

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Residential Real Property Disclosure Act is  
5 amended by changing Section 70 as follows:

6 (765 ILCS 77/70)

7 Sec. 70. Predatory lending database program.

8 (a) As used in this Article:

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

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

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

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

22 "Counseling" means in-person counseling provided by a  
23 counselor employed by a HUD-approved counseling agency to all

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

10 "Counselor" means a counselor employed by a HUD-approved  
11 housing counseling agency.

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

23 "Department" means the Department of Financial and  
24 Professional Regulation.

25 "Exempt person or entity" means that term as it is defined  
26 in subsections (d) (1), (d) (1.5), and (d) (1.8) of Section 1-4 of

1 the Residential Mortgage License Act of 1987.

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

4 "HUD-approved counseling" or "counseling" means counseling  
5 given to a borrower by a counselor employed by a HUD-approved  
6 housing counseling agency.

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

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

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

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

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

23 "Originator" means a "loan originator" as defined in  
24 subsection (hh) of Section 1-4 of the Residential Mortgage  
25 License Act of 1987, except an exempt person, and means a  
26 "mortgage loan originator" as defined in subsection (jj) of

1 Section 1-4 of the Residential Mortgage License Act of 1987,  
2 except an exempt person.

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

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

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

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

18 (a-5) A predatory lending database program shall be  
19 established within Cook County. The program shall be  
20 administered in accordance with this Article. The inception  
21 date of the program shall be July 1, 2008. A predatory lending  
22 database program shall be expanded to include Kane, Peoria, and  
23 Will counties. The inception date of the expansion of the  
24 program as it applies to Kane, Peoria, and Will counties shall  
25 be July 1, 2010. Until the inception date, none of the duties,  
26 obligations, contingencies, or consequences of or from the

1 program shall be imposed. The program shall apply to all  
2 mortgage applications that are governed by this Article and  
3 that are made or taken on or after the inception of the  
4 program.

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

15 (c) Within 10 business days after taking a mortgage  
16 application, the broker or originator for any mortgage on  
17 residential property within the program area must submit to the  
18 predatory lending database all of the information required  
19 under Section 72 and any other information required by the  
20 Department by rule. Within 7 business days after receipt of the  
21 information, the Department shall compare that information to  
22 the housing counseling standards in Section 73 and issue to the  
23 borrower and the broker or originator a determination of  
24 whether counseling is recommended for the borrower. The  
25 borrower may not waive counseling. If at any time after  
26 submitting the information required under Section 72 the broker

1 or originator (i) changes the terms of the loan or (ii) issues  
2 a new commitment to the borrower, then, within 5 business days  
3 thereafter, the broker or originator shall re-submit all of the  
4 information required under Section 72 and, within 4 business  
5 days after receipt of the information re-submitted by the  
6 broker or originator, the Department shall compare that  
7 information to the housing counseling standards in Section 73  
8 and shall issue to the borrower and the broker or originator a  
9 new determination of whether re-counseling is recommended for  
10 the borrower based on the information re-submitted by the  
11 broker or originator. The Department shall require  
12 re-counseling if the loan terms have been modified to meet  
13 another counseling standard in Section 73, or if the broker has  
14 increased the interest rate by more than 200 basis points.

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

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

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

25 (1) the Department issues a determination not to  
26 recommend HUD-approved counseling for the borrower in

1           accordance with subsection (c); or

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

6           (f) Within 10 business days after closing, the title  
7 insurance company or closing agent must submit to the predatory  
8 lending database all of the information required under Section  
9 76 and any other information required by the Department by  
10 rule.

11           (g) The title insurance company or closing agent shall  
12 attach to the mortgage a certificate of compliance with the  
13 requirements of this Article, as generated by the database. If  
14 the transaction is exempt, the title insurance company or  
15 closing agent shall attach to the mortgage a certificate of  
16 exemption, as generated by the database. If the title insurance  
17 company or closing agent fails to attach the certificate of  
18 compliance or exemption, whichever is required, then the  
19 mortgage is not recordable. In addition, if any lis pendens for  
20 a residential mortgage foreclosure is recorded on the property  
21 within the program area, a certificate of service must be  
22 simultaneously recorded that affirms that a copy of the lis  
23 pendens was filed with the Department. A lis pendens filed  
24 after July 1, 2016 shall be filed with the Department  
25 electronically. ~~The lis pendens may be filed with the~~  
26 ~~Department either electronically or by filing a hard copy.~~ If



1 the certificate of service is not recorded, then the lis  
2 pendens pertaining to the residential mortgage foreclosure in  
3 question is not recordable and is of no force and effect.

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

25 (i) Nothing in this Article is intended to prevent a  
26 borrower from making his or her own decision as to whether to

1 proceed with a transaction.

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

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

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

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

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

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

22 (2) the number of borrowers receiving counseling;

23 (3) the number of loans closed;

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

26 (5) the number of loans requiring counseling where the

1 mortgage originator changed the loan terms subsequent to  
2 counseling;

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

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

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

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

13 (Source: P.A. 97-891, eff. 1-1-13; 98-1081, eff. 1-1-15.)

14 Section 99. Effective date. This Act takes effect upon  
15 becoming law.