

AN ACT concerning regulation.

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

Section 5. The Residential Mortgage License Act of 1987 is amended by changing Section 1-4 and by adding Section 5-12.5 as follows:

(205 ILCS 635/1-4)

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

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

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

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

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

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

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

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

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

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

mortgage loans in any one calendar year.

(2) (Blank).

(2.1) A bona fide nonprofit organization.

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

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

(4) (Blank).

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

(6) (Blank).

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

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

engage in the activities regulated by this Act.

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

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

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

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

residential mortgage loan or residential mortgage loan commitment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(x) (Blank).

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

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

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

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

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

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

(dd) "Affiliate" shall mean:

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

(2) any entity:

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

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

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

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

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

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

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

(hh) (Blank).

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

available pursuant to State or federal law or rule.

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

(i) takes a residential mortgage loan application; or

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

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

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

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

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

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

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

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

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

(nn) "Individual" means a natural person.

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

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

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

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

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

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

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

services to the public, including:

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

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

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

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

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

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

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

(A) a depository institution;

(B) a subsidiary that is:

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

(ii) regulated by a federal banking agency; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) the transfer of ownership;
- (2) a repayment maturity date;
- (3) the death of the consumer; or
- (4) any other event contemplated by the writing.

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

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

(205 ILCS 635/5-12.5 new)

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

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

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

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

(765 ILCS 77/70)

Sec. 70. Predatory lending database program.

(a) As used in this Article:

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

"Borrower" means a person seeking a mortgage loan.

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

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

instructions of the entity financing the transaction.

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

(i) in person; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) the number of loans registered with the program;
- (2) the number of borrowers receiving counseling;
- (3) the number of loans closed;
- (4) the number of loans requiring counseling for each of the standards set forth in Section 73;
- (5) the number of loans requiring counseling where the mortgage originator changed the loan terms subsequent to counseling;
- (6) the number of licensed mortgage brokers and loan originators entering information into the database;
- (7) the number of investigations based on information obtained from the database, including the number of licensees fined, the number of licenses suspended, and the number of licenses revoked;
- (8) a summary of the types of non-traditional mortgage products being offered; and
- (9) a summary of how the Department is actively utilizing the program to combat mortgage fraud.

Public Act 103-1015

SB3551 Enrolled

LRB103 37488 RTM 67611 b

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