

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 Section 1-4 and by adding Section 5-12.5  
6 as follows:

7 (205 ILCS 635/1-4)

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

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

18 (b) "Making a residential mortgage loan" or "funding a  
19 residential mortgage loan" shall mean for compensation or  
20 gain, either directly or indirectly, advancing funds or making  
21 a commitment to advance funds to a loan applicant for a  
22 residential mortgage loan.

23 (c) "Soliciting, processing, placing, or negotiating a

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

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

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

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

17 (1.5) Any employee of a person or entity mentioned in  
18 item (1) of this subsection, when acting for such person  
19 or entity, or any registered mortgage loan originator when  
20 acting for an entity described in subsection (tt) of this  
21 Section.

22 (1.8) Any person or entity that does not originate  
23 mortgage loans in the ordinary course of business, but  
24 makes or acquires residential mortgage loans with his or  
25 her own funds for his or her or its own investment without  
26 intent to make, acquire, or resell more than 3 residential

1 mortgage loans in any one calendar year.

2 (2) (Blank).

3 (2.1) A bona fide nonprofit organization.

4 (2.2) An employee of a bona fide nonprofit  
5 organization when acting on behalf of that organization.

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

10 (4) (Blank).

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

19 (6) (Blank).

20 (7) Any entity engaged solely in providing loan  
21 processing services through the sponsoring of individuals  
22 acting pursuant to subsection (d) of Section 7-1A of this  
23 Act.

24 (e) "Licensee" or "residential mortgage licensee" shall  
25 mean a person, partnership, association, corporation, or any  
26 other entity who or which is licensed pursuant to this Act to

1 engage in the activities regulated by this Act.

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

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

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

24 (i) "Residential mortgage financing transaction" shall  
25 mean the negotiation, acquisition, sale, or arrangement for or  
26 the offer to negotiate, acquire, sell, or arrange for, a

1 residential mortgage loan or residential mortgage loan  
2 commitment.

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

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

7 (l) "Party to a residential mortgage financing  
8 transaction" shall mean a borrower, lender, or loan broker in  
9 a residential mortgage financing transaction.

10 (m) "Payments" shall mean payment of all or any of the  
11 following: principal, interest and escrow reserves for taxes,  
12 insurance and other related reserves, and reimbursement for  
13 lender advances.

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

22 (n-1) "Director" shall mean the Director of the Division  
23 of Banking of the Department of Financial and Professional  
24 Regulation, except that, beginning on July 31, 2009 (the  
25 effective date of Public Act 96-112), all references in this  
26 Act to the Director are deemed, in appropriate contexts, to be

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

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

15 (p) "Loan broker" or "broker" shall mean a person,  
16 partnership, association, corporation, or limited liability  
17 company, other than those persons, partnerships, associations,  
18 corporations, or limited liability companies exempted from  
19 licensing pursuant to Section 1-4, subsection (d), of this  
20 Act, who performs the activities described in subsections (c),  
21 (o), and (yy) of this Section.

22 (q) "Servicing" shall mean the collection or remittance  
23 for or the right or obligation to collect or remit for any  
24 lender, noteowner, noteholder, or for a licensee's own  
25 account, of payments, interests, principal, and trust items  
26 such as hazard insurance and taxes on a residential mortgage

1 loan in accordance with the terms of the residential mortgage  
2 loan; and includes loan payment follow-up, delinquency loan  
3 follow-up, loan analysis and any notifications to the borrower  
4 that are necessary to enable the borrower to keep the loan  
5 current and in good standing. "Servicing" includes management  
6 of third-party entities acting on behalf of a residential  
7 mortgage licensee for the collection of delinquent payments  
8 and the use by such third-party entities of said licensee's  
9 servicing records or information, including their use in  
10 foreclosure.

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



1 or her periodic examination of each licensee. "Full service  
2 office" does not include a remote location.

3 (s) "Purchasing" shall mean the purchase of conventional  
4 or government-insured mortgage loans secured by residential  
5 real estate situated in Illinois from either the lender or  
6 from the secondary market.

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

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

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

14 (1) obtain a residential mortgage loan for the  
15 borrower or assist the borrower in obtaining a residential  
16 mortgage loan; or

17 (2) consider making a residential mortgage loan to the  
18 borrower.

19 (w) "Advertisement" shall mean the attempt by publication,  
20 dissemination, or circulation to induce, directly or  
21 indirectly, any person to enter into a residential mortgage  
22 loan agreement or residential mortgage loan brokerage  
23 agreement relative to a mortgage secured by residential real  
24 estate situated in Illinois.

25 (x) (Blank).

26 (y) "Government-insured mortgage loan" shall mean any

1 mortgage loan made on the security of residential real estate  
2 insured by the Department of Housing and Urban Development or  
3 Farmers Home Loan Administration, or guaranteed by the  
4 Veterans Administration.

5 (z) "Annual audit" shall mean a certified audit of the  
6 licensee's books and records and systems of internal control  
7 performed by a certified public accountant in accordance with  
8 generally accepted accounting principles and generally  
9 accepted auditing standards.

10 (aa) "Financial institution" shall mean a savings and loan  
11 association, savings bank, credit union, or a bank organized  
12 under the laws of Illinois or a savings and loan association,  
13 savings bank, credit union or a bank organized under the laws  
14 of the United States and headquartered in Illinois.

15 (bb) "Escrow agent" shall mean a third party, individual  
16 or entity charged with the fiduciary obligation for holding  
17 escrow funds on a residential mortgage loan pending final  
18 payout of those funds in accordance with the terms of the  
19 residential mortgage loan.

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

22 (dd) "Affiliate" shall mean:

23 (1) any entity that directly controls or is controlled  
24 by the licensee and any other company that is directly  
25 affecting activities regulated by this Act that is  
26 controlled by the company that controls the licensee;

1 (2) any entity:

2 (A) that is controlled, directly or indirectly, by  
3 a trust or otherwise, by or for the benefit of  
4 shareholders who beneficially or otherwise control,  
5 directly or indirectly, by trust or otherwise, the  
6 licensee or any company that controls the licensee; or

7 (B) a majority of the directors or trustees of  
8 which constitute a majority of the persons holding any  
9 such office with the licensee or any company that  
10 controls the licensee;

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

15 (ee) "First tier subsidiary" shall be defined by  
16 regulation incorporating the comparable definitions used by  
17 the Office of the Comptroller of the Currency and the Illinois  
18 Commissioner of Banks and Real Estate.

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

1 loans funded or purchased by the licensee in the preceding  
2 calendar year and (ii) the number of conventional residential  
3 mortgage loans funded or purchased by the licensee in the  
4 preceding calendar year.

5 (gg) "Delinquency rate factor" means the factor set by  
6 rule of the Commissioner that is multiplied by the average  
7 gross delinquency rate of licensees, determined annually for  
8 the immediately preceding calendar year, for the purpose of  
9 determining which licensees shall be examined by the  
10 Commissioner pursuant to subsection (b) of Section 4-8 of this  
11 Act.

12 (hh) (Blank).

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

1 available pursuant to State or federal law or rule.

2 (jj) "Mortgage loan originator" means an individual who  
3 for compensation or gain or in the expectation of compensation  
4 or gain:

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

6 (ii) offers or negotiates terms of a residential  
7 mortgage loan.

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

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

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

1 agent of that lender, mortgage broker, or other mortgage loan  
2 originator.

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

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

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

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

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

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

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

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

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

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

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

25           (ss) "Real estate brokerage activity" means any activity  
26 that involves offering or providing real estate brokerage

1 services to the public, including:

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

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

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

12 (4) engaging in any activity for which a person  
13 engaged in the activity is required to be registered or  
14 licensed as a real estate agent or real estate broker  
15 under any applicable law; or

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

18 (tt) "Registered mortgage loan originator" means any  
19 individual that:

20 (1) meets the definition of mortgage loan originator  
21 and is an employee of:

22 (A) a depository institution;

23 (B) a subsidiary that is:

24 (i) owned and controlled by a depository  
25 institution; and

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



1 (C) an institution regulated by the Farm Credit  
2 Administration; and

3 (2) is registered with, and maintains a unique  
4 identifier through, the Nationwide Multistate Licensing  
5 System and Registry.

6 (uu) "Unique identifier" means a number or other  
7 identifier assigned by protocols established by the Nationwide  
8 Multistate Licensing System and Registry.

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

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

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

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

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

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

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

11 (1) Promotes affordable housing or provides home  
12 ownership education or similar services.

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

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

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

22 (5) Provides to, or identifies for, the borrower  
23 residential mortgage loans with terms favorable to the  
24 borrower and comparable to residential mortgage loans and  
25 housing assistance provided under government housing  
26 assistance programs.

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

4 (ccc) "Shared appreciation agreement" means a writing  
5 evidencing a transaction or any option, future, or any other  
6 derivative between a person and a consumer where the consumer  
7 receives money or any other item of value in exchange for an  
8 interest or future interest in a dwelling or residential real  
9 estate or a future obligation to repay a sum on the occurrence  
10 of an event, such as:

11 (1) the transfer of ownership;

12 (2) a repayment maturity date;

13 (3) the death of the consumer; or

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

15 The Commissioner may define by rule and regulation any  
16 terms used in this Act for the efficient and clear  
17 administration of this Act.

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

19 (205 ILCS 635/5-12.5 new)

20 Sec. 5-12.5. Shared appreciation agreement consumer  
21 counseling and disclosures.

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

1       (b) The Secretary may adopt rules relating to shared  
2 appreciation agreements, including, but not limited to, rules  
3 defining statutory terms; relating to disclosures to help  
4 consumers understand the cost, duration, and fees of the  
5 agreement, as well as potential alternatives; on the limits on  
6 the interest or other fees that may be charged to a borrower;  
7 and relating to counseling under subsection (a).

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

10       (765 ILCS 77/70)

11       Sec. 70. Predatory lending database program.

12       (a) As used in this Article:

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

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

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

20       "Closing agent" means an individual assigned by a title  
21 insurance company or a broker or originator to ensure that the  
22 execution of documents related to the closing of a real estate  
23 sale or the refinancing of a real estate loan and the  
24 disbursement of closing funds are in conformity with the

1 instructions of the entity financing the transaction.

2 "Counseling" means ~~in-person~~ counseling provided by a  
3 counselor employed by a HUD-approved counseling agency to all  
4 borrowers. Counseling must be provided in the following  
5 manner:

6 (i) in person; or

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

19 "Counselor" means a counselor employed by a HUD-approved  
20 housing counseling agency.

21 "Credit score" means a credit risk score as defined by the  
22 Fair Isaac Corporation, or its successor, and reported under  
23 such names as "BEACON", "EMPIRICA", and "FAIR ISAAC RISK  
24 SCORE" by one or more of the following credit reporting  
25 agencies or their successors: Equifax, Inc., Experian  
26 Information Solutions, Inc., and TransUnion LLC. If the

1 borrower's credit report contains credit scores from 2  
2 reporting agencies, then the broker or loan originator shall  
3 report the lower score. If the borrower's credit report  
4 contains credit scores from 3 reporting agencies, then the  
5 broker or loan originator shall report the middle score.

6 "Department" means the Department of Financial and  
7 Professional Regulation.

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

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

13 "HUD-approved counseling" or "counseling" means counseling  
14 given to a borrower by a counselor employed by a HUD-approved  
15 housing counseling agency.

16 "Interest only" means a closed-end loan that permits one  
17 or more payments of interest without any reduction of the  
18 principal balance of the loan, other than the first payment on  
19 the loan.

20 "Lender" means that term as it is defined in subsection  
21 (g) of Section 1-4 of the Residential Mortgage License Act of  
22 1987.

23 "Licensee" means that term as it is defined in subsection  
24 (e) of Section 1-4 of the Residential Mortgage License Act of  
25 1987.

26 "Mortgage loan" means that term as it is defined in

1 subsection (f) of Section 1-4 of the Residential Mortgage  
2 License Act of 1987.

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

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

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

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

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

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

25 (a-5) A predatory lending database program shall be  
26 established within Cook County. The program shall be

1 administered in accordance with this Article. The inception  
2 date of the program shall be July 1, 2008. A predatory lending  
3 database program shall be expanded to include Kane, Peoria,  
4 and Will counties. The inception date of the expansion of the  
5 program as it applies to Kane, Peoria, and Will counties shall  
6 be July 1, 2010. Until the inception date, none of the duties,  
7 obligations, contingencies, or consequences of or from the  
8 program shall be imposed. The program shall apply to all  
9 mortgage applications that are governed by this Article and  
10 that are made or taken on or after the inception of the  
11 program.

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

22 (c) Within 10 business days after taking a mortgage  
23 application, the broker or originator for any mortgage on  
24 residential property within the program area must submit to  
25 the predatory lending database all of the information required  
26 under Section 72 and any other information required by the



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

23 (d) If the Department recommends counseling for the  
24 borrower under subsection (c), then the Department shall  
25 notify the borrower of all participating HUD-approved  
26 counseling agencies located within the State and, where

1 applicable, nationally HUD-approved counseling agencies, and  
2 direct the borrower to interview with a counselor associated  
3 with one of those agencies. Within 10 business days after  
4 receipt of the notice of HUD-approved counseling agencies, it  
5 is the borrower's responsibility to select one of those  
6 agencies and shall engage in an interview with a counselor  
7 associated with that agency. The borrower must supply all  
8 necessary documents, as set forth by the counselor, at least  
9 72 hours before the scheduled interview. The selection must  
10 take place and the appointment for the interview must be set  
11 within 10 business days, although the interview may take place  
12 beyond the 10 business day period. Within 7 business days  
13 after interviewing the borrower, the counselor must submit to  
14 the predatory lending database all of the information required  
15 under Section 74 and any other information required by the  
16 Department by rule. Reasonable and customary costs not to  
17 exceed \$300 associated with counseling provided under the  
18 program shall be paid by the broker or originator and shall not  
19 be charged back to, or recovered from, the borrower. The  
20 Department shall annually calculate to the nearest dollar an  
21 adjusted rate for inflation. A counselor shall not recommend  
22 or suggest that a borrower contact any specific mortgage  
23 origination company, financial institution, or entity that  
24 deals in mortgage finance to obtain a loan, another quote, or  
25 for any other reason related to the specific mortgage  
26 transaction; however, a counselor may suggest that the

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

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

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

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

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

23 (g) The title insurance company or closing agent shall  
24 attach to the mortgage a certificate of compliance with the  
25 requirements of this Article, as generated by the database. If  
26 the transaction is exempt, the title insurance company or

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

18 (h) All information provided to the predatory lending  
19 database under the program is confidential and is not subject  
20 to disclosure under the Freedom of Information Act, except as  
21 otherwise provided in this Article. Information or documents  
22 obtained by employees of the Department in the course of  
23 maintaining and administering the predatory lending database  
24 are deemed confidential. Employees are prohibited from making  
25 disclosure of such confidential information or documents. Any  
26 request for production of information from the predatory

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

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

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

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

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

26 (j-3) A violation of any provision of this Article by a

1 housing counselor shall be referred to the Department of  
2 Housing and Urban Development.

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

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

10 (2) the number of borrowers receiving counseling;

11 (3) the number of loans closed;

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

14 (5) the number of loans requiring counseling where the  
15 mortgage originator changed the loan terms subsequent to  
16 counseling;

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

19 (7) the number of investigations based on information  
20 obtained from the database, including the number of  
21 licensees fined, the number of licenses suspended, and the  
22 number of licenses revoked;

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

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

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