for  
24 a residential mortgage foreclosure is recorded on the property  
25 within the program area, a certificate of service must be  
26 simultaneously recorded that affirms that a copy of the lis

1 pendens was filed with the Department. The lis pendens may be  
2 filed with the Department either electronically or by filing a  
3 hard copy. If the certificate of service is not recorded, then  
4 the lis pendens pertaining to the residential mortgage  
5 foreclosure in question is not recordable and is of no force  
6 and effect.

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

1 activity.

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

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

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

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

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

18 (k) During the existence of the program, the Department  
19 shall submit semi-annual reports to the Governor and to the  
20 General Assembly by May 1 and November 1 of each year detailing  
21 its findings regarding the program. The report shall include,  
22 by county, at least the following information for each  
23 reporting period:

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

25 (2) the number of borrowers receiving counseling;

26 (3) the number of loans closed;

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

3 (5) the number of loans requiring counseling where the  
4 mortgage originator changed the loan terms subsequent to  
5 counseling;

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

8 (7) the number of investigations based on information  
9 obtained from the database, including the number of  
10 licensees fined, the number of licenses suspended, and the  
11 number of licenses revoked;

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

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

16 (Source: P.A. 96-328, eff. 8-11-09; 96-856, eff. 12-31-09;  
17 97-891, eff. 1-1-13.)

18 (765 ILCS 77/72)

19 Sec. 72. Originator; required information. As part of the  
20 predatory lending database program, the broker or originator  
21 must submit all of the following information for inclusion in  
22 the predatory lending database for each loan for which the  
23 originator takes an application:

24 (1) The borrower's name, address, social security  
25 number or taxpayer identification number, date of birth,

1 and income and expense information, including total  
2 monthly consumer debt, contained in the mortgage  
3 application.

4 (2) The address, permanent index number, and a  
5 description of the collateral and information about the  
6 loan or loans being applied for and the loan terms,  
7 including the amount of the loan, the rate and whether the  
8 rate is fixed or adjustable, amortization or loan period  
9 terms, and any other material terms.

10 (3) The borrower's credit score at the time of  
11 application.

12 (4) Information about the originator and the company  
13 the originator works for, including the originator's  
14 license number and address, fees being charged, whether the  
15 fees are being charged as points up front, the yield spread  
16 premium payable outside closing, and other charges made or  
17 remuneration required by the broker or originator or its  
18 affiliates or the broker's or originator's employer or its  
19 affiliates for the mortgage loans.

20 (5) Information about affiliated or third party  
21 service providers, including the names and addresses of  
22 appraisers, title insurance companies, closing agents,  
23 attorneys, and realtors who are involved with the  
24 transaction and the broker or originator and any moneys  
25 received from the broker or originator in connection with  
26 the transaction.



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

4           (7) Annual real estate taxes for the property, together  
5 with any assessments payable in connection with the  
6 property to be secured by the collateral and the proposed  
7 monthly principal and interest charge of all loans to be  
8 taken by the borrower and secured by the property of the  
9 borrower.

10          (8) Information concerning how the broker or  
11 originator obtained the client and the name of its referral  
12 source, if any.

13          (9) Information concerning the notices provided by the  
14 broker or originator to the borrower as required by law and  
15 the date those notices were given.

16          (10) Information concerning whether a sale and  
17 leaseback is contemplated and the names of the lessor and  
18 lessee, seller, and purchaser.

19          (11) Any and all financing by the borrower for the  
20 subject property within 12 months prior to the date of  
21 application.

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

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

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

1           (15) Whether the loan may result in negative  
2 amortization.

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

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

7           (18) Whether the loan is an ARM.

8           All information entered into the predatory lending  
9 database must be true and correct to the best of the  
10 originator's knowledge. The originator shall, prior to  
11 closing, correct, update, or amend the data as necessary. If  
12 any corrections become necessary after the file has been  
13 accessed by the closing agent or housing counselor, a new file  
14 must be entered.

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

16           (765 ILCS 77/74)

17           Sec. 74. Counselor; required information. As part of the  
18 predatory lending database program, a counselor must submit all  
19 of the following information for inclusion in the predatory  
20 lending database:

21           (1) The information called for in items (1), (6), (9),  
22 (11), (12), (13), (14), (15), (16), (17), and (18) of  
23 Section 72.

24           (2) Any information from the borrower that confirms or  
25 contradicts the information called for under item (1) of

1           this Section.

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

5           (4) Information pertaining to the borrower's monthly  
6           expenses that assists the counselor in determining whether  
7           the borrower can afford the loans or loans for which the  
8           borrower is applying.

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

12          (6) Whether the borrower provided tax returns to the  
13          broker or originator or to the counselor, and, if so, who  
14          prepared the tax returns.

15          (7) A statement of the recommendations of the counselor  
16          that indicates the counselor's response to each of the  
17          following statements:

18                 (A) The loan should not be approved due to indicia  
19                 of fraud.

20                 (B) The loan should be approved; no material  
21                 problems noted.

22                 (C) The borrower cannot afford the loan.

23                 (D) The borrower does not understand the  
24                 transaction.

25                 (E) The borrower does not understand the costs  
26                 associated with the transaction.

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

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

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

6 (I) There are discrepancies between the borrower's  
7 verbal understanding and the originator's completed  
8 form.

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

11 (K) The borrower understands the true cost of debt  
12 consolidation and the need for credit card discipline.

13 (L) The information that the borrower provided the  
14 originator has been amended by the originator.

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

16 (765 ILCS 77/76)

17 Sec. 76. Title insurance company or closing agent; required  
18 information. As part of the predatory lending database ~~pilot~~  
19 program, a title insurance company or closing agent must submit  
20 all of the following information for inclusion in the predatory  
21 lending database:

22 (1) The borrower's name, address, social security  
23 number or taxpayer identification number, date of birth,  
24 and income and expense information contained in the  
25 mortgage application.

1           (2) The address, permanent index number, and a  
2 description of the collateral and information about the  
3 loan or loans being applied for and the loan terms,  
4 including the amount of the loan, the rate and whether the  
5 rate is fixed or adjustable, amortization or loan period  
6 terms, and any other material terms.

7           (3) Annual real estate taxes for the property, together  
8 with any assessments payable in connection with the  
9 property to be secured by the collateral and the proposed  
10 monthly principal and interest charge of all loans to be  
11 taken by the borrower and secured by the property of the  
12 borrower as well as any required escrows and the amounts  
13 paid monthly for those escrows.

14           (4) All itemizations and descriptions set forth in the  
15 RESPA settlement statement including items to be  
16 disbursed, payable outside closing "POC" items noted on the  
17 statement, and a list of payees and the amounts of their  
18 checks.

19           (5) The name and license number of the title insurance  
20 company or closing agent together with the name of the  
21 agent actually conducting the closing.

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

25           (7) The date of closing, a detailed list of all notices  
26 provided to the borrower at closing and the date of those

1 notices, and all information indicated on the Truth in  
2 Lending statement and Good Faith Estimate disclosures.  
3 (Source: P.A. 94-280, eff. 1-1-06.)

4 (765 ILCS 77/78)

5 Sec. 78. Exemption. Borrowers applying for reverse  
6 mortgage financing of residential real estate including under  
7 programs regulated by the Federal Housing Administration (FHA)  
8 that require HUD-approved ~~HUD-certified~~ counseling are exempt  
9 from the program and may submit a HUD counseling certificate to  
10 comply with the program. A certificate of exemption is required  
11 for recording.

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

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

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

19 (765 ILCS 77/80)

20 Sec. 80. Predatory Lending Database Program Fund. The  
21 Predatory Lending Database Program Fund is created as a special  
22 fund in the State treasury. Subject to appropriation, moneys in  
23 the Fund shall be appropriated to the Illinois Housing  
24 Development Authority for the purpose of making grants for

1 HUD-approved ~~HUD-certified~~ counseling agencies participating  
2 in the Predatory Lending Database Program to assist with  
3 implementation and development of the Predatory Lending  
4 Database Program.

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