



Rep. Marlow H. Colvin

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LRB097 19725 PJG 66587 a

1 AMENDMENT TO HOUSE BILL 4521

2 AMENDMENT NO. _____. Amend House Bill 4521 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 1-4, 2-2, 2-4, 3-2, 4-5, 4-8.2,
6 7-1A, 7-11, and 7-13 and by adding Section 2-3A as follows:

7 (205 ILCS 635/1-4)

8 Sec. 1-4. Definitions.

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

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

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

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

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

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

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

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

1 intent to make, acquire, or resell more than 3 residential
2 mortgage loans in any one calendar year.

3 (2) (Blank).

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

8 (4) (Blank).

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

17 (6) (Blank).

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

22 (f) "Mortgage loan" "residential mortgage loan" or "home
23 mortgage loan" shall mean any loan primarily for personal,
24 family, or household use that is secured by a mortgage, deed of
25 trust, or other equivalent consensual security interest on a
26 dwelling as defined in Section 103(v) of the federal Truth in

1 Lending Act, or residential real estate upon which is
2 constructed or intended to be constructed a dwelling.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (v) "Loan brokerage agreement" shall mean a written

1 agreement in which a broker or loan broker agrees to do either
2 of the following:

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

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

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

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

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

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

26 (aa) "Financial institution" shall mean a savings and loan

1 association, savings bank, credit union, or a bank organized
2 under the laws of Illinois or a savings and loan association,
3 savings bank, credit union or a bank organized under the laws
4 of the United States and headquartered in Illinois.

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

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

12 (dd) "Affiliate" shall mean:

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

17 (2) any entity:

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

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

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

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

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

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

24 (gg) "Delinquency rate factor" means the factor set by rule
25 of the Commissioner that is multiplied by the average gross
26 delinquency rate of licensees, determined annually for the

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

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

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

25 (jj) "Mortgage loan originator" means an individual who for
26 compensation or gain or in the expectation of compensation or

1 gain:

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

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

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

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

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

26 "Mortgage loan originator" does not include a person or

1 entity solely involved in extensions of credit relating to
2 timeshare plans, as that term is defined in Section 101(53D) of
3 Title 11, United States Code.

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

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

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

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

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

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

24 (ii) communicating with a consumer to obtain the
25 information necessary for the processing or underwriting
26 of a loan, to the extent that the communication does not

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

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

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

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

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

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

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

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

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

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

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

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

17 (A) a depository institution;

18 (B) a subsidiary that is:

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

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

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

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

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

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

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

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

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

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

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

3 (205 ILCS 635/2-2)

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

5 (a) The Secretary shall issue a license upon completion of
6 all of the following:

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

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

13 (3) The payment, in certified funds, of investigation
14 and application fees, the total of which shall be in an
15 amount equal to \$2,700 ~~\$2,043~~ annually. To comply with the
16 common renewal date and requirements of the Nationwide
17 Mortgage Licensing System and Registry, the term of initial
18 licenses may be extended or shortened with applicable fees
19 prorated 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 to the license applicant.

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

22 (Source: P.A. 95-1047, eff. 4-6-09; 96-112, eff. 7-31-09;
23 96-1000, eff. 7-2-10.)

24 (205 ILCS 635/2-3A new)

25 Sec. 2-3A. Residential mortgage license application and

1 issuance.

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

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

14 (c) In connection with an application for licensing, the
15 applicant may be required, at a minimum, to furnish to the
16 Nationwide Mortgage Licensing System and Registry information
17 concerning the applicant's identity, including:

18 (1) fingerprints for submission to the Federal Bureau
19 of Investigation or any governmental agency or entity
20 authorized to receive such information for a State,
21 national, and international criminal history background
22 check; and

23 (2) personal history and experience in a form
24 prescribed by the Nationwide Mortgage Licensing System and
25 Registry, including the submission of authorization for
26 the Nationwide Mortgage Licensing System and Registry and

1 the Director to obtain:

2 (A) an independent credit report obtained from a
3 consumer reporting agency described in Section 603(p)
4 of the Fair Credit Reporting Act (15 U.S.C. 1681a(p));
5 and

6 (B) information related to any administrative,
7 civil, or criminal findings by any governmental
8 jurisdiction.

9 (d) For the purposes of this Section, and in order to
10 reduce the points of contact that the Federal Bureau of
11 Investigation may have to maintain for purposes of subsection
12 (c) of this Section, the Director may use the Nationwide
13 Mortgage Licensing System and Registry as a channeling agent
14 for requesting information from and distributing information
15 to the Department of Justice or any governmental agency.

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

23 (205 ILCS 635/2-4) (from Ch. 17, par. 2322-4)

24 Sec. 2-4. Avertisments of Licensee. Each application for
25 license or for the renewal of a license shall be accompanied by

1 the following averments stating that the applicant:

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

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

7 (c) Will keep and maintain for 36 months the same
8 written records as required by the federal Equal Credit
9 Opportunity Act, and any other information required by
10 regulations of the Commissioner regarding any home
11 mortgage in the course of the conduct of its residential
12 mortgage business;

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

17 (e) Will not engage, whether as principal or agent, in
18 the practice of rejecting residential mortgage
19 applications without reasonable cause, or varying terms or
20 application procedures without reasonable cause, for home
21 mortgages on real estate within any specific geographic
22 area from the terms or procedures generally provided by the
23 licensee within other geographic areas of the State;

24 (f) Will not engage in fraudulent home mortgage
25 underwriting practices;

26 (g) Will not make payment, whether directly or

1 indirectly, of any kind to any in house or fee appraiser of
2 any government or private money lending agency with which
3 an application for a home mortgage has been filed for the
4 purpose of influencing the independent judgment of the
5 appraiser with respect to the value of any real estate
6 which is to be covered by such home mortgage;

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

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

12 (j) Will not knowingly make any false promises likely
13 to influence or persuade, or pursue a course of
14 misrepresentation and false promises through agents,
15 solicitors, advertising or otherwise;

16 (k) Will not knowingly misrepresent, circumvent or
17 conceal, through whatever subterfuge or device, any of the
18 material particulars or the nature thereof, regarding a
19 transaction to which it is a party to the injury of another
20 party thereto;

21 (l) Will disburse funds in accordance with its
22 agreements;

23 (m) Has not committed a crime against the law of this
24 State, any other state or of the United States, involving
25 moral turpitude, fraudulent or dishonest dealing, and that
26 no final judgment has been entered against it in a civil

1 action upon grounds of fraud, misrepresentation or deceit
2 which has not been previously reported to the Commissioner;

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

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

10 (p) Has not become insolvent;

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

13 (r) Has not demonstrated by course of conduct,
14 negligence or incompetence in performing any act for which
15 it is required to hold a license under this Act;

16 (s) Will advise the Commissioner in writing, or the
17 Nationwide Mortgage Licensing System and Registry as
18 applicable, of any changes to the information submitted on
19 the most recent application for license within 30 days of
20 said change. The written notice must be signed in the same
21 form as the application for license being amended;

22 (t) Will comply with the provisions of this Act, or
23 with any lawful order, rule or regulation made or issued
24 under the provisions of this Act;

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

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

4 (w) Will advise the Commissioner in writing within 30
5 days of any request made to a licensee under this Act to
6 repurchase a loan in a manner that completely and clearly
7 identifies to whom the request was made, the loans
8 involved, and the reason therefor;

9 (x) Will advise the Commissioner in writing within 30
10 days of any request from any entity to repurchase a loan in
11 a manner that completely and clearly identifies to whom the
12 request was made, the loans involved, and the reason for
13 the request;

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

16 (z) Will not knowingly hire or employ a loan originator
17 who is not registered, or mortgage loan originator who is
18 not licensed, with the Commissioner as required under
19 Section 7-1 or Section 7-1A, as applicable, of this Act; ~~-~~

20 (aa) Will not charge or collect advance payments from
21 borrowers or homeowners for engaging in loan modification;
22 and

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

25 A licensee who fails to fulfill obligations of an averment,
26 to comply with averments made, or otherwise violates any of the

1 averments made under this Section shall be subject to the
2 penalties in Section 4-5 of this Act.

3 (Source: P.A. 95-331, eff. 8-21-07; 96-112, eff. 7-31-09.)

4 (205 ILCS 635/3-2) (from Ch. 17, par. 2323-2)

5 Sec. 3-2. Annual audit.

6 (a) At the licensee's fiscal year-end, but in no case more
7 than 12 months after the last audit conducted pursuant to this
8 Section, except as otherwise provided in this Section, it shall
9 be mandatory for each residential mortgage licensee to cause
10 its books and accounts to be audited by a certified public
11 accountant not connected with such licensee. The books and
12 records of all licensees under this Act shall be maintained on
13 an accrual basis. The audit must be sufficiently comprehensive
14 in scope to permit the expression of an opinion on the
15 financial statements, which must be prepared in accordance with
16 generally accepted accounting principles, and must be
17 performed in accordance with generally accepted auditing
18 standards. Notwithstanding the requirements of this
19 subsection, a licensee that is a first tier subsidiary may
20 submit audited consolidated financial statements of its parent
21 as long as the consolidated statements are supported by
22 consolidating statements. The licensee's chief financial
23 officer shall attest to the licensee's financial statements
24 disclosed in the consolidating statements.

25 (b) As used herein, the term "expression of opinion"

1 includes either (1) an unqualified opinion, (2) a qualified
2 opinion, (3) a disclaimer of opinion, or (4) an adverse
3 opinion.

4 (c) If a qualified or adverse opinion is expressed or if an
5 opinion is disclaimed, the reasons therefore must be fully
6 explained. An opinion, qualified as to a scope limitation,
7 shall not be acceptable.

8 (d) The most recent audit report shall be filed with the
9 Commissioner within 90 days after the end of the licensee's
10 fiscal year, or with the Nationwide Mortgage Licensing System
11 and Registry, if applicable, pursuant to Mortgage Call Report
12 requirements. The report filed with the Commissioner shall be
13 certified by the certified public accountant conducting the
14 audit. The Commissioner may promulgate rules regarding late
15 audit reports.

16 (e) If any licensee required to make an audit shall fail to
17 cause an audit to be made, the Commissioner shall cause the
18 same to be made by a certified public accountant at the
19 licensee's expense. The Commissioner shall select such
20 certified public accountant by advertising for bids or by such
21 other fair and impartial means as he or she establishes by
22 regulation.

23 (f) In lieu of the audit or compilation financial statement
24 required by this Section, a licensee shall submit and the
25 Commissioner may accept any audit made in conformance with the
26 audit requirements of the U.S. Department of Housing and Urban

1 Development.

2 (g) With respect to licensees who solely broker residential
3 mortgage loans as defined in subsection (o) of Section 1-4,
4 instead of the audit required by this Section, the Commissioner
5 may accept compilation financial statements prepared at least
6 every 12 months, and the compilation financial statement must
7 be ~~prepared by an independent certified public accountant~~
8 ~~licensed under the Illinois Public Accounting Act or by an~~
9 ~~equivalent state licensing law with full disclosure in~~
10 ~~accordance with generally accepted accounting principals and~~
11 ~~must be~~ submitted within 90 days after the end of the
12 licensee's fiscal year, or with the Nationwide Mortgage
13 Licensing System and Registry, if applicable, pursuant to
14 Mortgage Call Report requirements. If a licensee under this
15 Section fails to file a compilation as required, the
16 Commissioner shall cause an audit of the licensee's books and
17 accounts to be made by a certified public accountant at the
18 licensee's expense. The Commissioner shall select the
19 certified public accountant by advertising for bids or by such
20 other fair and impartial means as he or she establishes by
21 rule. A licensee who files false or misleading compilation
22 financial statements is guilty of a business offense and shall
23 be fined not less than \$5,000.

24 (h) The workpapers of the certified public accountants
25 employed by each licensee for purposes of this Section are to
26 be made available to the Commissioner or the Commissioner's

1 designee upon request and may be reproduced by the Commissioner
2 or the Commissioner's designee to enable to the Commissioner to
3 carry out the purposes of this Act.

4 (i) Notwithstanding any other provision of this Section, if
5 a licensee relying on subsection (g) of this Section causes its
6 books to be audited at any other time or causes its financial
7 statements to be reviewed, a complete copy of the audited or
8 reviewed financial statements shall be delivered to the
9 Commissioner at the time of the annual license renewal payment
10 following receipt by the licensee of the audited or reviewed
11 financial statements. All workpapers shall be made available to
12 the Commissioner upon request. The financial statements and
13 workpapers may be reproduced by the Commissioner or the
14 Commissioner's designee to carry out the purposes of this Act.

15 (Source: P.A. 96-112, eff. 7-31-09; revised 11-18-11.)

16 (205 ILCS 635/4-5) (from Ch. 17, par. 2324-5)

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

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

22 (1) Through separate acts or an act or a course of
23 conduct, the licensee has violated any provisions of this
24 Act, any rule or regulation promulgated by the Commissioner
25 or of any other law, rule or regulation of this State or

1 the United States.

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

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

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

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

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

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

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

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

23 (h) When the Commissioner finds any person in violation of
24 the grounds set forth in subsection (i), he or she may enter an
25 order imposing one or more of the following penalties:

26 (1) Revocation of license;

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

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

7 (4) Issuance of a reprimand;

8 (5) Imposition of a fine not to exceed \$25,000 for each
9 count of separate offense, provided that a fine may be
10 imposed not to exceed \$75,000 for each separate count of
11 offense of paragraph (2) of subsection (i) of this Section;

12 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 subpoena or subpoena duces tecum;

18 (16) A pattern of substantially underestimating the
19 maximum closing costs;

20 (17) Failure to comply with or violation of any
21 provision of this Act; -

22 (18) Failure to comply with or violation of any
23 provision of Article 3 of the Residential Real Property
24 Disclosure 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, but upon the Director approving the surrender, it
2 shall not affect the licensee's civil or criminal liability
3 for acts committed prior to surrender or entitle the
4 licensee to a return of any part of the license fee.

5 (Source: P.A. 96-112, eff. 7-31-09.)

6 (205 ILCS 635/4-8.2)

7 Sec. 4-8.2. Reports of violations. Any person licensed
8 under this Act or any other person may report to the
9 Commissioner any information to show that a person subject to
10 this Act is or may be in violation of this Act. A licensee who
11 files a report with the Department of Financial and
12 Professional Regulation that another licensee is engaged in one
13 or more violations pursuant to this Act shall not be the
14 subject of disciplinary action by the Department, unless the
15 Department determines, by a preponderance of the evidence
16 available to the Department, that the reporting person
17 knowingly and willingly participated in the violation that was
18 reported.

19 (Source: P.A. 93-561, eff. 1-1-04.)

20 (205 ILCS 635/7-1A)

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

22 (a) It is unlawful for any individual to act or assume to
23 act as a mortgage loan originator, as defined in subsection
24 (jj) of Section 1-4 of this Act, without obtaining a license

1 from the Director, unless the individual is exempt under
2 subsection (c) of this Section. It is unlawful for any
3 individual who holds a mortgage loan originator license to
4 provide short sale facilitation services unless he or she holds
5 a license under the Real Estate License Act of 2000. Each
6 licensed mortgage loan originator must register with and
7 maintain a valid unique identifier issued by the Nationwide
8 Mortgage Licensing System and Registry.

9 (b) In order to facilitate an orderly transition to
10 licensing and minimize disruption in the mortgage marketplace,
11 the operability date for subsection (a) of this Section shall
12 be as provided in this subsection (b). For this purpose, the
13 Director may require submission of licensing information to the
14 Nationwide Mortgage Licensing System and Registry prior to the
15 operability dates designated by the Director pursuant to items
16 (1) and (2) of this subsection (b).

17 (1) For all individuals other than individuals
18 described in item (2) of this subsection (b), the
19 operability date as designated by the Director shall be no
20 later than July 31, 2010, or any date approved by the
21 Secretary of the U.S. Department of Housing and Urban
22 Development, pursuant to the authority granted under
23 federal Public Law 110-289, Section 1508.

24 (2) For all individuals registered as loan originators
25 as of the effective date of this amendatory Act of the 96th
26 General Assembly, the operability date as designated by the

1 Director shall be no later than January 1, 2011, or any
2 date approved by the Secretary of the U.S. Department of
3 Housing and Urban Development, pursuant to the authority
4 granted under Public Law 110-289, Section 1508.

5 (3) For all individuals described in item (1) or (2) of
6 this subsection (b) who are loss mitigation specialists
7 employed by servicers, the operability date shall be July
8 31, 2011, or any date approved by the Secretary of the U.S.
9 Department of Housing and Urban Development pursuant to
10 authority granted under Public Law 110-289, Section 1508.

11 (c) The following, when engaged in the following
12 activities, are exempt from this Act:

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

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

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

21 (4) A licensed attorney who negotiates the terms of a
22 residential mortgage loan on behalf of a client as an
23 ancillary matter to the attorney's representation of the
24 client, unless the attorney is compensated by a lender, a
25 mortgage broker, or other mortgage loan originator or by
26 any agent of a lender, mortgage broker, or other mortgage

1 loan originator.

2 (d) A loan processor or underwriter who is an independent
3 contractor may not engage in the activities of a loan processor
4 or underwriter unless he or she obtains and maintains a license
5 under subsection (a) of this Section. Each independent
6 contractor loan processor or underwriter licensed as a mortgage
7 loan originator must have and maintain a valid unique
8 identifier issued by the Nationwide Mortgage Licensing System
9 and Registry.

10 (e) For the purposes of implementing an orderly and
11 efficient licensing process, the Director may establish
12 licensing rules or regulations and interim procedures for
13 licensing and acceptance of applications. For previously
14 registered or licensed individuals, the Director may establish
15 expedited review and licensing procedures.

16 (Source: P.A. 96-112, eff. 7-31-09.)

17 (205 ILCS 635/7-11)

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

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

23 (1) Suspend, revoke, or refuse to renew a license or
24 reprimand, place on probation or otherwise discipline a
25 licensee if the Director finds that the mortgage loan

1 originator has violated this Act or any other applicable
2 law or regulation or has been convicted of a criminal
3 offense.

4 (2) Impose a fine of not more than \$1,000 or, for
5 engaging in an act prohibited by item (1) of Section 7-13,
6 not more than \$3,000 for each day for each violation of
7 this Act or any other applicable law or regulation that is
8 committed. If the Mortgage Loan Originator engages in a
9 pattern of repeated violations, the Director may impose a
10 fine of not more than \$2,000 or, for engaging in an act
11 prohibited by item (1) of Section 7-13, not more than
12 \$6,000 for each day for each violation committed. In
13 determining the amount of a fine to be imposed pursuant to
14 this Act or any other applicable law or regulation, the
15 Director shall consider all of the following:

16 (A) The seriousness of the violation;

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

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

21 (b) In addition to any other action authorized by this Act
22 or any other applicable law, rule or regulation, the Director
23 may investigate alleged violations of the Act or any other
24 applicable law, rule or regulation and complaints concerning
25 any such violation. The Director may seek a court order to
26 enjoin the violation.

1 (c) In addition to any other action authorized by this Act
2 or any other applicable law, rule or regulation, if the
3 Director determines that a mortgage loan originator is engaged
4 in or is believed to be engaged in activities that may
5 constitute a violation of this Act or any other applicable law,
6 rule or regulation, the Director may issue a cease and desist
7 order to compel the mortgage loan originator to comply with
8 this Act or any other applicable law, rule or regulation or,
9 upon a showing that an emergency exists, may suspend the
10 mortgage loan originator's license for a period not exceeding
11 180 calendar days, pending investigation.

12 (Source: P.A. 96-112, eff. 7-31-09.)

13 (205 ILCS 635/7-13)

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

17 (1) Directly or indirectly employ any scheme, device,
18 or artifice to defraud or mislead borrowers or lenders or
19 to defraud any person.

20 (2) Engage in any unfair or deceptive practice toward
21 any person.

22 (3) Obtain property by fraud or misrepresentation.

23 (4) Solicit or enter into a contract with a borrower
24 that provides in substance that the person or individual
25 subject to this Act may earn a fee or commission through

1 "best efforts" to obtain a loan even though no loan is
2 actually obtained for the borrower.

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

7 (6) Conduct any business covered by this Act without
8 holding a valid license as required under this Act, or
9 assist or aid and abet any person in the conduct of
10 business under this Act without a valid license as required
11 under this Act.

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

15 (8) Fail to comply with this Act or rules or
16 regulations promulgated under this Act, or fail to comply
17 with any other state or federal law, including the rules
18 and regulations thereunder, applicable to any business
19 authorized or conducted under this Act.

20 (9) Make, in any manner, any false or deceptive
21 statement or representation of a material fact, or any
22 omission of a material fact, required on any document or
23 application subject to this Act.

24 (10) Negligently make any false statement or knowingly
25 and willfully make any omission of material fact in
26 connection with any information or report filed with a

1 governmental agency or the Nationwide Mortgage Licensing
2 System and Registry or in connection with any investigation
3 conducted by the Director or another governmental agency.

4 (11) Make any payment, threat or promise, directly or
5 indirectly, to any person for the purpose of influencing
6 the independent judgment of the person in connection with a
7 residential mortgage loan, or make any payment threat or
8 promise, directly or indirectly, to any appraiser of a
9 property, for the purpose of influencing the independent
10 judgment of the appraiser with respect to the value of the
11 property.

12 (12) Collect, charge, attempt to collect or charge, or
13 use or propose any agreement purporting to collect or
14 charge any fee prohibited by this Act, including advance
15 fees for loan modification.

16 (13) Cause or require a borrower to obtain property
17 insurance coverage in an amount that exceeds the
18 replacement cost of the improvements as established by the
19 property insurer.

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

22 (15) Engage in conduct that constitutes dishonest
23 dealings.

24 (16) Knowingly instruct, solicit, propose, or cause a
25 person other than the borrower to sign a borrower's
26 signature on a mortgage related document, or solicit,

1 accept or execute any contract or other document related to
2 the residential mortgage transaction that contains any
3 blanks to be filled in after signing or initialing the
4 contract or other document, except for forms authorizing
5 the verification of application information.

6 (17) Discourage any applicant from seeking or
7 participating in housing or financial counseling either
8 before or after the consummation of a loan transaction, or
9 fail to provide information on counseling resources upon
10 request.

11 (18) Charge for any ancillary products or services, not
12 essential to the basic loan transaction for which the
13 consumer has applied, without the applicant's knowledge
14 and written authorization, or charge for any ancillary
15 products or services not actually provided in the
16 transaction.

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

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

21 (21) Structure activities or contracts to evade
22 provisions of this Act.

23 (Source: P.A. 96-112, eff. 7-31-09.)

24 Section 10. The Title Insurance Act is amended by changing
25 Section 23

1 (215 ILCS 155/23) (from Ch. 73, par. 1423)

2 Sec. 23. Violation; penalties.

3 (a) Any violation of any of the provisions of this Act and,
4 beginning January 1, 2013, any violation of any of the
5 provisions of Article 3 of the Residential Real Property
6 Disclosure Act shall constitute a business offense and shall
7 subject the party violating the same to a penalty of \$1000 for
8 each offense.

9 (b) Nothing contained in this Section shall affect the
10 right of the Secretary to revoke or suspend a title insurance
11 company's or independent escrowee's certificate of authority
12 or a title insurance agent's registration under any other
13 Section of this Act.

14 (Source: P.A. 94-893, eff. 6-20-06.)

15 Section 15. The Residential Real Property Disclosure Act is
16 amended by changing Sections 70 and 72 as follows:

17 (765 ILCS 77/70)

18 Sec. 70. Predatory lending database program.

19 (a) As used in this Article:

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

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

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

4 "Closing agent" means an individual assigned by a title
5 insurance company or a broker or originator to ensure that the
6 execution of documents related to the closing of a real estate
7 sale or the refinancing of a real estate loan and the
8 disbursement of closing funds are in conformity with the
9 instructions of the entity financing the transaction.

10 "Counseling" means in-person counseling provided by a
11 counselor employed by a HUD-certified counseling agency to all
12 borrowers, or documented telephone counseling where a hardship
13 would be imposed on one or more borrowers. A hardship shall
14 exist in instances in which the borrower is confined to his or
15 her home due to medical conditions, as verified in writing by a
16 physician, or the borrower resides 50 miles or more from the
17 nearest participating HUD-certified housing counseling agency.
18 In instances of telephone counseling, the borrower must supply
19 all necessary documents to the counselor at least 72 hours
20 prior to the scheduled telephone counseling session.

21 "Counselor" means a counselor employed by a HUD-certified
22 housing counseling agency.

23 "Credit score" means a credit risk score as defined by the
24 Fair Isaac Corporation, or its successor, and reported under
25 such names as "BEACON", "EMPIRICA", and "FAIR ISAAC RISK SCORE"
26 by one or more of the following credit reporting agencies or

1 their successors: Equifax, Inc., Experian Information
2 Solutions, Inc., and TransUnion LLC. If the borrower's credit
3 report contains credit scores from 2 reporting agencies, then
4 the broker or loan originator shall report the lower score. If
5 the borrower's credit report contains credit scores from 3
6 reporting agencies, then the broker or loan originator shall
7 report the middle score.

8 "Department" means the Department of Financial and
9 Professional Regulation.

10 "Exempt person" means that term as it is defined in
11 subsections (d)(1) and (d)(1.5) of Section 1-4 of the
12 Residential Mortgage License Act of 1987.

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

15 "HUD-certified counseling" or "counseling" means
16 counseling given to a borrower by a counselor employed by a
17 HUD-certified housing counseling agency.

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

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

24 "Licensee" means that term as it is defined in subsection
25 (e) of Section 1-4 of the Residential Mortgage License Act of
26 1987.

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

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

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

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

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

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

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

26 (a-5) A predatory lending database program shall be

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

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

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

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

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

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

26 (e) The broker or originator and the borrower may not take

1 any legally binding action concerning the loan transaction
2 until the later of the following:

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

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

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

14 (g) The title insurance company or closing agent shall
15 attach to the mortgage a certificate of compliance with the
16 requirements of this Article, as generated by the database. If
17 the title insurance company or closing agent fails to attach
18 the certificate of compliance, then the mortgage is not
19 recordable. In addition, if any lis pendens for a residential
20 mortgage foreclosure is recorded on the property within the
21 program area, a certificate of service must be simultaneously
22 recorded that affirms that a copy of the lis pendens was filed
23 with the Department. If the certificate of service is not
24 recorded, then the lis pendens pertaining to the residential
25 mortgage foreclosure in question is not recordable and is of no
26 force and effect.

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

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

25 (j) Any person who violates any provision of this Article
26 commits an unlawful practice within the meaning of the Consumer

1 Fraud and Deceptive Business Practices Act.

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

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

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

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

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

19 (2) the number of borrowers receiving counseling;

20 (3) the number of loans closed;

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

23 (5) the number of loans requiring counseling where the
24 mortgage originator changed the loan terms subsequent to
25 counseling;

26 (6) the number of licensed mortgage brokers and loan

1 originators entering information into the database;

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

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

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

10 (Source: P.A. 95-691, eff. 6-1-08; 96-328, eff. 8-11-09;
11 96-856, eff. 12-31-09.)

12 (765 ILCS 77/72)

13 Sec. 72. Originator; required information. As part of the
14 predatory lending database program, the broker or originator
15 must submit all of the following information for inclusion in
16 the predatory lending database for each loan for which the
17 originator takes an application:

18 (1) The borrower's name, address, social security
19 number or taxpayer identification number, date of birth,
20 and income and expense information, including total
21 monthly consumer debt, contained in the mortgage
22 application.

23 (2) The address, permanent index number, and a
24 description of the collateral and information about the
25 loan or loans being applied for and the loan terms,

1 including the amount of the loan, the rate and whether the
2 rate is fixed or adjustable, amortization or loan period
3 terms, and any other material terms.

4 (3) The borrower's credit score at the time of
5 application.

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

14 (5) Information about affiliated or third party
15 service providers, including the names and addresses of
16 appraisers, title insurance companies, closing agents,
17 attorneys, and realtors who are involved with the
18 transaction and the broker or originator and any moneys
19 received from the broker or originator in connection with
20 the transaction.

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

24 (7) Annual real estate taxes for the property, together
25 with any assessments payable in connection with the
26 property to be secured by the collateral and the proposed

1 monthly principal and interest charge of all loans to be
2 taken by the borrower and secured by the property of the
3 borrower.

4 (8) Information concerning how the broker or
5 originator obtained the client and the name of its referral
6 source, if any.

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

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

13 (11) Any and all financing by the borrower for the
14 subject property within 12 months prior to the date of
15 application.

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

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

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

21 (15) Whether the loan may result in negative
22 amortization.

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

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

1 (18) Whether the loan is an ARM.

2 (Source: P.A. 94-280, eff. 1-1-06; 95-691, eff. 6-1-08.)

3 Section 99. Effective date. This Act takes effect January
4 1, 2013."