



Rep. Marlow H. Colvin

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LRB096 05294 MJR 24615 a

1 AMENDMENT TO HOUSE BILL 4011

2 AMENDMENT NO. _____. Amend House Bill 4011 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 Sections 1-2, 1-4, 2-2, 2-3, 2-4, 2-6, 3-1,
6 3-2, 3-4, 4-1, 4-2, 4-5, 4-8.3, and the heading of Article VII
7 and by adding Sections 4-7, 4-8.1A, 4-9.1, 7-1A, 7-2, 7-3, 7-4,
8 7-5, 7-6, 7-7, 7-8, 7-9, 7-10, 7-11, 7-12, 7-13, and 7-14 as
9 follows:

10 (205 ILCS 635/1-2) (from Ch. 17, par. 2321-2)

11 Sec. 1-2. Purpose of Act and Policy Statement.

12 (a) The origination, funding, purchasing and brokering of
13 residential mortgage loans and the type of entities involved in
14 residential mortgage lending have undergone significant
15 changes in recent years, due in part to developments in the
16 general economy, specifically interest rate volatility, the

1 sophistication of the national secondary market for mortgage
2 loans and the market for mortgage backed securities. The recent
3 trend toward deregulation in the financial services industry
4 has accelerated the evolution of residential mortgage lending,
5 dramatically increasing the types of mortgage loans offered and
6 the manner in which they are advertised and marketed to
7 consumers. Depository institutions, traditionally the major
8 source of residential mortgage financing for individuals, now
9 compete for capital and customers with mortgage bankers and
10 other financial service organizations. Residential mortgage
11 lenders of every type have increasingly relied on nonfinancial
12 intermediaries, such as mortgage brokers, to find customers.
13 These developments have raised questions as to whether all
14 entities engaging in this banking function operate under
15 appropriate regulatory scrutiny and as to whether all
16 residential mortgage lenders are conducting their business in
17 the best interests of Illinois homeowners and potential
18 homeowners.

19 (b) The activities of lenders and their offering of
20 financing for residential real property have a direct and
21 immediate impact upon the housing industry, the neighborhoods
22 and communities of this State, its homeowners and potential
23 homeowners. The General Assembly finds that it is essential for
24 the protection of the citizens of this State and the stability
25 of the State's economy that reasonable standards governing the
26 business practices of residential mortgage lenders and their

1 agents be imposed. The General Assembly further finds that the
2 obligations of lenders and their agents to consumers in
3 connection with making, soliciting, processing, placing or
4 negotiating of residential mortgage loans are such as to
5 warrant the uniform regulation of the residential mortgage
6 lending process, including the application, solicitation,
7 making and servicing of residential mortgage loans. The purpose
8 of this Act is to protect Illinois consumers seeking
9 residential mortgage loans and to ensure that the residential
10 mortgage lending industry is operating fairly, honestly and
11 efficiently, free from deceptive and anti-competitive
12 practices. The purpose of this Act is to regulate residential
13 mortgage lending to benefit our citizens by ensuring
14 availability of residential mortgage funding, to benefit
15 responsible providers of residential mortgage loans and
16 services, and to avoid requirements inconsistent with
17 legitimate and responsible business practices in the
18 residential mortgage lending industry.

19 (c) The General Assembly finds that the provisions of this
20 amendatory Act of the 96th General Assembly that set forth the
21 authority and framework for State participation in a Nationwide
22 Mortgage Licensing System and Registry are consistent with the
23 purposes of this Section and for the purpose of complying with
24 the federal Secure and Fair Enforcement for Mortgage Licensing
25 Act of 2008.

26 (Source: P.A. 85-735.)

1 (205 ILCS 635/1-4) (from Ch. 17, par. 2321-4)

2 Sec. 1-4. Definitions.

3 (a) "Residential real property" or "residential real
4 estate" shall mean any real property located in Illinois, upon
5 which is constructed or intended to be constructed a dwelling
6 ~~real property located in this State improved by a one to four~~
7 ~~family dwelling used or occupied, wholly or partly, as the home~~
8 ~~or residence of one or more persons and may refer, subject to~~
9 ~~regulations of the Commissioner, to unimproved real property~~
10 ~~upon which those kinds dwellings are to be constructed.~~

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

16 (c) "Soliciting, processing, placing, or negotiating a
17 residential mortgage loan" shall mean for compensation or gain,
18 either directly or indirectly, accepting or offering to accept
19 an application for a residential mortgage loan, assisting or
20 offering to assist in the processing of an application for a
21 residential mortgage loan on behalf of a borrower, or
22 negotiating or offering to negotiate the terms or conditions of
23 a residential mortgage loan with a lender on behalf of a
24 borrower including, but not limited to, the submission of
25 credit packages for the approval of lenders, the preparation of

1 residential mortgage loan closing documents, including a
2 closing in the name of a broker.

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

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

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

8 (1.5) Any employee of a person or entity, or any
9 registered mortgage loan originator when acting for an
10 entity, mentioned in item (1) of this subsection.

11 (2) Any person or entity that does not originate
12 mortgage loans in the ordinary course of business making or
13 acquiring residential mortgage loans with his or her or its
14 own funds for his or her or its own investment without
15 intent to make, acquire, or resell more than 2 ~~10~~
16 residential mortgage loans in any one calendar year.

17 (3) Any person employed by a licensee to assist in the
18 performance of the activities regulated by this Act who is
19 compensated in any manner by only one licensee.

20 (4) (Blank). ~~Any person licensed pursuant to the Real~~
21 ~~Estate License Act of 2000, who engages only in the taking~~
22 ~~of applications and credit and appraisal information to~~
23 ~~forward to a licensee or an exempt entity under this Act~~
24 ~~and who is compensated by either a licensee or an exempt~~
25 ~~entity under this Act, but is not compensated by either the~~
26 ~~buyer (applicant) or the seller.~~

1 (5) Any individual, corporation, partnership, or other
2 entity that originates, services, or brokers residential
3 mortgage loans, as these activities are defined in this
4 Act, and who or which receives no compensation for those
5 activities, subject to the Commissioner's regulations with
6 regard to the nature and amount of compensation.

7 (6) (Blank). ~~A person who prepares supporting~~
8 ~~documentation for a residential mortgage loan application~~
9 ~~taken by a licensee and performs ministerial functions~~
10 ~~pursuant to specific instructions of the licensee who~~
11 ~~neither requires nor permits the preparer to exercise his~~
12 ~~or her discretion or judgment; provided that this activity~~
13 ~~is engaged in pursuant to a binding, written agreement~~
14 ~~between the licensee and the preparer that:~~

15 ~~(A) holds the licensee fully accountable for the~~
16 ~~preparer's action; and~~

17 ~~(B) otherwise meets the requirements of this~~
18 ~~Section and this Act, does not undermine the purposes~~
19 ~~of this Act, and is approved by the Commissioner.~~

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

24 (f) "Mortgage loan" "residential mortgage loan" or "home
25 mortgage loan" shall mean any loan primarily for personal,
26 family, or household use that is secured by a mortgage, deed of

1 trust, or other equivalent consensual security interest on a
2 dwelling as defined in Section 103(v) of the federal Truth in
3 Lending Act, or residential real estate upon which is
4 constructed or intended to be constructed a dwelling ~~a loan to~~
5 ~~or for the benefit of any natural person made primarily for~~
6 ~~personal, family, or household use, primarily secured by either~~
7 ~~a mortgage on residential real property or certificates of~~
8 ~~stock or other evidence of ownership interests in and~~
9 ~~proprietary leases from, corporations, partnerships, or~~
10 ~~limited liability companies formed for the purpose of~~
11 ~~cooperative ownership of residential real property, all~~
12 ~~located in Illinois.~~

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

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

25 (i) "Residential mortgage financing transaction" shall
26 mean the negotiation, acquisition, sale, or arrangement for or

1 the offer to negotiate, acquire, sell, or arrange for, a
2 residential mortgage loan or residential mortgage loan
3 commitment.

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

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

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

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

15 (n) "Commissioner" shall mean the Commissioner of Banks and
16 Real Estate, except that all references in this Act to the
17 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 ~~or a person~~
22 ~~authorized by the Commissioner, the Office of Banks and Real~~
23 ~~Estate Act, or this Act to act in the Commissioner's stead.~~

24 (n-1) "Director" shall mean the Director of the Division of
25 Banking of the Department of Financial and Professional
26 Regulation, except that beginning on the effective date of this

1 amendatory Act of the 96th General Assembly, all references in
2 this Act to the Director are deemed, in appropriate contexts,
3 to be the Secretary of Financial and Professional Regulation,
4 or his or her designee, including the Director of the Division
5 of Banking of the Department of Financial and Professional
6 Regulation.

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

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

24 (q) "Servicing" shall mean the collection or remittance for
25 or the right or obligation to collect or remit for any lender,
26 noteowner, noteholder, or for a licensee's own account, of

1 payments, interests, principal, and trust items such as hazard
2 insurance and taxes on a residential mortgage loan in
3 accordance with the terms of the residential mortgage loan; and
4 includes loan payment follow-up, delinquency loan follow-up,
5 loan analysis and any notifications to the borrower that are
6 necessary to enable the borrower to keep the loan current and
7 in good standing.

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

24 (s) "Purchasing" shall mean the purchase of conventional or
25 government-insured mortgage loans secured by residential real
26 estate situated in Illinois from either the lender or from the

1 secondary market.

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

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

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

9 (1) obtain a residential mortgage loan for the borrower
10 or assist the borrower in obtaining a residential mortgage
11 loan; or

12 (2) consider making a residential mortgage loan to the
13 borrower.

14 (w) "Advertisement" shall mean the attempt by publication,
15 dissemination, or circulation to induce, directly or
16 indirectly, any person to enter into a residential mortgage
17 loan agreement or residential mortgage loan brokerage
18 agreement relative to a mortgage secured by residential real
19 estate situated in Illinois.

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

22 (y) "Government-insured mortgage loan" shall mean any
23 mortgage loan made on the security of residential real estate
24 insured by the Department of Housing and Urban Development or
25 Farmers Home Loan Administration, or guaranteed by the Veterans
26 Administration.

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

6 (aa) "Financial institution" shall mean a savings and loan
7 association, savings bank, credit union, or a bank organized
8 under the laws of Illinois or a savings and loan association,
9 savings bank, credit union or a bank organized under the laws
10 of the United States and headquartered in Illinois.

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

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

18 (dd) "Affiliate" shall mean:

19 (1) any entity that directly controls or is controlled
20 by the licensee and any other company that is directly
21 affecting activities regulated by this Act that is
22 controlled by the company that controls the licensee;

23 (2) any entity:

24 (A) that is controlled, directly or indirectly, by
25 a trust or otherwise, by or for the benefit of
26 shareholders who beneficially or otherwise control,

1 directly or indirectly, by trust or otherwise, the
2 licensee or any company that controls the licensee; or

3 (B) a majority of the directors or trustees of
4 which constitute a majority of the persons holding any
5 such office with the licensee or any company that
6 controls the licensee;

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

11 The Commissioner may define by rule and regulation any
12 terms used in this Act for the efficient and clear
13 administration of this Act.

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

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

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

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

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

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

1 include any information or record routinely prepared by a
2 licensee and maintained in the ordinary course of business or
3 any information or record that is required to be made publicly
4 available pursuant to State or federal law or rule.

5 (jj) "Mortgage loan originator" means an individual who for
6 compensation or gain or in the expectation of compensation or
7 gain:

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

9 (ii) offers or negotiates terms of a residential
10 mortgage loan.

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

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

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

26 (kk) "Depository institution" has the same meaning as in

1 Section 3 of the Federal Deposit Insurance Act, and includes
2 any credit union.

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

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

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

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

15 "Clerical or support duties" includes subsequent to the receipt
16 of an application:

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

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

1 public, through advertising or other means of
2 communicating or providing information, including the use
3 of business cards, stationery, brochures, signs, rate
4 lists, or other promotional items, that the individual can
5 or will perform any of the activities of a mortgage loan
6 originator.

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

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

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

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

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

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

25 (3) negotiating, on behalf of any party, any portion of
26 a contract relating to the sale, purchase, lease, rental,

1 or exchange of real property, other than in connection with
2 providing financing with respect to any such transaction;

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

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

9 (tt) "Registered mortgage loan originator" means any
10 individual that:

11 (1) meets the definition of mortgage loan originator
12 and is an employee of:

13 (A) a depository institution;

14 (B) a subsidiary that is:

15 (i) owned and controlled by a depository
16 institution; and

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

18 (C) an institution regulated by the Farm Credit
19 Administration; and

20 (2) is registered with, and maintains a unique
21 identifier through, the Nationwide Mortgage Licensing
22 System and Registry.

23 (uu) "Unique identifier" means a number or other identifier
24 assigned by protocols established by the Nationwide Mortgage
25 Licensing System and Registry.

26 (Source: P.A. 93-561, eff. 1-1-04; 93-1018, eff. 1-1-05.)

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

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

3 (a) The Commissioner shall issue a license upon completion
4 of all of the following:

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

8 (2) The filing with the Commissioner of a listing of
9 judgments entered against, and bankruptcy petitions by,
10 the license applicant for the preceding 10 years.

11 (3) The payment, in certified funds, of investigation
12 and application fees, the total of which shall be in an
13 amount equal to \$2,700 annually, however, the Commissioner
14 may increase the investigation and application fees by rule
15 as provided in Section 4-11. To comply with the common
16 renewal date and requirements of the Nationwide Mortgage
17 Licensing System and Registry, the term of initial licenses
18 may be extended or shortened with applicable fees prorated
19 or combined accordingly.

20 (4) Except for a broker applying to renew a license,
21 the filing of an audited balance sheet including all
22 footnotes prepared by a certified public accountant in
23 accordance with generally accepted accounting principles
24 and generally accepted auditing principles which evidences
25 that the applicant meets the net worth requirements of

1 Section 3-5.

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

21 (6) An investigation of the averments required by
22 Section 2-4, which investigation must allow the
23 Commissioner to issue positive findings stating that the
24 financial responsibility, experience, character, and
25 general fitness of the license applicant and of the members
26 thereof if the license applicant is a partnership or

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

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

16 (b) All licenses shall be issued ~~in duplicate with one copy~~
17 ~~being transmitted~~ to the license applicant ~~and the second being~~
18 ~~retained with the Commissioner.~~

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

24 (Source: P.A. 93-32, eff. 7-1-03; 93-1018, eff. 1-1-05.)

1 Sec. 2-3. Application form.

2 (a) Application for a residential mortgage license must be
3 made in accordance with Section 2-6 and, if applicable, in
4 accordance with requirements of the Nationwide Mortgage
5 Licensing System and Registry. The application shall be in
6 writing, under oath, and on a form obtained from and prescribed
7 by the Commissioner, or may be submitted electronically, with
8 attestation, to the Nationwide Mortgage Licensing System and
9 Registry.

10 (b) The application shall contain the name and complete
11 business and residential address or addresses of the license
12 applicant. If the license applicant is a partnership,
13 association, corporation or other form of business
14 organization, the application shall contain the names and
15 complete business and residential addresses of each member,
16 director and principal officer thereof. Such application shall
17 also include a description of the activities of the license
18 applicant, in such detail and for such periods, as the
19 Commissioner may require, including all of the following:

20 (1) An affirmation of financial solvency noting such
21 capitalization requirements as may be required by the
22 Commissioner, and access to such credit as may be required
23 by the Commissioner.

24 (2) An affirmation that the license applicant or its
25 members, directors or principals as may be appropriate, are
26 at least 18 years of age.

1 (3) Information as to the character, fitness,
2 financial and business responsibility, background,
3 experience, and criminal record of any (i) person, entity,
4 or ultimate equitable owner that owns or controls, directly
5 or indirectly, 10% or more of any class of stock of the
6 license applicant; (ii) person, entity, or ultimate
7 equitable owner that is not a depository institution, as
8 defined in Section 1007.50 of the Savings Bank Act, that
9 lends, provides, or infuses, directly or indirectly, in any
10 way, funds to or into a license applicant, in an amount
11 equal to or more than 10% of the license applicant's net
12 worth; (iii) person, entity, or ultimate equitable owner
13 that controls, directly or indirectly, the election of 25%
14 or more of the members of the board of directors of a
15 license applicant; or (iv) person, entity, or ultimate
16 equitable owner that the Commissioner finds influences
17 management of the license applicant.

18 (4) Upon written request by the licensee and
19 notwithstanding the provisions of paragraphs (1), (2), and
20 (3) of this subsection, the Commissioner may permit the
21 licensee to omit all or part of the information required by
22 those paragraphs if, in lieu of the omitted information,
23 the licensee submits an affidavit stating that the
24 information submitted on the licensee's previous renewal
25 application is still true and accurate. The Commissioner
26 may promulgate rules prescribing the form and content of

1 the affidavit that are necessary to accomplish the purposes
2 of this Section.

3 (5) Such other information as required by regulations
4 of the Commissioner.

5 (Source: P.A. 89-355, eff. 8-17-95.)

6 (205 ILCS 635/2-4) (from Ch. 17, par. 2322-4)

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

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

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

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

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

25 (e) Will not engage, whether as principal or agent, in

1 the practice of rejecting residential mortgage
2 applications without reasonable cause, or varying terms or
3 application procedures without reasonable cause, for home
4 mortgages on real estate within any specific geographic
5 area from the terms or procedures generally provided by the
6 licensee within other geographic areas of the State;

7 (f) Will not engage in fraudulent home mortgage
8 underwriting practices;

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

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

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

21 (j) Will not knowingly make any false promises likely
22 to influence or persuade, or pursue a course of
23 misrepresentation and false promises through agents,
24 solicitors, advertising or otherwise;

25 (k) Will not knowingly misrepresent, circumvent or
26 conceal, through whatever subterfuge or device, any of the

1 material particulars or the nature thereof, regarding a
2 transaction to which it is a party to the injury of another
3 party thereto;

4 (l) Will disburse funds in accordance with its
5 agreements;

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

12 (n) Will account or deliver to the owner upon request
13 ~~any person~~ any personal property such as money, fund,
14 deposit, check, draft, mortgage, other document or thing of
15 value, ~~which has come into its possession, and which is not~~
16 ~~its property, or~~ which it is not in law or equity entitled
17 to retain under the circumstances, ~~at the time which has~~
18 ~~been agreed upon or is required by law, or, in the absence~~
19 ~~of a fixed time, upon demand of the person entitled to such~~
20 ~~accounting and delivery;~~

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

23 (p) Has not become insolvent;

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

26 (r) Has not demonstrated by course of conduct,

1 negligence or incompetence in performing any act for which
2 it is required to hold a license under this Act;

3 (s) Will advise the Commissioner in writing, or the
4 Nationwide Mortgage Licensing System and Registry as
5 applicable, of any changes to the information submitted on
6 the most recent application for license within 30 days of
7 said change. The written notice must be signed in the same
8 form as the application for 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 ~~when the license applicant~~
19 ~~requests~~ a licensee under this Act to repurchase a loan in
20 a manner that completely and clearly identifies to whom the
21 request was made, the loans involved, and the reason, ~~and~~
22 ~~the circumstances~~ therefor;

23 (x) Will advise the Commissioner in writing within 30
24 days of any request from any entity ~~when the license~~
25 ~~applicant is requested by another entity~~ to repurchase a
26 loan in a manner that completely and clearly identifies to

1 whom the request was made, the loans involved, and the
2 reason for the request, and the circumstances therefor;

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

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

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

13 (Source: P.A. 95-331, eff. 8-21-07.)

14 (205 ILCS 635/2-6) (from Ch. 17, par. 2322-6)

15 Sec. 2-6. License issuance and renewal; fee.

16 (a) Beginning July 1, 2003, licenses shall be renewed every
17 year on the anniversary of the date of issuance of the original
18 license, or the common renewal date of the Nationwide Mortgage
19 Licensing System and Registry as adopted by the Director. To
20 comply with the common renewal date of the Nationwide Mortgage
21 Licensing System and Registry, the term of existing licenses
22 may be extended or shortened with applicable fees prorated
23 accordingly. Properly completed renewal application forms and
24 filing fees must be received by the Commissioner 60 days prior
25 to the renewal date.

1 (b) It shall be the responsibility of each licensee to
2 accomplish renewal of its license; failure of the licensee to
3 receive renewal forms absent a request sent by certified mail
4 for such forms will not waive said responsibility. Failure by a
5 licensee to submit a properly completed renewal application
6 form and fees in a timely fashion, absent a written extension
7 from the Commissioner, will result in the assessment of
8 additional fees, as follows:

9 (1) A fee of \$750 will be assessed to the licensee 30
10 days after the proper renewal date and \$1,500 each month
11 thereafter, until the license is either renewed or expires
12 pursuant to Section 2-6, subsections (c) and (d), of this
13 Act.

14 (2) Such fee will be assessed without prior notice to
15 the licensee, but will be assessed only in cases wherein
16 the Commissioner has in his or her possession documentation
17 of the licensee's continuing activity for which the
18 unrenewed license was issued.

19 (c) A license which is not renewed by the date required in
20 this Section shall automatically become inactive. No activity
21 regulated by this Act shall be conducted by the licensee when a
22 license becomes inactive. The Commissioner may require the
23 licensee to provide a plan for the disposition of any
24 residential mortgage loans not closed or funded when the
25 license becomes inactive. The Commissioner may allow a licensee
26 with an inactive license to conduct activities regulated by

1 this Act for the sole purpose of assisting borrowers in the
2 closing or funding of loans for which the loan application was
3 taken from a borrower while the license was active. An inactive
4 license may be reactivated by the Commissioner upon payment of
5 the renewal fee, and payment of a reactivation fee equal to the
6 renewal fee.

7 (d) A license which is not renewed within one year of
8 becoming inactive shall expire.

9 (e) A licensee ceasing an activity or activities regulated
10 by this Act and desiring to no longer be licensed shall so
11 inform the Commissioner in writing and, at the same time,
12 convey the license and all other symbols or indicia of
13 licensure. The licensee shall include a plan for the withdrawal
14 from regulated business, including a timetable for the
15 disposition of the business, and comply with the surrender
16 guidelines or requirements of the Director. Upon receipt of
17 such written notice, the Commissioner shall post the
18 cancellation or issue a certified statement canceling the
19 license.

20 (Source: P.A. 93-32, eff. 7-1-03; 93-561, eff. 1-1-04; 93-1018,
21 eff. 1-1-05.)

22 (205 ILCS 635/3-1) (from Ch. 17, par. 2323-1)

23 Sec. 3-1. Bonds of licensees.

24 (a) Every licensee, with respect to any person appointed or
25 elected to any position requiring the receipt of payment,

1 management, or use of money belonging to a residential mortgage
2 licensee engaged in the activities of originating, servicing,
3 or purchasing mortgage loans or whose duties permit him or her
4 to have access to or custody of any of its money or securities
5 or custody of any money or securities belonging to third
6 parties or whose duties permit him or her regularly to make
7 entries in the books or other records of a licensee, shall,
8 before assuming his or her duties, maintain a fidelity bond in
9 the amount of \$100,000 by some fidelity insurance company
10 licensed to do business in this State.

11 (b) Each bond shall be for any loss the licensee may
12 sustain in money or other property through the commission of
13 any dishonest or criminal act or omission by any person
14 required to be bonded, whether committed alone or in concert
15 with another. The bond shall be in the form and amount approved
16 by the Commissioner who may at any time require one or more
17 additional bonds. A true copy of every bond, including all
18 riders and endorsements executed subsequent to the effective
19 date of the bond, shall be filed at all times with the
20 Commissioner. Each bond shall provide that a cancellation
21 thereof shall not become effective unless and until 30 days
22 notice in writing first shall have been given to the
23 Commissioner unless he or she shall have approved the
24 cancellation earlier. If the Commissioner believes the
25 licensee's business is being conducted in an unsafe manner due
26 to the lack of bonds or the inadequacy of bonds, he or she may

1 proceed against the licensee as provided for in Section 4-5.

2 (c) All licensees shall maintain a bond in accordance with
3 this subsection. Each bond shall be for the recovery of
4 expenses, fines, or fees due to or levied by the Commissioner
5 in accordance with this Act. The bond shall be payable when the
6 licensee fails to comply with any provisions of this Act and
7 shall be in the form of a surety or licensure bond in the
8 amount and form as prescribed by the Commissioner pursuant to
9 rules and regulations. The bond shall be payable to the Office
10 of Banks and Real Estate and shall be issued by some insurance
11 company authorized to do business in this State. A copy of the
12 bond, including any and all riders and endorsements executed
13 subsequent to the effective date of the bond, shall be placed
14 on file with the Office of Banks and Real Estate within 10 days
15 of the execution thereof.

16 (d) The Commissioner may promulgate rules with respect to
17 bonding requirements for residential mortgage licensees and
18 their mortgage loan originators that are reasonable and
19 necessary to accomplish the purposes of this Act.

20 (Source: P.A. 89-508, eff. 7-3-96.)

21 (205 ILCS 635/3-2) (from Ch. 17, par. 2323-2)

22 Sec. 3-2. Annual audit.

23 (a) At the licensee's fiscal year-end, but in no case more
24 than 12 months after the last audit conducted pursuant to this
25 Section, except as otherwise provided in this Section, it shall

1 be mandatory for each residential mortgage licensee to cause
2 its books and accounts to be audited by a certified public
3 accountant not connected with such licensee. The books and
4 records of all licensees under this Act shall be maintained on
5 an accrual basis. The audit must be sufficiently comprehensive
6 in scope to permit the expression of an opinion on the
7 financial statements, which must be prepared in accordance with
8 generally accepted accounting principles, and must be
9 performed in accordance with generally accepted auditing
10 standards. Notwithstanding the requirements of this
11 subsection, a licensee that is a first tier subsidiary may
12 submit audited consolidated financial statements of its parent
13 as long as the consolidated statements are supported by
14 consolidating statements. The licensee's chief financial
15 officer shall attest to the licensee's financial statements
16 disclosed in the consolidating statements.

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

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

25 (d) The most recent audit report shall be filed with the
26 Commissioner within 90 days after the end of the licensee's

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

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

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

19 (g) With respect to licensees who solely broker residential
20 mortgage loans as defined in subsection (o) of Section 1-4,
21 instead of the audit required by this Section, the Commissioner
22 may accept compilation financial statements prepared at least
23 every 12 months, and the compilation financial statement must
24 be prepared by an independent certified public accountant
25 licensed under the Illinois Public Accounting Act or by an
26 equivalent state licensing law with full disclosure in

1 accordance with generally accepted accounting principals and
2 must be submitted within 90 days after the end of the
3 licensee's fiscal year, or with the Nationwide Mortgage
4 Licensing System and Registry, if applicable, pursuant to
5 Mortgage Call Report requirements. If a licensee under this
6 Section fails to file a compilation as required, the
7 Commissioner shall cause an audit of the licensee's books and
8 accounts to be made by a certified public accountant at the
9 licensee's expense. The Commissioner shall select the
10 certified public accountant by advertising for bids or by such
11 other fair and impartial means as he or she establishes by
12 rule. A licensee who files false or misleading compilation
13 financial statements is guilty of a business offense and shall
14 be fined not less than \$5,000.

15 (h) The workpapers of the certified public accountants
16 employed by each licensee for purposes of this Section are to
17 be made available to the Commissioner or the Commissioner's
18 designee upon request and may be reproduced by the Commissioner
19 or the Commissioner's designee to enable to the Commissioner to
20 carry out the purposes of this Act.

21 (i) Notwithstanding any other provision of this Section, if
22 a licensee relying on subsection (g) of this Section causes its
23 books to be audited at any other time or causes its financial
24 statements to be reviewed, a complete copy of the audited or
25 reviewed financial statements shall be delivered to the
26 Commissioner at the time of the annual license renewal payment

1 following receipt by the licensee of the audited or reviewed
2 financial statements. All workpapers shall be made available to
3 the Commissioner upon request. The financial statements and
4 workpapers may be reproduced by the Commissioner or the
5 Commissioner's designee to carry out the purposes of this Act.

6 (Source: P.A. 93-561, eff. 1-1-04; 93-1018, eff. 1-1-05.)

7 (205 ILCS 635/3-4) (from Ch. 17, par. 2323-4)

8 Sec. 3-4. Office and staff within the State.

9 (a) A licensee whose principal place of business is located
10 in the State of Illinois shall maintain at least one full
11 service office with staff reasonably adequate to handle
12 efficiently communications, questions, and all other matters
13 relating to any application for a home mortgage or an existing
14 home mortgage with respect to which such licensee is performing
15 services, regardless of kind, for any borrower or lender, note
16 owner or holder, or for himself or herself while engaged in the
17 residential mortgage business. Offices shall not be located in
18 any real estate, retail, or financial business establishment,
19 unless separated from the other business by a separate and
20 distinct area within the establishment. The location and
21 operation of a full service office shall be in compliance with
22 any applicable zoning laws or ordinances and home office or
23 business regulations. The Director may require a licensee
24 operating from a home or residentially zoned office to provide
25 another approved location that is suitable to conduct an

1 examination under Sections 4-2 and 4-7 of the Act. This
2 subsection (a) does not limit the Director's authority to
3 examine at any other office, facility or location of the
4 licensee as permitted by the Act.

5 (b) In lieu of maintaining a full service office in the
6 State of Illinois, and subject to the rules of the Department,
7 a licensee whose principal place of business is located outside
8 the State of Illinois may comply with all of the following
9 requirements:

10 (1) provide, upon the Director's request and notice, an
11 approved location that is suitable to conduct an
12 examination under Sections 4-2 and 4-7 of the Act. This
13 subsection (b) does not limit the Director's authority to
14 examine at any other office, facility or location of the
15 licensee as permitted by the Act.

16 (2) ~~must~~ submit a certified audit as required in
17 Section 3-2 of this Act evidencing a minimum net worth of
18 \$150,000 ~~\$100,000~~, which must be maintained at all times,
19 and shall submit and maintain a fidelity bond in the amount
20 of \$100,000.

21 (Source: P.A. 93-1018, eff. 1-1-05.)

22 (205 ILCS 635/4-1) (from Ch. 17, par. 2324-1)

23 Sec. 4-1. Commissioner of Banks and Real Estate; functions,
24 powers, and duties. The functions, powers, and duties of the
25 Commissioner of Banks and Real Estate shall include the

1 following:

2 (a) To issue or refuse to issue any license as provided by
3 this Act;

4 (b) To revoke or suspend for cause any license issued under
5 this Act;

6 (c) To keep records of all licenses issued under this Act;

7 (d) To receive, consider, investigate, and act upon
8 complaints made by any person in connection with any
9 residential mortgage licensee in this State;

10 (e) To consider and act upon any recommendations from the
11 Residential Mortgage Board;

12 (f) To prescribe the forms of and receive:

13 (1) applications for licenses; and

14 (2) all reports and all books and records required to
15 be made by any licensee under this Act, including annual
16 audited financial statements and annual reports of
17 mortgage activity;

18 (g) To adopt rules and regulations necessary and proper for
19 the administration of this Act;

20 (h) To subpoena documents and witnesses and compel their
21 attendance and production, to administer oaths, and to require
22 the production of any books, papers, or other materials
23 relevant to any inquiry authorized by this Act;

24 (h-1) To issue orders against any person, if the
25 Commissioner has reasonable cause to believe that an unsafe,
26 unsound, or unlawful practice has occurred, is occurring, or is

1 about to occur, if any person has violated, is violating, or is
2 about to violate any law, rule, or written agreement with the
3 Commissioner, or for the purpose of administering the
4 provisions of this Act and any rule adopted in accordance with
5 the Act;

6 (h-2) To address any inquiries to any licensee, or the
7 officers thereof, in relation to its activities and conditions,
8 or any other matter connected with its affairs, and it shall be
9 the duty of any licensee or person so addressed, to promptly
10 reply in writing to such inquiries. The Commissioner may also
11 require reports from any licensee at any time the Commissioner
12 may deem desirable;

13 (i) To require information with regard to any license
14 applicant as he or she may deem desirable, with due regard to
15 the paramount interests of the public as to the experience,
16 background, honesty, truthfulness, integrity, and competency
17 of the license applicant as to financial transactions involving
18 primary or subordinate mortgage financing, and where the
19 license applicant is an entity other than an individual, as to
20 the honesty, truthfulness, integrity, and competency of any
21 officer or director of the corporation, association, or other
22 entity, or the members of a partnership;

23 (j) To examine the books and records of every licensee
24 under this Act at intervals as specified in Section 4-2;

25 (k) To enforce provisions of this Act;

26 (l) To levy fees, fines, and charges for services performed

1 in administering this Act; the aggregate of all fees collected
2 by the Commissioner on and after the effective date of this Act
3 shall be paid promptly after receipt of the same, accompanied
4 by a detailed statement thereof, into the Savings and
5 Residential Finance Regulatory Fund; the amounts deposited
6 into that Fund shall be used for the ordinary and contingent
7 expenses of the Office of Banks and Real Estate. Nothing in
8 this Act shall prevent continuing the practice of paying
9 expenses involving salaries, retirement, social security, and
10 State-paid insurance of State officers by appropriation from
11 the General Revenue Fund.

12 (m) To appoint examiners, supervisors, experts, and
13 special assistants as needed to effectively and efficiently
14 administer this Act;

15 (n) To conduct hearings for the purpose of:

16 (1) appeals of orders of the Commissioner;

17 (2) suspensions or revocations of licenses, or fining
18 of licensees;

19 (3) investigating:

20 (i) complaints against licensees; or

21 (ii) annual gross delinquency rates; and

22 (4) carrying out the purposes of this Act;

23 (o) To exercise exclusive visitorial power over a licensee
24 unless otherwise authorized by this Act or as vested in the
25 courts, or upon prior consultation with the Commissioner, a
26 foreign residential mortgage regulator with an appropriate

1 supervisory interest in the parent or affiliate of a licensee;

2 (p) To enter into cooperative agreements with state
3 regulatory authorities of other states to provide for
4 examination of corporate offices or branches of those states
5 and to accept reports of such examinations;

6 (q) To assign an examiner or examiners to monitor the
7 affairs of a licensee with whatever frequency the Commissioner
8 determines appropriate and to charge the licensee for
9 reasonable and necessary expenses of the Commissioner, if in
10 the opinion of the Commissioner an emergency exists or appears
11 likely to occur; and

12 (r) To impose civil penalties of up to \$50 per day against
13 a licensee for failing to respond to a regulatory request or
14 reporting requirement.

15 (s) To enter into agreements in connection with the
16 Nationwide Mortgage Licensing System and Registry.

17 (Source: P.A. 93-1018, eff. 1-1-05.)

18 (205 ILCS 635/4-2) (from Ch. 17, par. 2324-2)

19 Sec. 4-2. Examination; prohibited activities.

20 (a) The business affairs of a licensee under this Act shall
21 be examined for compliance with this Act as often as the
22 Commissioner deems necessary and proper. The Commissioner
23 shall promulgate rules with respect to the frequency and manner
24 of examination. The Commissioner shall appoint a suitable
25 person to perform such examination. The Commissioner and his

1 appointees may examine the entire books, records, documents,
2 and operations of each licensee and its subsidiary, affiliate,
3 or agent, and may examine any of the licensee's or its
4 subsidiary's, affiliate's, or agent's officers, directors,
5 employees and agents under oath. For purposes of this Section,
6 "agent" includes service providers such as accountants,
7 closing services providers, providers of outsourced services
8 such as call centers, marketing consultants, and loan
9 processors, even if exempt from licensure under this Act. This
10 Section does not apply to an attorney's privileged work product
11 or communications.

12 (b) The Commissioner shall prepare a sufficiently detailed
13 report of each licensee's examination, shall issue a copy of
14 such report to each licensee's principals, officers, or
15 directors and shall take appropriate steps to ensure correction
16 of violations of this Act.

17 (c) Affiliates of a licensee shall be subject to
18 examination by the Commissioner on the same terms as the
19 licensee, but only when reports from, or examination of a
20 licensee provides for documented evidence of unlawful activity
21 between a licensee and affiliate benefiting, affecting or
22 deriving from the activities regulated by this Act.

23 (d) The expenses of any examination of the licensee and
24 affiliates shall be borne by the licensee and assessed by the
25 Commissioner as established by regulation.

26 (e) Upon completion of the examination, the Commissioner

1 shall issue a report to the licensee. All confidential
2 supervisory information, including the examination report and
3 the work papers of the report, shall belong to the
4 Commissioner's office and may not be disclosed to anyone other
5 than the licensee, law enforcement officials or other
6 regulatory agencies that have an appropriate regulatory
7 interest as determined by the Commissioner, or to a party
8 presenting a lawful subpoena to the Office of the Commissioner.
9 The Commissioner may immediately appeal to the court of
10 jurisdiction the disclosure of such confidential supervisory
11 information and seek a stay of the subpoena pending the outcome
12 of the appeal. Reports required of licensees by the
13 Commissioner under this Act and results of examinations
14 performed by the Commissioner under this Act shall be the
15 property of only the Commissioner, but may be shared with the
16 licensee. Access under this Act to the books and records of
17 each licensee shall be limited to the Commissioner and his
18 agents as provided in this Act and to the licensee and its
19 authorized agents and designees. No other person shall have
20 access to the books and records of a licensee under this Act.
21 Any person upon whom a demand for production of confidential
22 supervisory information is made, whether by subpoena, order, or
23 other judicial or administrative process, must withhold
24 production of the confidential supervisory information and
25 must notify the Commissioner of the demand, at which time the
26 Commissioner is authorized to intervene for the purpose of

1 enforcing the limitations of this Section or seeking the
2 withdrawal or termination of the attempt to compel production
3 of the confidential supervisory information. The Commissioner
4 may impose any conditions and limitations on the disclosure of
5 confidential supervisory information that are necessary to
6 protect the confidentiality of such information. Except as
7 authorized by the Commissioner, no person obtaining access to
8 confidential supervisory information may make a copy of the
9 confidential supervisory information. The Commissioner may
10 condition a decision to disclose confidential supervisory
11 information on entry of a protective order by the court or
12 administrative tribunal presiding in the particular case or on
13 a written agreement of confidentiality. In a case in which a
14 protective order or agreement has already been entered between
15 parties other than the Commissioner, the Commissioner may
16 nevertheless condition approval for release of confidential
17 supervisory information upon the inclusion of additional or
18 amended provisions in the protective order. The Commissioner
19 may authorize a party who obtained the records for use in one
20 case to provide them to another party in another case, subject
21 to any conditions that the Commissioner may impose on either or
22 both parties. The requestor shall promptly notify other parties
23 to a case of the release of confidential supervisory
24 information obtained and, upon entry of a protective order,
25 shall provide copies of confidential supervisory information
26 to the other parties.

1 (f) The Commissioner, deputy commissioners, and employees
2 of the Office of Banks and Real Estate shall be subject to the
3 restrictions provided in Section 2.5 of the Office of Banks and
4 Real Estate Act including, without limitation, the
5 restrictions on (i) owning shares of stock or holding any other
6 equity interest in an entity regulated under this Act or in any
7 corporation or company that owns or controls an entity
8 regulated under this Act; (ii) being an officer, director,
9 employee, or agent of an entity regulated under this Act; and
10 (iii) obtaining a loan or accepting a gratuity from an entity
11 regulated under this Act.

12 (g) After the initial examination for those licensees whose
13 only mortgage activity is servicing fewer than 1,000 Illinois
14 residential loans, the examination required in subsection (a)
15 may be waived upon submission of a letter from the licensee's
16 independent certified auditor that the licensee serviced fewer
17 than 1,000 Illinois residential loans during the year in which
18 the audit was performed.

19 (Source: P.A. 93-1018, eff. 1-1-05.)

20 (205 ILCS 635/4-5) (from Ch. 17, par. 2324-5)

21 Sec. 4-5. Suspension, revocation of licenses; fines.

22 (a) Upon written notice to a licensee, the Commissioner may
23 suspend or revoke any license issued pursuant to this Act if he
24 or she shall make a finding of one or more of the following in
25 the notice that:

1 (1) Through separate acts or an act or a course of
2 conduct, the licensee has violated any provisions of this
3 Act, any rule or regulation promulgated by the Commissioner
4 or of any other law, rule or regulation of this State or
5 the United States.

6 (2) Any fact or condition exists which, if it had
7 existed at the time of the original application for such
8 license would have warranted the Commissioner in refusing
9 originally to issue such license.

10 (3) If a licensee is other than an individual, any
11 ultimate equitable owner, officer, director, or member of
12 the licensed partnership, association, corporation, or
13 other entity has so acted or failed to act as would be
14 cause for suspending or revoking a license to that party as
15 an individual.

16 (b) No license shall be suspended or revoked, except as
17 provided in this Section, nor shall any licensee be fined
18 without notice of his or her right to a hearing as provided in
19 Section 4-12 of this Act.

20 (c) The Commissioner, on good cause shown that an emergency
21 exists, may suspend any license for a period not exceeding 180
22 days, pending investigation. Upon a showing that a licensee has
23 failed to meet the experience or educational requirements of
24 Section 2-2 or the requirements of subsection (g) of Section
25 3-2, the Commissioner shall suspend, prior to hearing as
26 provided in Section 4-12, the license until those requirements

1 have been met.

2 (d) The provisions of subsection (e) of Section 2-6 of this
3 Act shall not affect a licensee's civil or criminal liability
4 for acts committed prior to surrender of a license.

5 (e) No revocation, suspension or surrender of any license
6 shall impair or affect the obligation of any pre-existing
7 lawful contract between the licensee and any person.

8 (f) Every license issued under this Act shall remain in
9 force and effect until the same shall have expired without
10 renewal, have been surrendered, revoked or suspended in
11 accordance with the provisions of this Act, but the
12 Commissioner shall have authority to reinstate a suspended
13 license or to issue a new license to a licensee whose license
14 shall have been revoked if no fact or condition then exists
15 which would have warranted the Commissioner in refusing
16 originally to issue such license under this Act.

17 (g) Whenever the Commissioner shall revoke or suspend a
18 license issued pursuant to this Act or fine a licensee under
19 this Act, he or she shall forthwith execute in duplicate a
20 written order to that effect. The Commissioner shall publish
21 notice of such order in the Illinois Register and post notice
22 of the order on an agency Internet site maintained by the
23 Commissioner and shall forthwith serve a copy of such order
24 upon the licensee. Any such order may be reviewed in the manner
25 provided by Section 4-12 of this Act.

26 (h) When the Commissioner finds any person in violation of

1 the grounds set forth in subsection (i), he or she may enter an
2 order imposing one or more of the following penalties:

3 (1) Revocation of license;

4 (2) Suspension of a license subject to reinstatement
5 upon satisfying all reasonable conditions the Commissioner
6 may specify;

7 (3) Placement of the licensee or applicant on probation
8 for a period of time and subject to all reasonable
9 conditions as the Commissioner may specify;

10 (4) Issuance of a reprimand;

11 (5) Imposition of a fine not to exceed \$25,000 for each
12 count of separate offense; and

13 (6) Denial of a license.

14 (i) The following acts shall constitute grounds for which
15 the disciplinary actions specified in subsection (h) above may
16 be taken:

17 (1) Being convicted or found guilty, regardless of
18 pendency of an appeal, of a crime in any jurisdiction which
19 involves fraud, dishonest dealing, or any other act of
20 moral turpitude;

21 (2) Fraud, misrepresentation, deceit or negligence in
22 any mortgage financing transaction;

23 (3) A material or intentional misstatement of fact on
24 an initial or renewal application;

25 (4) Failure to follow the Commissioner's regulations
26 with respect to placement of funds in escrow accounts;

1 (5) Insolvency or filing under any provision of the
2 Bankruptcy Code as a debtor;

3 (6) Failure to account or deliver to any person any
4 property such as any money, fund, deposit, check, draft,
5 mortgage, or other document or thing of value, which has
6 come into his or her hands and which is not his or her
7 property or which he or she is not in law or equity
8 entitled to retain, under the circumstances and at the time
9 which has been agreed upon or is required by law or, in the
10 absence of a fixed time, upon demand of the person entitled
11 to such accounting and delivery;

12 (7) Failure to disburse funds in accordance with
13 agreements;

14 (8) Any misuse, misapplication, or misappropriation of
15 trust funds or escrow funds;

16 (9) Having a license, or the equivalent, to practice
17 any profession or occupation revoked, suspended, or
18 otherwise acted against, including the denial of licensure
19 by a licensing authority of this State or another state,
20 territory or country for fraud, dishonest dealing or any
21 other act of moral turpitude;

22 (10) Failure to issue a satisfaction of mortgage when
23 the residential mortgage has been executed and proceeds
24 were not disbursed to the benefit of the mortgagor and when
25 the mortgagor has fully paid licensee's costs and
26 commission;

1 (11) Failure to comply with any order of the
2 Commissioner or rule made or issued under the provisions of
3 this Act;

4 (12) Engaging in activities regulated by this Act
5 without a current, active license unless specifically
6 exempted by this Act;

7 (13) Failure to pay in a timely manner any fee, charge
8 or fine under this Act;

9 (14) Failure to maintain, preserve, and keep available
10 for examination, all books, accounts or other documents
11 required by the provisions of this Act and the rules of the
12 Commissioner;

13 (15) Refusing, obstructing, evading, or unreasonably
14 delaying an investigation, information request, or
15 examination authorized under this Act, or refusing
16 obstructing, evading, or unreasonably delaying compliance
17 with the Director's Refusal to permit an investigation or
18 examination of the licensee's or its affiliates' books and
19 records or refusal to comply with the Commissioner's
20 subpoena or subpoena duces tecum;

21 (16) A pattern of substantially underestimating the
22 maximum closing costs;

23 (17) Failure to comply with or violation of any
24 provision of this Act.

25 (j) A licensee shall be subject to the disciplinary actions
26 specified in this Act for violations of subsection (i) by any

1 officer, director, shareholder, joint venture, partner,
2 ultimate equitable owner, or employee of the licensee.

3 (k) Such licensee shall be subject to suspension or
4 revocation for unauthorized employee actions only if there is a
5 pattern of repeated violations by employees or the licensee has
6 knowledge of the violations, or there is substantial harm to a
7 consumer.

8 (l) Procedure for surrender of license:

9 (1) The Commissioner may, after 10 days notice by
10 certified mail to the licensee at the address set forth on
11 the license, stating the contemplated action and in general
12 the grounds therefor and the date, time and place of a
13 hearing thereon, and after providing the licensee with a
14 reasonable opportunity to be heard prior to such action,
15 fine such licensee an amount not exceeding \$25,000 per
16 violation, or revoke or suspend any license issued
17 hereunder if he or she finds that:

18 (i) The licensee has failed to comply with any
19 provision of this Act or any order, decision, finding,
20 rule, regulation or direction of the Commissioner
21 lawfully made pursuant to the authority of this Act; or

22 (ii) Any fact or condition exists which, if it had
23 existed at the time of the original application for the
24 license, clearly would have warranted the Commissioner
25 in refusing to issue the license.

26 (2) Any licensee may submit application to surrender a

1 ~~license by delivering to the Commissioner written notice~~
2 ~~that he or she thereby surrenders such license,~~ but upon
3 the Director approving the surrender, it shall not affect
4 the licensee's civil or criminal liability for acts
5 committed prior to surrender or entitle the licensee to a
6 return of any part of the license fee.

7 (Source: P.A. 93-561, eff. 1-1-04; 93-1018, eff. 1-1-05.)

8 (205 ILCS 635/4-7 new)

9 Sec. 4-7. Additional investigation and examination
10 authority. In addition to any authority allowed under this Act,
11 the Director shall have the authority to conduct investigations
12 and examinations as follows:

13 (a) For purposes of initial licensing, license renewal,
14 license suspension, license conditioning, license revocation
15 or termination, or general or specific inquiry or investigation
16 to determine compliance with this Act, the Commissioner shall
17 have the authority to access, receive, and use any books,
18 accounts, records, files, documents, information, or evidence
19 including, but not limited to, the following:

20 (1) criminal, civil, and administrative history
21 information, including nonconviction data as specified in
22 the Criminal Code of 1961;

23 (2) personal history and experience information,
24 including independent credit reports obtained from a
25 consumer reporting agency described in Section 603(p) of

1 the Federal Fair Credit Reporting Act; and

2 (3) any other documents, information, or evidence the
3 Commissioner deems relevant to the inquiry or
4 investigation regardless of the location, possession,
5 control, or custody of the documents, information, or
6 evidence.

7 (b) For the purposes of investigating violations or
8 complaints arising under this Act, or for the purposes of
9 examination, the Commissioner may review, investigate, or
10 examine any licensee, individual, or person subject to this
11 Act, as often as necessary in order to carry out the purposes
12 of this Act. The Commissioner may direct, subpoena, or order
13 the attendance of and examine under oath all persons whose
14 testimony may be required about the loans or the business or
15 subject matter of any such examination or investigation, and
16 may direct, subpoena, or order the person to produce books,
17 accounts, records, files, and any other documents the
18 Commissioner deems relevant to the inquiry.

19 (c) Each licensee, individual, or person subject to this
20 Act shall make available to the Commissioner upon request the
21 books and records relating to the operations of such licensee,
22 individual, or person subject to this Act. The Commissioner
23 shall have access to such books and records and interview the
24 officers, principals, mortgage loan originators, employees,
25 independent contractors, agents, and customers of the
26 licensee, individual, or person subject to this Act concerning

1 their business.

2 (d) Each licensee, individual, or person subject to this
3 Act shall make or compile reports or prepare other information
4 as directed by the Commissioner in order to carry out the
5 purposes of this Section including, but not limited to:

6 (1) accounting compilations;

7 (2) information lists and data concerning loan
8 transactions in a format prescribed by the Commissioner; or

9 (3) other information deemed necessary to carry out the
10 purposes of this Section.

11 (e) In making any examination or investigation authorized
12 by this Act, the Commissioner may control access to any
13 documents and records of the licensee or person under
14 examination or investigation. The Commissioner may take
15 possession of the documents and records or place a person in
16 exclusive charge of the documents and records in the place
17 where they are usually kept. During the period of control, no
18 individual or person shall remove or attempt to remove any of
19 the documents and records except pursuant to a court order or
20 with the consent of the Commissioner. Unless the Commissioner
21 has reasonable grounds to believe the documents or records of
22 the licensee have been, or are at risk of being altered or
23 destroyed for purposes of concealing a violation of this Act,
24 the licensee or owner of the documents and records shall have
25 access to the documents or records as necessary to conduct its
26 ordinary business affairs.

1 (f) In order to carry out the purposes of this Section, the
2 Commissioner may:

3 (1) retain attorneys, accountants, or other
4 professionals and specialists as examiners, auditors, or
5 investigators to conduct or assist in the conduct of
6 examinations or investigations;

7 (2) enter into agreements or relationships with other
8 government officials or regulatory associations in order
9 to improve efficiencies and reduce regulatory burden by
10 sharing resources, standardized or uniform methods or
11 procedures, and documents, records, information or
12 evidence obtained under this Section;

13 (3) use, hire, contract, or employ public or privately
14 available analytical systems, methods, or software to
15 examine or investigate the licensee, individual, or person
16 subject to this Act;

17 (4) accept and rely on examination or investigation
18 reports made by other government officials, within or
19 without this State; or

20 (5) accept audit reports made by an independent
21 certified public accountant for the licensee, individual,
22 or person subject to this Act in the course of that part of
23 the examination covering the same general subject matter as
24 the audit and may incorporate the audit report in the
25 report of the examination, report of investigation, or
26 other writing of the Commissioner.

1 (g) The authority of this Section shall remain in effect,
2 whether such a licensee, individual, or person subject to this
3 Act acts or claims to act under any licensing or registration
4 law of this State, or claims to act without the authority.

5 (h) No licensee, individual, or person subject to
6 investigation or examination under this Section may knowingly
7 withhold, abstract, remove, mutilate, destroy, or secrete any
8 books, records, computer records, or other information.

9 (205 ILCS 635/4-8.1A new)

10 Sec. 4-8.1A. Confidentiality.

11 (a) In order to promote more effective regulation and
12 reduce regulatory burden through supervisory information
13 sharing, except as otherwise provided in federal Public Law
14 110-289, Section 1512, the requirements under any federal law
15 or state law regarding the privacy or confidentiality of any
16 information or material provided to the Nationwide Mortgage
17 Licensing System and Registry, and any privilege arising under
18 federal or state law, including the rules of any federal or
19 state court, with respect to such information or material,
20 shall continue to apply to information or material after the
21 information or material has been disclosed to the Nationwide
22 Mortgage Licensing System and Registry. The information and
23 material may be shared with all state and federal regulatory
24 officials with mortgage industry oversight authority without
25 the loss of privilege or the loss of confidentiality

1 protections provided by federal law or state law.

2 (b) In order to promote more effective regulation and
3 reduce regulatory burden through supervisory information
4 sharing, the Director is authorized to enter agreements or
5 sharing arrangements with other governmental agencies, the
6 Conference of State Bank Supervisors, the American Association
7 of Residential Mortgage Regulators or other associations
8 representing governmental agencies as established by rule,
9 regulation or order of the Director. The sharing of
10 confidential supervisory information or any information or
11 material described in subsection (a) of this Section pursuant
12 to an agreement or sharing arrangement shall not result in the
13 loss of privilege or the loss of confidentiality protections
14 provided by federal law or state law.

15 (c) In order to promote more effective regulation and
16 reduce regulatory burden through supervisory information
17 sharing, information or material that is subject to a privilege
18 or confidentiality under subsection (a) of this Section shall
19 not be subject to the following:

20 (1) disclosure under any State law governing the
21 disclosure to the public of information held by an officer
22 or an agency of the State; or

23 (2) subpoena or discovery, or admission into evidence,
24 in any private civil action or administrative process,
25 unless with respect to any privilege held by the Nationwide
26 Mortgage Licensing System and Registry with respect to the

1 information or material, the person to whom such
2 information or material pertains waives, in whole or in
3 part, in the discretion of that person, that privilege.

4 (d) In order to promote more effective regulation and
5 reduce regulatory burden through supervisory information
6 sharing, other law relating to the disclosure of confidential
7 supervisory information or any information or material
8 described in subsection (a) of this Section that is
9 inconsistent with subsection (a) of this Section shall be
10 superseded by the requirements of this Section to the extent
11 the other law provides less confidentiality or a weaker
12 privilege.

13 (e) In order to promote more effective regulation and
14 reduce regulatory burden through supervisory information
15 sharing, this Section shall not apply to the employment history
16 of a mortgage loan originator, and the record of publicly
17 adjudicated disciplinary and enforcement actions against a
18 mortgage loan originator.

19 (205 ILCS 635/4-8.3)

20 Sec. 4-8.3. Annual report of mortgage brokering and
21 servicing activity. On or before March 1 of each year or the
22 date selected for Mortgage Call Reports under Section 4-9.1 of
23 this Act, each licensee, ~~except residential mortgage brokers,~~
24 shall file a report with the Commissioner that shall disclose
25 such information as the Commissioner requires. Exempt entities

1 as defined in subsection (d) of Section 1-4 shall not file the
2 annual report of mortgage and servicing activity required by
3 this Section.

4 (Source: P.A. 93-1018, eff. 1-1-05.)

5 (205 ILCS 635/4-9.1 new)

6 Sec. 4-9.1. Mortgage call reports. Each residential
7 mortgage licensee shall submit to the Nationwide Mortgage
8 Licensing System and Registry reports of condition, which shall
9 be in the form and shall contain the information that the
10 Nationwide Mortgage Licensing System and Registry may require.

11 (205 ILCS 635/Art. VII heading)

12 ARTICLE VII.

13 MORTGAGE LOAN ORIGINATOR LICENSE REQUIRED

14 REGISTRATION OF LOAN ORIGINATORS

15 (205 ILCS 635/7-1A new)

16 Sec. 7-1A. Mortgage loan originator license.

17 (a) It is unlawful for any individual to act or assume to
18 act as a mortgage loan originator, as defined in subsection
19 (jj) of Section 1-4 of this Act, without obtaining a license
20 from the Director, unless the individual is exempt under
21 subsection (c) of this Section. Each licensed mortgage loan
22 originator must register with and maintain a valid unique
23 identifier issued by the Nationwide Mortgage Licensing System

1 and Registry.

2 (b) In order to facilitate an orderly transition to
3 licensing and minimize disruption in the mortgage marketplace,
4 the operability date for subsection (a) of this Section shall
5 be as follows:

6 (1) For all individuals other than individuals
7 described in item (2) of this subsection (b), the
8 operability date shall be July 31, 2010, or any later date
9 approved by the Secretary of the U.S. Department of Housing
10 and Urban Development, pursuant to the authority granted
11 under federal Public Law 110-289, Section 1508(a).

12 (2) For all individuals registered as mortgage loan
13 originators as of the effective date of this amendatory Act
14 of the 96th General Assembly, the operability date shall be
15 January 1, 2011, or any later date approved by the
16 Secretary of the U.S. Department of Housing and Urban
17 Development, pursuant to the authority granted under
18 Public Law 110-289, Section 1508(a).

19 (3) For all individuals described in item (1) or (2) of
20 this subsection (b) who are loss mitigation specialists
21 employed by servicers, the operability date of July 31,
22 2011, or any later date approved by the Secretary of the
23 U.S. Department of Housing and Urban Development pursuant
24 to authority granted under Public Law 110-289, Section
25 1508(a).

26 (c) The following are exempt from this Act:

1 (1) Registered mortgage loan originators, when acting
2 for an entity described in subsection (tt) of Section 1-4.

3 (2) Any individual who offers or negotiates terms of a
4 residential mortgage loan with or on behalf of an immediate
5 family member of the individual.

6 (3) Any individual who offers or negotiates terms of a
7 residential mortgage loan secured by a dwelling that served
8 as the individual's residence.

9 (4) A licensed attorney who negotiates the terms of a
10 residential mortgage loan on behalf of a client as an
11 ancillary matter to the attorney's representation of the
12 client, unless the attorney is compensated by a lender, a
13 mortgage broker, or other mortgage loan originator or by
14 any agent of a lender, mortgage broker, or other mortgage
15 loan originator.

16 (d) A loan processor or underwriter who is an independent
17 contractor may not engage in the activities of a loan processor
18 or underwriter unless he or she obtains and maintains a license
19 under subsection (a) of this Section. Each independent
20 contractor loan processor or underwriter licensed as a mortgage
21 loan originator must have and maintain a valid unique
22 identifier issued by the Nationwide Mortgage Licensing System
23 and Registry.

24 (e) For the purposes of implementing an orderly and
25 efficient licensing process, the Director may establish
26 licensing rules or regulations and interim procedures for

1 licensing and acceptance of applications. For previously
2 registered or licensed individuals, the Director may establish
3 expedited review and licensing procedures.

4 (205 ILCS 635/7-2 new)

5 Sec. 7-2. State license application and issuance.

6 (a) Applicants for a license shall apply in a form
7 prescribed by the Director. Each form shall contain content as
8 set forth by rule, regulation, instruction, or procedure of the
9 Director and may be changed or updated as necessary by the
10 Director in order to carry out the purposes of this Act.

11 (b) In order to fulfill the purposes of this Act, the
12 Director is authorized to establish relationships or contracts
13 with the Nationwide Mortgage Licensing System and Registry or
14 other entities designated by the Nationwide Mortgage Licensing
15 System and Registry to collect and maintain records and process
16 transaction fees or other fees related to licensees or other
17 persons subject to this Act.

18 (c) In connection with an application for licensing as a
19 mortgage loan originator, the applicant shall, at a minimum,
20 furnish to the Nationwide Mortgage Licensing System and
21 Registry information concerning the applicant's identity,
22 including the following:

23 (1) Fingerprints for submission to the Federal Bureau
24 of Investigation, and any governmental agency or entity
25 authorized to receive such information for a state,

1 national and international criminal history background
2 check.

3 (2) Personal history and experience in a form
4 prescribed by the Nationwide Mortgage Licensing System and
5 Registry, including the submission of authorization for
6 the Nationwide Mortgage Licensing System and Registry and
7 the Director to obtain:

8 (A) an independent credit report obtained from a
9 consumer reporting agency described in Section 603(p)
10 of the Fair Credit Reporting Act; and

11 (B) information related to any administrative,
12 civil, or criminal findings by any governmental
13 jurisdiction.

14 (d) For the purpose of this Section, and in order to reduce
15 the points of contact which the Federal Bureau of Investigation
16 may have to maintain for purposes of subsection (c) of this
17 Section, the Director may use the Nationwide Mortgage Licensing
18 System and Registry as a channeling agent for requesting
19 information from and distributing information to the
20 Department of Justice or any governmental agency.

21 (e) For the purposes of this Section and in order to reduce
22 the points of contact which the Director may have to maintain
23 for purposes of item (2) of subsection (c) of this Section, the
24 Director may use the Nationwide Mortgage Licensing System and
25 Registry as a channeling agent for requesting and distributing
26 information to and from any source so directed by the Director.

1 (205 ILCS 635/7-3 new)

2 Sec. 7-3. Issuance of license. The Director shall not issue
3 a mortgage loan originator license unless the Director makes at
4 a minimum the following findings:

5 (1) The applicant has never had a mortgage loan originator
6 license revoked in any governmental jurisdiction, except that a
7 subsequent formal vacation of such revocation shall not be
8 deemed a revocation.

9 (2) The applicant has not been convicted of, or pled guilty
10 or nolo contendere to, a felony in a domestic, foreign, or
11 military court:

12 (A) during the 7-year period preceding the date of the
13 application for licensing and registration; or

14 (B) at any time preceding such date of application, if
15 such felony involved an act of fraud, dishonesty, or a
16 breach of trust, or money laundering;

17 provided that any pardon of a conviction shall not be a
18 conviction for purposes of this item (2).

19 (3) The applicant has demonstrated financial
20 responsibility, character, and general fitness so as to command
21 the confidence of the community and to warrant a determination
22 that the mortgage loan originator will operate honestly,
23 fairly, and efficiently within the purposes of this Act. For
24 purposes of this item (3) a person has shown that he or she is
25 not financially responsible when he or she has shown a

1 disregard for the management of his or her own financial
2 condition. A determination that an individual has not shown
3 financial responsibility may include, but is not limited to,
4 consideration of:

5 (A) current outstanding judgments, except judgments
6 solely as a result of medical expenses;

7 (B) current outstanding tax liens or other government
8 liens and filings, educational loan defaults, and
9 non-payment of child support;

10 (C) foreclosures within the past 3 years;

11 (D) a pattern of seriously delinquent accounts within
12 the past 3 years; and

13 (E) an independent credit report obtained under
14 Section 7-2(c) (2) of the Act; provided that, a credit score
15 may not be the sole basis for determining that an
16 individual has not shown financial responsibility;
17 provided further that, the credit report may be the sole
18 basis for determining that an individual has not shown
19 financial responsibility.

20 (4) The applicant has completed the pre-licensing
21 education requirement described in Section 7-4 of this Act.

22 (5) The applicant has passed a written test that meets the
23 test requirement described in Section 7-5 of this Act.

24 (6) The applicant has met the surety bond requirement as
25 required pursuant to Section 7-11 of this Act.

1 (205 ILCS 635/7-4 new)

2 Sec. 7-4. Pre-licensing and education of mortgage loan
3 originators.

4 (a) In order to meet the pre-licensing education
5 requirement referred to in item (4) of Section 7-3 of this Act
6 an individual shall complete at least 20 hours of education
7 approved in accordance with subsection (b) of this Section,
8 which shall include at least:

9 (1) 3 hours of Federal law and regulations;

10 (2) 3 hours of ethics, which shall include instruction
11 on fraud, consumer protection, and fair lending issues; and

12 (3) 2 hours of training related to lending standards
13 for the nontraditional mortgage product marketplace.

14 (b) For purposes of subsection (a) of this Section,
15 pre-licensing education courses shall be reviewed and approved
16 by the Nationwide Mortgage Licensing System and Registry based
17 upon reasonable standards. Review and approval of a
18 pre-licensing education course shall include review and
19 approval of the course provider.

20 (c) Nothing in this Section shall preclude any
21 pre-licensing education course, as approved by the Nationwide
22 Mortgage Licensing System and Registry, that is provided by the
23 employer of the applicant or an entity which is affiliated with
24 the applicant by an agency contract, or any subsidiary or
25 affiliate of such an employer or entity.

26 (d) Pre-licensing education may be offered in a classroom,

1 online, or by any other means approved by the Nationwide
2 Mortgage Licensing System and Registry.

3 (e) The pre-licensing education requirements approved by
4 the Nationwide Mortgage Licensing System and Registry for the
5 subjects listed in items (1) through (3) of subsection (a) for
6 any state shall be accepted as credit towards completion of
7 pre-licensing education requirements in Illinois.

8 (f) An individual previously registered under this Act who
9 is applying to be licensed after the effective date of this
10 amendatory Act of the 96th General Assembly must prove that he
11 or she has completed all of the continuing education
12 requirements for the year in which the registration or license
13 was last held.

14 (205 ILCS 635/7-5 new)

15 Sec. 7-5. Testing of mortgage loan originators.

16 (a) In order to meet the written test requirement referred
17 to in item (5) of Section 7-3, an individual shall pass, in
18 accordance with the standards established under this
19 subsection (a), a qualified written test developed by the
20 Nationwide Mortgage Licensing System and Registry and
21 administered by a test provider approved by the Nationwide
22 Mortgage Licensing System and Registry based upon reasonable
23 standards.

24 (b) A written test shall not be treated as a qualified
25 written test for purposes of subsection (a) of this Section

1 unless the test adequately measures the applicant's knowledge
2 and comprehension in appropriate subject areas, including:

3 (1) ethics;

4 (2) federal law and regulation pertaining to mortgage
5 origination;

6 (3) State law and regulation pertaining to mortgage
7 origination; and

8 (4) federal and State law and regulation, including
9 instruction on fraud, consumer protection, the
10 nontraditional mortgage marketplace, and fair lending
11 issues.

12 (c) Nothing in this Section shall prohibit a test provider
13 approved by the Nationwide Mortgage Licensing System and
14 Registry from providing a test at the location of the employer
15 of the applicant or the location of any subsidiary or affiliate
16 of the employer of the applicant, or the location of any entity
17 with which the applicant holds an exclusive arrangement to
18 conduct the business of a mortgage loan originator.

19 (d) An individual shall not be considered to have passed a
20 qualified written test unless the individual achieves a test
21 score of not less than 75% correct answers to questions.

22 An individual may retake a test 3 consecutive times with
23 each consecutive taking occurring at least 30 days after the
24 preceding test.

25 After failing 3 consecutive tests, an individual shall wait
26 at least 6 months before taking the test again.

1 A licensed mortgage loan originator who fails to maintain a
2 valid license for a period of 5 years or longer shall retake
3 the test, not taking into account any time during which such
4 individual is a registered mortgage loan originator.

5 (205 ILCS 635/7-6 new)

6 Sec. 7-6. Standards for license renewal.

7 (a) The minimum standards for license renewal for mortgage
8 loan originators shall include the following:

9 (1) The mortgage loan originator continues to meet the
10 minimum standards for license issuance under Section 7-3.

11 (2) The mortgage loan originator has satisfied the
12 annual continuing education requirements described in
13 Section 7-7.

14 (3) The mortgage loan originator has paid all required
15 fees for renewal of the license.

16 (b) The license of a mortgage loan originator failing to
17 satisfy the minimum standards for license renewal shall expire.
18 The Director may adopt procedures for the reinstatement of
19 expired licenses consistent with the standards established by
20 the Nationwide Mortgage Licensing System and Registry.

21 (205 ILCS 635/7-7 new)

22 Sec. 7-7. Continuing education for mortgage loan
23 originators.

24 (a) In order to meet the annual continuing education

1 requirements referred to in Section 7-6, a licensed mortgage
2 loan originator shall complete at least 8 hours of education
3 approved in accordance with subsection (b) of this Section,
4 which shall include at least:

5 (1) 3 hours of Federal law and regulations;

6 (2) 2 hours of ethics, which shall include instruction
7 on fraud, consumer protection, and fair lending issues; and

8 (3) 2 hours of training related to lending standards
9 for the nontraditional mortgage product marketplace.

10 (b) For purposes of this subsection (a), continuing
11 education courses shall be reviewed and approved by the
12 Nationwide Mortgage Licensing System and Registry based upon
13 reasonable standards. Review and approval of a continuing
14 education course shall include review and approval of the
15 course provider.

16 (c) Nothing in this Section shall preclude any education
17 course, as approved by the Nationwide Mortgage Licensing System
18 and Registry, that is provided by the employer of the mortgage
19 loan originator or an entity which is affiliated with the
20 mortgage loan originator by an agency contract, or any
21 subsidiary or affiliate of the employer or entity.

22 (d) Continuing education may be offered either in a
23 classroom, online, or by any other means approved by the
24 Nationwide Mortgage Licensing System and Registry.

25 (e) A licensed mortgage loan originator:

26 (1) Except as provided in Section 7-6 and subsection

1 (i) of this Section, may only receive credit for a
2 continuing education course in the year in which the course
3 is taken; and

4 (2) May not take the same approved course in the same
5 or successive years to meet the annual requirements for
6 continuing education.

7 (f) A licensed mortgage loan originator who is an approved
8 instructor of an approved continuing education course may
9 receive credit for the licensed mortgage loan originator's own
10 annual continuing education requirement at the rate of 2 hours
11 credit for every one hour taught.

12 (g) A person having successfully completed the education
13 requirements approved by the Nationwide Mortgage Licensing
14 System and Registry for the subjects listed in subsection (a)
15 of this Section for any state shall be accepted as credit
16 towards completion of continuing education requirements in
17 this State.

18 (h) A licensed mortgage loan originator who subsequently
19 becomes unlicensed must complete the continuing education
20 requirements for the last year in which the license was held
21 prior to issuance of a new or renewed license.

22 (i) A person meeting the requirements of Section 7-6 may
23 make up any deficiency in continuing education as established
24 by rule or regulation of the Director.

1 Sec. 7-8. Authority to require license. In addition to any
2 other duties imposed upon the Director by law, the Director
3 shall require mortgage loan originators to be licensed and
4 registered through the Nationwide Mortgage Licensing System
5 and Registry. In order to carry out this requirement the
6 Director is authorized to participate in the Nationwide
7 Mortgage Licensing System and Registry. For this purpose, the
8 Director may establish by agreement, order or rule requirements
9 as necessary, including, but not limited to, the following:

10 (1) Background checks for:

11 (A) criminal history through fingerprint or other
12 databases;

13 (B) civil or administrative records;

14 (C) credit history; or

15 (D) any other information as deemed necessary by
16 the Nationwide Mortgage Licensing System and Registry.

17 (2) The payment of fees to apply for or renew licenses
18 through the Nationwide Mortgage Licensing System and
19 Registry;

20 (3) The setting or resetting as necessary of renewal or
21 reporting dates; and

22 (4) Requirements for amending or surrendering a
23 license or any other such activities as the Director deems
24 necessary for participation in the Nationwide Mortgage
25 Licensing System and Registry.

1 (205 ILCS 635/7-9 new)

2 Sec. 7-9. Report to Nationwide Mortgage Licensing System
3 and Registry. Subject to State privacy laws, the Director is
4 required to report regularly violations of this Act, as well as
5 enforcement actions and other relevant information, to the
6 Nationwide Mortgage Licensing System and Registry subject to
7 the provisions contained in Section 4-8.1A of this Act.

8 (205 ILCS 635/7-10 new)

9 Sec. 7-10. Nationwide Mortgage Licensing System and
10 Registry information challenge process. The Director shall
11 establish a process whereby mortgage loan originators may
12 challenge information entered into the Nationwide Mortgage
13 Licensing System and Registry by the Director.

14 (205 ILCS 635/7-11 new)

15 Sec. 7-11. Mortgage loan originator suspension or
16 revocation of registration; refusal to renew; fines.

17 (a) In addition to any other action authorized by this Act
18 or any other applicable law, rule or regulation, the Director
19 may do the following:

20 (1) Suspend, revoke, or refuse to renew a license or
21 reprimand, place on probation or otherwise discipline a
22 licensee if the Director finds that the mortgage loan
23 originator has violated this Act or any other applicable
24 law or regulation or has been convicted of a criminal

1 offense.

2 (2) Impose a fine of not more than \$1,000 for each day
3 for each violation of this Act or any other applicable law
4 or regulation that is committed. If the Mortgage Loan
5 Originator engages in a pattern of repeated violations, the
6 Director may impose a fine of not more than \$2,000 for each
7 day for each violation committed. In determining the amount
8 of a fine to be imposed pursuant to this Act or any other
9 applicable law or regulation, the Director shall consider
10 all of the following:

11 (A) The seriousness of the violation;

12 (B) The mortgage loan originator's good faith
13 efforts to prevent the violation; and

14 (C) The mortgage loan originator's history of
15 violations and compliance with orders.

16 (b) In addition to any other action authorized by this Act
17 or any other applicable law, rule or regulation, the Director
18 may investigate alleged violations of the Act or any other
19 applicable law, rule or regulation and complaints concerning
20 any such violation. The Director may seek a court order to
21 enjoin the violation.

22 (c) In addition to any other action authorized by this Act
23 or any other applicable law, rule or regulation, if the
24 Director determines that a mortgage loan originator is engaged
25 in or is believed to be engaged in activities that may
26 constitute a violation of this Act or any other applicable law,

1 rule or regulation, the Director may issue a cease and desist
2 order to compel the mortgage loan originator to comply with
3 this Act or any other applicable law, rule or regulation or,
4 upon a showing that an emergency exists, may suspend the
5 mortgage loan originator's license for a period not exceeding
6 180 calendar days, pending investigation.

7 (205 ILCS 635/7-12 new)

8 Sec. 7-12. Surety bond required.

9 (a) Each mortgage loan originator shall be covered by a
10 surety bond in accordance with this Section. In the event that
11 the mortgage loan originator is an employee or exclusive agent
12 of a person subject to this Act, the surety bond of such person
13 subject to this Act can be used in lieu of the mortgage loan
14 originator's surety bond requirement. The surety bond shall
15 provide coverage for each mortgage loan originator in an amount
16 prescribed under subsection (b) of this Section. The surety
17 bond shall be in a form prescribed by the Director. The
18 Director may promulgate rules or regulations with respect to
19 the requirements for such surety bonds as necessary to
20 accomplish the purposes of this Act.

21 (b) The penal sum of the surety bond shall be maintained in
22 an amount that reflects the dollar amount of loans originated
23 as determined by the Director.

24 (c) When an action is commenced on a licensee's bond the
25 Director may require the filing of a new bond.

1 (d) Immediately upon recovery upon any action on the bond
2 the licensee shall file a new bond.

3 (205 ILCS 635/7-13 new)

4 Sec. 7-13. Prohibited acts and practices for mortgage loan
5 originators. It is a violation of this Act for an individual
6 subject to this Act to:

7 (1) Directly or indirectly employ any scheme, device,
8 or artifice to defraud or mislead borrowers or lenders or
9 to defraud any person.

10 (2) Engage in any unfair or deceptive practice toward
11 any person.

12 (3) Obtain property by fraud or misrepresentation.

13 (4) Solicit or enter into a contract with a borrower
14 that provides in substance that the person or individual
15 subject to this Act may earn a fee or commission through
16 "best efforts" to obtain a loan even though no loan is
17 actually obtained for the borrower.

18 (5) Solicit, advertise, or enter into a contract for
19 specific interest rates, points, or other financing terms
20 unless the terms are actually available at the time of
21 soliciting, advertising, or contracting.

22 (6) Conduct any business covered by this Act without
23 holding a valid license as required under this Act, or
24 assist or aid and abet any person in the conduct of
25 business under this Act without a valid license as required

1 under this Act.

2 (7) Fail to make disclosures as required by this Act
3 and any other applicable State or federal law, including
4 regulations thereunder.

5 (8) Fail to comply with this Act or rules or
6 regulations promulgated under this Act, or fail to comply
7 with any other state or federal law, including the rules
8 and regulations thereunder, applicable to any business
9 authorized or conducted under this Act.

10 (9) Make, in any manner, any false or deceptive
11 statement or representation of a material fact, or any
12 omission of a material fact, required on any document or
13 application subject to this Act.

14 (10) Negligently make any false statement or knowingly
15 and willfully make any omission of material fact in
16 connection with any information or report filed with a
17 governmental agency or the Nationwide Mortgage Licensing
18 System and Registry or in connection with any investigation
19 conducted by the Director or another governmental agency.

20 (11) Make any payment, threat or promise, directly or
21 indirectly, to any person for the purpose of influencing
22 the independent judgment of the person in connection with a
23 residential mortgage loan, or make any payment threat or
24 promise, directly or indirectly, to any appraiser of a
25 property, for the purpose of influencing the independent
26 judgment of the appraiser with respect to the value of the

1 property.

2 (12) Collect, charge, attempt to collect or charge, or
3 use or propose any agreement purporting to collect or
4 charge any fee prohibited by this Act.

5 (13) Cause or require a borrower to obtain property
6 insurance coverage in an amount that exceeds the
7 replacement cost of the improvements as established by the
8 property insurer.

9 (14) Fail to truthfully account for monies belonging to
10 a party to a residential mortgage loan transaction.

11 (15) Engage in conduct that constitutes dishonest
12 dealings.

13 (16) Knowingly instruct, solicit, propose, or cause a
14 person other than the borrower to sign a borrower's
15 signature on a mortgage related document, or solicit,
16 accept or execute any contract or other document related to
17 the residential mortgage transaction that contains any
18 blanks to be filled in after signing or initialing the
19 contract or other document, except for forms authorizing
20 the verification of application information.

21 (17) Discourage any applicant from seeking or
22 participating in housing or financial counseling either
23 before or after the consummation of a loan transaction, or
24 fail to provide information on counseling resources upon
25 request.

26 (18) Charge for any ancillary products or services, not

1 essential to the basic loan transaction for which the
2 consumer has applied, without the applicant's knowledge
3 and written authorization, or charge for any ancillary
4 products or services not actually provided in the
5 transaction.

6 (19) Fail to give reasonable consideration to a
7 borrower's ability to repay the debt.

8 (20) Interfere or obstruct an investigation or
9 examination conducted pursuant to this Act.

10 (205 ILCS 635/7-14 new)

11 Sec. 7-14. Unique identifier shown. The unique identifier
12 of any person originating a residential mortgage loan shall be
13 clearly shown on all residential mortgage loan application
14 forms, solicitations, and advertisements, including business
15 cards and websites, and any other documents as established by
16 rule, regulation, or order of the Commissioner.

17 Section 97. Severability. The provisions of this Act are
18 severable under Section 1.31 of the Statute on Statutes.

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