



Rep. Margo McDermed

Filed: 3/23/2018

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LRB100 16949 XWW 36187 a

1 AMENDMENT TO HOUSE BILL 4404

2 AMENDMENT NO. _____. Amend House Bill 4404 by replacing
3 everything after the enacting clause with the following:

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

6 (205 ILCS 635/1-4)

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

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

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

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

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

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

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

1 (1.5) Any employee of a person or entity mentioned
2 in item (1) of this subsection, when acting for such
3 person or entity, or any registered mortgage loan
4 originator when acting for an entity described in
5 subsection (tt) of this Section.

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

12 (2) (Blank).

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

17 (4) (Blank).

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

1 (6) (Blank).

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

7 (f) "Mortgage loan" "residential mortgage loan" or
8 "home mortgage loan" shall mean any loan primarily for
9 personal, family, or household use that is secured by a
10 mortgage, deed of trust, or other equivalent consensual
11 security interest on a dwelling as defined in Section
12 103(v) of the federal Truth in Lending Act, or residential
13 real estate upon which is constructed or intended to be
14 constructed a dwelling.

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

18 (h) "Ultimate equitable owner" shall mean a person who,
19 directly or indirectly, owns or controls an ownership
20 interest in a corporation, foreign corporation, alien
21 business organization, trust, or any other form of business
22 organization regardless of whether the person owns or
23 controls the ownership interest through one or more persons
24 or one or more proxies, powers of attorney, nominees,
25 corporations, associations, partnerships, trusts, joint
26 stock companies, or other entities or devices, or any

1 combination thereof.

2 (i) "Residential mortgage financing transaction" shall
3 mean the negotiation, acquisition, sale, or arrangement
4 for or the offer to negotiate, acquire, sell, or arrange
5 for, a residential mortgage loan or residential mortgage
6 loan commitment.

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

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

11 (l) "Party to a residential mortgage financing
12 transaction" shall mean a borrower, lender, or loan broker
13 in a residential mortgage financing transaction.

14 (m) "Payments" shall mean payment of all or any of the
15 following: principal, interest and escrow reserves for
16 taxes, insurance and other related reserves, and
17 reimbursement for lender advances.

18 (n) "Commissioner" shall mean the Commissioner of
19 Banks and Real Estate, except that, beginning on April 6,
20 2009 (the effective date of Public Act 95-1047), all
21 references in this Act to the Commissioner of Banks and
22 Real Estate are deemed, in appropriate contexts, to be
23 references to the Secretary of Financial and Professional
24 Regulation, or his or her designee, including the Director
25 of the Division of Banking of the Department of Financial
26 and Professional Regulation.

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

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

21 (p) "Loan broker" or "broker" shall mean a person,
22 partnership, association, corporation, or limited
23 liability company, other than those persons, partnerships,
24 associations, corporations, or limited liability companies
25 exempted from licensing pursuant to Section 1-4,
26 subsection (d), of this Act, who performs the activities

1 described in subsections (c), (o), and (yy) of this
2 Section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (bb) "Escrow agent" shall mean a third party,

1 individual or entity charged with the fiduciary obligation
2 for holding escrow funds on a residential mortgage loan
3 pending final payout of those funds in accordance with the
4 terms of the residential mortgage loan.

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

7 (dd) "Affiliate" shall mean:

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

13 (2) any entity:

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

20 (B) a majority of the directors or trustees of
21 which constitute a majority of the persons holding
22 any such office with the licensee or any company
23 that controls the licensee;

24 (3) any company, including a real estate
25 investment trust, that is sponsored and advised on a
26 contractual basis by the licensee or any subsidiary or

1 affiliate of the licensee.

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

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

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

25 (hh) "Loan originator" means any natural person who,
26 for compensation or in the expectation of compensation,

1 either directly or indirectly makes, offers to make,
2 solicits, places, or negotiates a residential mortgage
3 loan. This definition applies only to Section 7-1 of this
4 Act.

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

21 (jj) "Mortgage loan originator" means an individual
22 who for compensation or gain or in the expectation of
23 compensation or gain:

24 (i) takes a residential mortgage loan application;

25 or

26 (ii) offers or negotiates terms of a residential

1 mortgage loan.

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

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

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

23 "Mortgage loan originator" does not include a person or
24 entity solely involved in extensions of credit relating to
25 timeshare plans, as that term is defined in Section
26 101(53D) of Title 11, United States Code.

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

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

7 (mm) "Immediate family member" means a spouse, child,
8 sibling, parent, grandparent, or grandchild, and includes
9 step-parents, step-children, step-siblings, or adoptive
10 relationships.

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

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

18 (i) the receipt, collection, distribution, and
19 analysis of information common for the processing or
20 underwriting of a residential mortgage loan; and

21 (ii) communicating with a consumer to obtain the
22 information necessary for the processing or
23 underwriting of a loan, to the extent that the
24 communication does not include offering or negotiating
25 loan rates or terms, or counseling consumers about
26 residential mortgage loan rates or terms. An

1 individual engaging solely in loan processor or
2 underwriter activities shall not represent to the
3 public, through advertising or other means of
4 communicating or providing information, including the
5 use of business cards, stationery, brochures, signs,
6 rate lists, or other promotional items, that the
7 individual can or will perform any of the activities of
8 a mortgage loan originator.

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

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

17 (rr) "Person" means a natural person, corporation,
18 company, limited liability company, partnership, or
19 association.

20 (ss) "Real estate brokerage activity" means any
21 activity that involves offering or providing real estate
22 brokerage services to the public, including:

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

26 (2) bringing together parties interested in the

1 sale, purchase, lease, rental, or exchange of real
2 property;

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

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

12 (5) offering to engage in any activity, or act in
13 any 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
17 originator 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
23 agency; or

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

26 (2) is registered with, and maintains a unique

1 identifier through, the Nationwide Mortgage Licensing
2 System and Registry.

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

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

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

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

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

21 (zz) "Short sale facilitation" means, for compensation
22 or gain, either directly or indirectly offering or
23 negotiating on behalf of a borrower or homeowner to
24 facilitate the sale of residential real estate subject to
25 one or more residential mortgage loans or debts
26 constituting liens on the property in which the proceeds

1 from selling the residential real estate will fall short of
2 the amount owed and the lien holders are contacted to agree
3 to release their lien on the residential real estate and
4 accept less than the full amount owed on the debt.

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

8 (Source: P.A. 98-749, eff. 7-16-14; 98-1081, eff. 1-1-15;
9 99-78, eff. 7-20-15.)".