

AN ACT concerning regulation.

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

Section 5. The State Finance Act is amended by adding Sections 5.710 and 6z-73 as follows:

(30 ILCS 105/5.710 new)

Sec. 5.710. The Financial Institutions Settlement of 2008 Fund.

(30 ILCS 105/6z-73 new)

Sec. 6z-73. Financial Institutions Settlement of 2008 Fund. The Financial Institutions Settlement of 2008 Fund is created as a nonappropriated trust fund to be held outside the State treasury, with the State Treasurer as custodian. Moneys in the Fund shall be used by the Comptroller solely for the purpose of payment of outstanding vouchers as of the effective date of this amendatory Act of the 95th General Assembly for expenses related to medical assistance under the Illinois Public Aid Code, the Children's Health Insurance Program Act, the Covering ALL KIDS Health Insurance Act, and the Senior Citizens and Disabled Persons Property Tax Relief and Pharmaceutical Assistance Act. The Department of Healthcare and Family Services must submit all necessary and proper

documentation to the Comptroller for administration of this Fund.

Section 7. The Home Equity Assurance Act is amended by changing Sections 3, 7, and 8 as follows:

(65 ILCS 95/3) (from Ch. 24, par. 1603)

Sec. 3. Definitions. For the purposes of this Act:

(a) "Bona fide offer" means an offer made in good faith and for a valuable consideration to purchase a qualified residence at a price that in the opinion of the governing commission is reasonable given current market conditions.

(b) "Certificate of participation" means the duly notarized document of membership in a program, signed by the qualified applicant and by an authorized representative of the governing commission, which specifies the location and description of the guaranteed residence, its guaranteed value, the registration date, and which has attached a program appraisal for the guaranteed residence.

(c) "Community organization" means a not-for-profit organization which has been registered with this State for at least 5 years as a not-for-profit organization, which qualifies for tax exempt status under Section 501 (c) (3) or 501 (c) (4) of the United States Internal Revenue Code of 1986, as now or hereafter amended, which continuously maintains an office or business location within the territory of a program together

with a current listed telephone number, and whose members reside within the territory of a program.

(d) "Eligible applicant" means a natural person who is the owner of a qualified residence within the territory of a program who continuously occupies or has a family member who occupies such qualified residence as the principal place of residence.

(e) "Family member" means a spouse, child, stepchild, parent, grandparent, brother, sister, or any such relations of the spouse of the member.

(f) "Governing commission" means the 9 member (or 18 member in the case of a merged program) governing body which is authorized by voter approval of the creation of a home equity program (or merger of programs) as provided in this Act and which is appointed by the mayor of the municipality in which the program has been approved with the approval of the city council, 7 (or 14 in the case of a merged program) of whom shall be appointed from a list or lists of nominees submitted by a community organization or community organizations as defined in this Act.

(g) "Gross selling value" means the total consideration to be paid for the purchase of a guaranteed residence, and shall include any amount that the buyer or prospective buyer agrees to assume on behalf of a member, including broker commissions, points, legal fees, personal financing, or other items of value involved in the sale.

(h) "Guarantee fund" means the funds collected under the provisions of this Act for the purpose of guaranteeing the property values of members within the territory of a program.

(i) "Guaranteed residence" means a qualified residence for which a certificate of participation has been issued, which is occupied continuously as the place of legal residence by the member or a family member, which is described in the certificate of participation, and which is entitled to coverage under this Act.

(j) "Guaranteed value" means the appraised valuation based upon a standard of current fair market value as of the registration date on the qualified residence as determined by a program appraiser pursuant to accepted professional appraisal standards and which is authorized by the commission for the registration date. The guaranteed value shall be used solely by the commission for the purpose of administering the program and shall remain confidential.

(k) "Member" means the owner of a guaranteed residence.

(l) "Owner" means a natural person who is the legal titleholder or who is the beneficiary of a trust which is the legal titleholder.

(m) "Physical perils" means physical occurrences such as, but not limited to, fire, windstorm, hail, nuclear explosion or seepage, war, insurrection, wear and tear, cracking, settling, vermin, rodents, insects, vandalism, pollution or contamination, and all such related occurrences or acts of God.

(n) "Program" means the guaranteed home equity program governed by a specific home equity commission.

(o) "Program appraisal" means a real estate appraisal conducted by a program appraiser for the purpose of establishing the guaranteed value of a qualified residence under a program and providing a general description of the qualified residence. The program appraisal shall be used solely by the governing commission for the purpose of administering the program and shall remain confidential.

(p) "Program appraiser" means a real estate appraiser who meets the professional standards established by the American Institute of Real Estate Appraisers (AIREA), the National Association of Independent Fee Appraisers (NAIFA), the National Society of Real Estate Appraisers (NSREA) or the American Society of Appraisers (ASA) and whose name is submitted to the governing commission by the appraiser to conduct program appraisals under the provisions of a program.

(q) "Program guidelines" means those policies, rules, regulations, and bylaws established from time to time by the governing commission to explain, clarify, or modify the program in order to fulfill its goals and objectives.

(r) "Qualified residence" means a building: (1) located in the territory of a program having at least one, but not more than 6, dwelling units; (2) classified by county ordinance as residential and assessed for property tax purposes; and (3) with at least one dwelling unit continuously occupied as the

principal legal residence of a member or family member.

(s) "Registration date" means the date of receipt by the governing commission of the registration fee and a completed application of a qualified applicant for participation in a program.

(t) "Registration fee" means the fee which is established by the governing commission to defray the cost of a program appraisal on a qualified residence.

(Source: P.A. 86-684.)

(65 ILCS 95/7) (from Ch. 24, par. 1607)

Sec. 7. Guarantee. A member or the estate of a member participating in a program created under the provisions of this Act shall be paid 100% of the difference between the guaranteed value as determined by the program and the gross selling value as determined in Section 8 of this Act if the guaranteed value is greater than the gross selling value. The guarantee provided by the program shall only apply to sales made 5 years or more after the date of issuance of the certificate of participation and shall be provided subject to all of the terms, conditions, and stipulations of the program. The guarantee provided by the program shall extend only to those who qualified as members at the time of their application, or to the estates of members; provided that the estate applies within 2 years of the member's death or immediately upon completion of the fifth year after the date of issuance of the certificate of participation,

whichever is later. A member shall receive the guarantee provided by the program only if the member has accepted a bona fide offer and the sale of the guaranteed residence has closed.

A member of a program agrees to abide by all conditions, stipulations, and provisions of a program and shall not be eligible for protection and shall not receive the guarantee unless all such conditions, stipulations and provisions have been met. Any member failing to abide by the conditions, stipulations and provisions of a program or who engages in fraud, misrepresentation, or concealment in any process involving a program forfeits both the registration fee and any claim to the guarantee.

(Source: P.A. 85-1044.)

(65 ILCS 95/8) (from Ch. 24, par. 1608)

Sec. 8. Procedures for obtaining benefits. (a) In order to be eligible for payment under a program created pursuant to this Act, a member must follow the program guidelines adopted by the governing commission as well as the procedures set forth in this Section.

(b) A member must file a "Notice of Intent to Sell" with the governing commission in accordance with program guidelines if and when the member intends to place the guaranteed residence on the market for sale. Upon receipt of a "Notice of Intent to Sell", the governing commission shall provide the member with a copy of this Section and a written description of

the rights and responsibilities of both the member and the governing commission and the procedures for obtaining benefits; provided, however, that such information provided by the governing commission shall not restrict or advise the member with respect to the selection of a real estate broker or agent. The information shall be delivered to the member either in person or by registered mail. A member is not eligible to file "Notice of Intent to Sell" until 5 years after the member's registration date.

(c) A member is required to offer the guaranteed residence for sale according to the program guidelines, including the utilization of complete and proper methods for listing residential property, listing the guaranteed residence at a price which reasonably can be expected to attract buyers, and providing reasonable access for potential buyers to see the guaranteed residence.

(d) A member shall ~~may~~ list the guaranteed residence in accordance with program guidelines with a real estate broker of the member's choice, for up to 90 days following the date on which the member listed the residence.

(e) Within 60 days of receipt of a "Notice of Intent to Sell", the governing commission shall ~~has the right to~~ have the guaranteed residence inspected by a program appraiser, at the governing commission's expense, in order to determine if the guaranteed residence is in substantially the same condition as described by the program appraisal attached to the certificate

of participation. If the guaranteed residence fails to meet this standard, the following procedures shall be followed:

(1) The program appraiser shall determine the percentage depreciation of the guaranteed residence due to failure to maintain the premises or due to physical perils or other causes not covered by the program.

(2) This percentage figure shall be multiplied by the guaranteed value to determine the dollar depreciation.

(3) This dollar depreciation shall be subtracted from the guaranteed value to derive a lower guaranteed value to be used for the purpose of determining the amount of payment under the program.

(f) A member shall make the guaranteed residence available to a program appraiser within a reasonable time within this 60 day period after receipt of notice from the commission that an inspection under paragraph (e) of this Section is required, or the member's coverage under the program shall be null, void and of no further effect, and the member's registration fee shall be forfeited.

(g) Ninety days after listing the guaranteed residence, a member shall be eligible to file a "Notice of Intent to Claim" with the governing commission, in accordance with guidelines established by the governing commission, attesting to the fact that the member has followed program guidelines in offering the guaranteed residence for sale, that the member is unable to obtain an offer for purchase of the guaranteed residence for at

least its guaranteed value, and that the member intends to file a claim against the program. Such notice shall include verifiable evidence of placement of the guaranteed residence on the market, the dates such placement took place, and shall list all reasonable offers to buy the property. Verifiable evidence may include a copy of advertisements for sale, a contract with a licensed real estate broker, or other evidence satisfactory to a majority of the governing commission.

(h) Upon receipt of the "Notice of Intent to Claim", the governing commission has 60 days during which it shall require the member to list the guaranteed residence at a price that the governing commission deems reasonable with a real estate broker of the member's choosing. The real estate broker chosen by the member shall advertise the guaranteed residence throughout the municipality which encompasses the territory of the program.

(i) During the 60 day period described in paragraph (h) of this Section, the member shall forward to the governing commission all offers of purchase by either personal delivery or registered mail. If the member receives an offer of purchase which can reasonably be expected to be consummated if accepted and whose gross selling value is greater than the guaranteed value of the guaranteed residence, then no benefits may be claimed under the program. If the member receives an offer to purchase at a gross selling value that is less than the guaranteed value, a majority of the Commission must determine if it is a bona fide offer. If the governing commission

determines the offer is not bona fide, the offer shall be deemed rejected by the governing commission. The member shall have a right to request arbitration. If the offer is deemed bona fide, the governing commission shall, within 7 ~~3~~ working days of the receipt of such offer, either:

(1) approve the offer, in which case the governing commission shall authorize the payment of the amount afforded under this Act upon receipt of verifiable evidence of the sale of the guaranteed residence subject to the following conditions: (i) sales involving eminent domain shall be covered as set forth in paragraph (1) of this Section; (ii) sales subsequent to an insured property and casualty loss shall be guaranteed for the guaranteed value as determined according to paragraph (e) of this Section; (iii) contract sales shall be guaranteed as determined by the guaranteed value in paragraph (e) of this Section, however proceeds payable from the program shall be disbursed in equal annual installments over the life of the contract; or

(2) reject the offer, in which case the member shall continue showing the guaranteed residence until the termination of the 60 day period. Any offer that the governing commission deems not to be a bona fide offer shall be rejected by the governing commission.

Unless the member and the governing commission otherwise agree, the governing commission's failure to act upon an offer within 7 ~~3~~ working days shall be deemed to be a rejection of

the offer.

If the member does not receive a bona fide offer within the 60 day period described in subsection (h), the Commission may order an appraisal, at the governing commission expense, of the property to determine the current fair market value. If the current fair market value is below the guaranteed value, the Commission may require the member to list the guaranteed residence at the fair market value price with a real estate broker of the member's choosing. If the member does not receive a bona fide offer within 90 days thereafter, the member may further reduce the price with the consent of the Commission. Every 90 days thereafter, the member may request, and the Commission may consent to, a reduced listing price.

(j) No guarantee is afforded by the program unless the member has accepted a bona fide offer and the sale of the guaranteed property has closed, and until 60 days after a member files a "Notice of Intent to Claim". The Furthermore, ~~the~~ governing commission shall be required to make payments to a member only upon receipt of verifiable evidence of the actual sale of the guaranteed residence in accordance with the terms agreed upon between the member and the governing commission at the time the governing commission authorized payment. If a member rejects an offer for purchase which has been submitted to and approved by the governing commission, the governing commission or program shall not be liable for any future guarantee payment larger than that authorized for this proposed

sale.

(k) Except as otherwise provided in this Act, payments under the program as provided in Section 7 of this Act shall not be made until the sale of the guaranteed residence has closed and title has passed or the beneficial interest has been transferred.

(1) When a guaranteed residence is to be acquired through the use of eminent domain by a condemning body, the following procedures shall apply:

(1) If the member rejects an offer from the condemning body equal to or greater than the guaranteed value, then no benefits may be claimed under the program.

(2) If the condemning body offers less than the guaranteed value, the governing commission may either: (i) pay 100% of the difference between the guaranteed value and the offered price if the member agrees to sell at the offered price; or (ii) advise the member that the offer is inadequate and should be refused. If the member refuses the offer and the final court determination of the value of the property is less than the guaranteed value, then the program shall pay 100% of the difference between the judgment and the guaranteed value.

(Source: P.A. 86-684.)

Section 10. The Illinois Banking Act is amended by changing Sections 2 and 48 and by adding Section 48.05 as follows:

(205 ILCS 5/2) (from Ch. 17, par. 302)

Sec. 2. General definitions. In this Act, unless the context otherwise requires, the following words and phrases shall have the following meanings:

"Accommodation party" shall have the meaning ascribed to that term in Section 3-419 of the Uniform Commercial Code.

"Action" in the sense of a judicial proceeding includes recoupments, counterclaims, set-off, and any other proceeding in which rights are determined.

"Affiliate facility" of a bank means a main banking premises or branch of another commonly owned bank. The main banking premises or any branch of a bank may be an "affiliate facility" with respect to one or more other commonly owned banks.

"Appropriate federal banking agency" means the Federal Deposit Insurance Corporation, the Federal Reserve Bank of Chicago, or the Federal Reserve Bank of St. Louis, as determined by federal law.

"Bank" means any person doing a banking business whether subject to the laws of this or any other jurisdiction.

A "banking house", "branch", "branch bank" or "branch office" shall mean any place of business of a bank at which deposits are received, checks paid, or loans made, but shall not include any place at which only records thereof are made, posted, or kept. A place of business at which deposits are received, checks paid, or loans made shall not be deemed to be

a branch, branch bank, or branch office if the place of business is adjacent to and connected with the main banking premises, or if it is separated from the main banking premises by not more than an alley; provided always that (i) if the place of business is separated by an alley from the main banking premises there is a connection between the two by public or private way or by subterranean or overhead passage, and (ii) if the place of business is in a building not wholly occupied by the bank, the place of business shall not be within any office or room in which any other business or service of any kind or nature other than the business of the bank is conducted or carried on. A place of business at which deposits are received, checks paid, or loans made shall not be deemed to be a branch, branch bank, or branch office (i) of any bank if the place is a terminal established and maintained in accordance with paragraph (17) of Section 5 of this Act, or (ii) of a commonly owned bank by virtue of transactions conducted at that place on behalf of the other commonly owned bank under paragraph (23) of Section 5 of this Act if the place is an affiliate facility with respect to the other bank.

"Branch of an out-of-state bank" means a branch established or maintained in Illinois by an out-of-state bank as a result of a merger between an Illinois bank and the out-of-state bank that occurs on or after May 31, 1997, or any branch established by the out-of-state bank following the merger.

"Bylaws" means the bylaws of a bank that are adopted by the

bank's board of directors or shareholders for the regulation and management of the bank's affairs. If the bank operates as a limited liability company, however, "bylaws" means the operating agreement of the bank.

"Call report fee" means the fee to be paid to the Commissioner by each State bank pursuant to paragraph (a) of subsection (3) of Section 48 of this Act.

"Capital" includes the aggregate of outstanding capital stock and preferred stock.

"Cash flow reserve account" means the account within the books and records of the Commissioner of Banks and Real Estate used to record funds designated to maintain a reasonable Bank and Trust Company Fund operating balance to meet agency obligations on a timely basis.

"Charter" includes the original charter and all amendments thereto and articles of merger or consolidation.

"Commissioner" means the Commissioner of Banks and Real Estate, except that beginning on the effective date of this amendatory Act of the 95th General Assembly, 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 a person authorized by the Commissioner, the Office of Banks and Real Estate Act, or this Act to act in the Commissioner's stead.~~

"Commonly owned banks" means 2 or more banks that each qualify as a bank subsidiary of the same bank holding company

pursuant to Section 18 of the Federal Deposit Insurance Act; "commonly owned bank" refers to one of a group of commonly owned banks but only with respect to one or more of the other banks in the same group.

"Community" means a city, village, or incorporated town and also includes the area served by the banking offices of a bank, but need not be limited or expanded to conform to the geographic boundaries of units of local government.

"Company" means a corporation, limited liability company, partnership, business trust, association, or similar organization and, unless specifically excluded, includes a "State bank" and a "bank".

"Consolidating bank" means a party to a consolidation.

"Consolidation" takes place when 2 or more banks, or a trust company and a bank, are extinguished and by the same process a new bank is created, taking over the assets and assuming the liabilities of the banks or trust company passing out of existence.

"Continuing bank" means a merging bank, the charter of which becomes the charter of the resulting bank.

"Converting bank" means a State bank converting to become a national bank, or a national bank converting to become a State bank.

"Converting trust company" means a trust company converting to become a State bank.

"Court" means a court of competent jurisdiction.

"Director" means a member of the board of directors of a bank. In the case of a manager-managed limited liability company, however, "director" means a manager of the bank and, in the case of a member-managed limited liability company, "director" means a member of the bank. The term "director" does not include an advisory director, honorary director, director emeritus, or similar person, unless the person is otherwise performing functions similar to those of a member of the board of directors.

"Eligible depository institution" means an insured savings association that is in default, an insured savings association that is in danger of default, a State or national bank that is in default or a State or national bank that is in danger of default, as those terms are defined in this Section, or a new bank as that term defined in Section 11(m) of the Federal Deposit Insurance Act or a bridge bank as that term is defined in Section 11(n) of the Federal Deposit Insurance Act or a new federal savings association authorized under Section 11(d) (2) (f) of the Federal Deposit Insurance Act.

"Fiduciary" means trustee, agent, executor, administrator, committee, guardian for a minor or for a person under legal disability, receiver, trustee in bankruptcy, assignee for creditors, or any holder of similar position of trust.

"Financial institution" means a bank, savings and loan association, credit union, or any licensee under the Consumer Installment Loan Act or the Sales Finance Agency Act and, for

purposes of Section 48.3, any proprietary network, funds transfer corporation, or other entity providing electronic funds transfer services, or any corporate fiduciary, its subsidiaries, affiliates, parent company, or contractual service provider that is examined by the Commissioner.

"Foundation" means the Illinois Bank Examiners' Education Foundation.

"General obligation" means a bond, note, debenture, security, or other instrument evidencing an obligation of the government entity that is the issuer that is supported by the full available resources of the issuer, the principal and interest of which is payable in whole or in part by taxation.

"Guarantee" means an undertaking or promise to answer for payment of another's debt or performance of another's duty, liability, or obligation whether "payment guaranteed" or "collection guaranteed".

"In danger of default" means a State or national bank, a federally chartered insured savings association or an Illinois state chartered insured savings association with respect to which the Commissioner or the appropriate federal banking agency has advised the Federal Deposit Insurance Corporation that:

(1) in the opinion of the Commissioner or the appropriate federal banking agency,

(A) the State or national bank or insured savings association is not likely to be able to meet the

demands of the State or national bank's or savings association's obligations in the normal course of business; and

(B) there is no reasonable prospect that the State or national bank or insured savings association will be able to meet those demands or pay those obligations without federal assistance; or

(2) in the opinion of the Commissioner or the appropriate federal banking agency,

(A) the State or national bank or insured savings association has incurred or is likely to incur losses that will deplete all or substantially all of its capital; and

(B) there is no reasonable prospect that the capital of the State or national bank or insured savings association will be replenished without federal assistance.

"In default" means, with respect to a State or national bank or an insured savings association, any adjudication or other official determination by any court of competent jurisdiction, the Commissioner, the appropriate federal banking agency, or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed for a State or national bank or an insured savings association.

"Insured savings association" means any federal savings association chartered under Section 5 of the federal Home

Owners' Loan Act and any State savings association chartered under the Illinois Savings and Loan Act of 1985 or a predecessor Illinois statute, the deposits of which are insured by the Federal Deposit Insurance Corporation. The term also includes a savings bank organized or operating under the Savings Bank Act.

"Insured savings association in recovery" means an insured savings association that is not an eligible depository institution and that does not meet the minimum capital requirements applicable with respect to the insured savings association.

"Issuer" means for purposes of Section 33 every person who shall have issued or proposed to issue any security; except that (1) with respect to certificates of deposit, voting trust certificates, collateral-trust certificates, and certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions), "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust, agreement, or instrument under which the securities are issued; (2) with respect to trusts other than those specified in clause (1) above, where the trustee is a corporation authorized to accept and execute trusts, "issuer" means the entrusters, depositors, or creators of the trust and any manager or committee charged with the general direction of the affairs of the trust pursuant to the

provisions of the agreement or instrument creating the trust; and (3) with respect to equipment trust certificates or like securities, "issuer" means the person to whom the equipment or property is or is to be leased or conditionally sold.

"Letter of credit" and "customer" shall have the meanings ascribed to those terms in Section 5-102 of the Uniform Commercial Code.

"Main banking premises" means the location that is designated in a bank's charter as its main office.

"Maker or obligor" means for purposes of Section 33 the issuer of a security, the promisor in a debenture or other debt security, or the mortgagor or grantor of a trust deed or similar conveyance of a security interest in real or personal property.

"Merged bank" means a merging bank that is not the continuing, resulting, or surviving bank in a consolidation or merger.

"Merger" includes consolidation.

"Merging bank" means a party to a bank merger.

"Merging trust company" means a trust company party to a merger with a State bank.

"Mid-tier bank holding company" means a corporation that (a) owns 100% of the issued and outstanding shares of each class of stock of a State bank, (b) has no other subsidiaries, and (c) 100% of the issued and outstanding shares of the corporation are owned by a parent bank holding company.

"Municipality" means any municipality, political subdivision, school district, taxing district, or agency.

"National bank" means a national banking association located in this State and after May 31, 1997, means a national banking association without regard to its location.

"Out-of-state bank" means a bank chartered under the laws of a state other than Illinois, a territory of the United States, or the District of Columbia.

"Parent bank holding company" means a corporation that is a bank holding company as that term is defined in the Illinois Bank Holding Company Act of 1957 and owns 100% of the issued and outstanding shares of a mid-tier bank holding company.

"Person" means an individual, corporation, limited liability company, partnership, joint venture, trust, estate, or unincorporated association.

"Public agency" means the State of Illinois, the various counties, townships, cities, towns, villages, school districts, educational service regions, special road districts, public water supply districts, fire protection districts, drainage districts, levee districts, sewer districts, housing authorities, the Illinois Bank Examiners' Education Foundation, the Chicago Park District, and all other political corporations or subdivisions of the State of Illinois, whether now or hereafter created, whether herein specifically mentioned or not, and shall also include any other state or any political corporation or subdivision of another

state.

"Public funds" or "public money" means current operating funds, special funds, interest and sinking funds, and funds of any kind or character belonging to, in the custody of, or subject to the control or regulation of the United States or a public agency. "Public funds" or "public money" shall include funds held by any of the officers, agents, or employees of the United States or of a public agency in the course of their official duties and, with respect to public money of the United States, shall include Postal Savings funds.

"Published" means, unless the context requires otherwise, the publishing of the notice or instrument referred to in some newspaper of general circulation in the community in which the bank is located at least once each week for 3 successive weeks. Publishing shall be accomplished by, and at the expense of, the bank required to publish. Where publishing is required, the bank shall submit to the Commissioner that evidence of the publication as the Commissioner shall deem appropriate.

"Qualified financial contract" means any security contract, commodity contract, forward contract, including spot and forward foreign exchange contracts, repurchase agreement, swap agreement, and any similar agreement, any option to enter into any such agreement, including any combination of the foregoing, and any master agreement for such agreements. A master agreement, together with all supplements thereto, shall be treated as one qualified financial contract. The contract,

option, agreement, or combination of contracts, options, or agreements shall be reflected upon the books, accounts, or records of the bank, or a party to the contract shall provide documentary evidence of such agreement.

"Recorded" means the filing or recording of the notice or instrument referred to in the office of the Recorder of the county wherein the bank is located.

"Resulting bank" means the bank resulting from a merger or conversion.

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

"Securities" means stocks, bonds, debentures, notes, or other similar obligations.

"Stand-by letter of credit" means a letter of credit under which drafts are payable upon the condition the customer has defaulted in performance of a duty, liability, or obligation.

"State bank" means any banking corporation that has a banking charter issued by the Commissioner under this Act.

"State Banking Board" means the State Banking Board of Illinois.

"Subsidiary" with respect to a specified company means a company that is controlled by the specified company. For purposes of paragraphs (8) and (12) of Section 5 of this Act, "control" means the exercise of operational or managerial control of a corporation by the bank, either alone or together

with other affiliates of the bank.

"Surplus" means the aggregate of (i) amounts paid in excess of the par value of capital stock and preferred stock; (ii) amounts contributed other than for capital stock and preferred stock and allocated to the surplus account; and (iii) amounts transferred from undivided profits.

"Tier 1 Capital" and "Tier 2 Capital" have the meanings assigned to those terms in regulations promulgated for the appropriate federal banking agency of a state bank, as those regulations are now or hereafter amended.

"Trust company" means a limited liability company or corporation incorporated in this State for the purpose of accepting and executing trusts.

"Undivided profits" means undistributed earnings less discretionary transfers to surplus.

"Unimpaired capital and unimpaired surplus", for the purposes of paragraph (21) of Section 5 and Sections 32, 33, 34, 35.1, 35.2, and 47 of this Act means the sum of the state bank's Tier 1 Capital and Tier 2 Capital plus such other shareholder equity as may be included by regulation of the Commissioner. Unimpaired capital and unimpaired surplus shall be calculated on the basis of the date of the last quarterly call report filed with the Commissioner preceding the date of the transaction for which the calculation is made, provided that: (i) when a material event occurs after the date of the last quarterly call report filed with the Commissioner that

reduces or increases the bank's unimpaired capital and unimpaired surplus by 10% or more, then the unimpaired capital and unimpaired surplus shall be calculated from the date of the material event for a transaction conducted after the date of the material event; and (ii) if the Commissioner determines for safety and soundness reasons that a state bank should calculate unimpaired capital and unimpaired surplus more frequently than provided by this paragraph, the Commissioner may by written notice direct the bank to calculate unimpaired capital and unimpaired surplus at a more frequent interval. In the case of a state bank newly chartered under Section 13 or a state bank resulting from a merger, consolidation, or conversion under Sections 21 through 26 for which no preceding quarterly call report has been filed with the Commissioner, unimpaired capital and unimpaired surplus shall be calculated for the first calendar quarter on the basis of the effective date of the charter, merger, consolidation, or conversion.

(Source: P.A. 92-483, eff. 8-23-01; 93-561, eff. 1-1-04.)

(205 ILCS 5/48) (from Ch. 17, par. 359)

Sec. 48. Secretary's ~~Commissioner's~~ powers; duties. The Secretary ~~Commissioner~~ shall have the powers and authority, and is charged with the duties and responsibilities designated in this Act, and a State bank shall not be subject to any other visitorial power other than as authorized by this Act, except those vested in the courts, or upon prior consultation with the

Secretary ~~Commissioner~~, a foreign bank regulator with an appropriate supervisory interest in the parent or affiliate of a state bank. In the performance of the Secretary's ~~Commissioner's~~ duties:

(1) The Commissioner shall call for statements from all State banks as provided in Section 47 at least one time during each calendar quarter.

(2) (a) The Commissioner, as often as the Commissioner shall deem necessary or proper, and no less frequently than 18 months following the preceding examination, shall appoint a suitable person or persons to make an examination of the affairs of every State bank, except that for every eligible State bank, as defined by regulation, the Commissioner in lieu of the examination may accept on an alternating basis the examination made by the eligible State bank's appropriate federal banking agency pursuant to Section 111 of the Federal Deposit Insurance Corporation Improvement Act of 1991, provided the appropriate federal banking agency has made such an examination. A person so appointed shall not be a stockholder or officer or employee of any bank which that person may be directed to examine, and shall have powers to make a thorough examination into all the affairs of the bank and in so doing to examine any of the officers or agents or employees thereof on oath and shall make a full and detailed report of the condition of the bank to the Commissioner. In making the examination the examiners shall include an

examination of the affairs of all the affiliates of the bank, as defined in subsection (b) of Section 35.2 of this Act, or subsidiaries of the bank as shall be necessary to disclose fully the conditions of the subsidiaries or affiliates, the relations between the bank and the subsidiaries or affiliates and the effect of those relations upon the affairs of the bank, and in connection therewith shall have power to examine any of the officers, directors, agents, or employees of the subsidiaries or affiliates on oath. After May 31, 1997, the Commissioner may enter into cooperative agreements with state regulatory authorities of other states to provide for examination of State bank branches in those states, and the Commissioner may accept reports of examinations of State bank branches from those state regulatory authorities. These cooperative agreements may set forth the manner in which the other state regulatory authorities may be compensated for examinations prepared for and submitted to the Commissioner.

(b) After May 31, 1997, the Commissioner is authorized to examine, as often as the Commissioner shall deem necessary or proper, branches of out-of-state banks. The Commissioner may establish and may assess fees to be paid to the Commissioner for examinations under this subsection (b). The fees shall be borne by the out-of-state bank, unless the fees are borne by the state regulatory authority that chartered the out-of-state bank, as determined by a cooperative agreement between the Commissioner and the state regulatory authority that chartered

the out-of-state bank.

(2.5) Whenever any State bank, any subsidiary or affiliate of a State bank, or after May 31, 1997, any branch of an out-of-state bank causes to be performed, by contract or otherwise, any bank services for itself, whether on or off its premises:

(a) that performance shall be subject to examination by the Commissioner to the same extent as if services were being performed by the bank or, after May 31, 1997, branch of the out-of-state bank itself on its own premises; and

(b) the bank or, after May 31, 1997, branch of the out-of-state bank shall notify the Commissioner of the existence of a service relationship. The notification shall be submitted with the first statement of condition (as required by Section 47 of this Act) due after the making of the service contract or the performance of the service, whichever occurs first. The Commissioner shall be notified of each subsequent contract in the same manner.

For purposes of this subsection (2.5), the term "bank services" means services such as sorting and posting of checks and deposits, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a State bank, including but not limited to electronic data processing related to those bank services.

(3) The expense of administering this Act, including the expense of the examinations of State banks as provided in this Act, shall to the extent of the amounts resulting from the fees provided for in paragraphs (a), (a-2), and (b) of this subsection (3) be assessed against and borne by the State banks:

(a) Each bank shall pay to the Secretary ~~Commissioner~~ a Call Report Fee which shall be paid in quarterly installments equal to one-fourth of the sum of the annual fixed fee of \$800, plus a variable fee based on the assets shown on the quarterly statement of condition delivered to the Secretary ~~Commissioner~~ in accordance with Section 47 for the preceding quarter according to the following schedule: 16¢ per \$1,000 of the first \$5,000,000 of total assets, 15¢ per \$1,000 of the next \$20,000,000 of total assets, 13¢ per \$1,000 of the next \$75,000,000 of total assets, 9¢ per \$1,000 of the next \$400,000,000 of total assets, 7¢ per \$1,000 of the next \$500,000,000 of total assets, and 5¢ per \$1,000 of all assets in excess of \$1,000,000,000, of the State bank. The Call Report Fee shall be calculated by the Secretary ~~Commissioner~~ and billed to the banks for remittance at the time of the quarterly statements of condition provided for in Section 47. The Secretary ~~Commissioner~~ may require payment of the fees provided in this Section by an electronic transfer of funds or an automatic debit of an account of each of the

State banks. In case more than one examination of any bank is deemed by the Secretary ~~Commissioner~~ to be necessary in any examination frequency cycle specified in subsection 2(a) of this Section, and is performed at his direction, the Secretary ~~Commissioner~~ may assess a reasonable additional fee to recover the cost of the additional examination; provided, however, that an examination conducted at the request of the State Treasurer pursuant to the Uniform Disposition of Unclaimed Property Act shall not be deemed to be an additional examination under this Section. In lieu of the method and amounts set forth in this paragraph (a) for the calculation of the Call Report Fee, the Secretary ~~Commissioner~~ may specify by rule that the Call Report Fees provided by this Section may be assessed semiannually or some other period and may provide in the rule the formula to be used for calculating and assessing the periodic Call Report Fees to be paid by State banks.

(a-1) If in the opinion of the Commissioner an emergency exists or appears likely, the Commissioner may assign an examiner or examiners to monitor the affairs of a State bank with whatever frequency he deems appropriate, including but not limited to a daily basis. The reasonable and necessary expenses of the Commissioner during the period of the monitoring shall be borne by the subject bank. The Commissioner shall furnish the State bank a

statement of time and expenses if requested to do so within 30 days of the conclusion of the monitoring period.

(a-2) On and after January 1, 1990, the reasonable and necessary expenses of the Commissioner during examination of the performance of electronic data processing services under subsection (2.5) shall be borne by the banks for which the services are provided. An amount, based upon a fee structure prescribed by the Commissioner, shall be paid by the banks or, after May 31, 1997, branches of out-of-state banks receiving the electronic data processing services along with the Call Report Fee assessed under paragraph (a) of this subsection (3).

(a-3) After May 31, 1997, the reasonable and necessary expenses of the Commissioner during examination of the performance of electronic data processing services under subsection (2.5) at or on behalf of branches of out-of-state banks shall be borne by the out-of-state banks, unless those expenses are borne by the state regulatory authorities that chartered the out-of-state banks, as determined by cooperative agreements between the Commissioner and the state regulatory authorities that chartered the out-of-state banks.

(b) "Fiscal year" for purposes of this Section 48 is defined as a period beginning July 1 of any year and ending June 30 of the next year. The Commissioner shall receive for each fiscal year, commencing with the fiscal year

ending June 30, 1987, a contingent fee equal to the lesser of the aggregate of the fees paid by all State banks under paragraph (a) of subsection (3) for that year, or the amount, if any, whereby the aggregate of the administration expenses, as defined in paragraph (c), for that fiscal year exceeds the sum of the aggregate of the fees payable by all State banks for that year under paragraph (a) of subsection (3), plus any amounts transferred into the Bank and Trust Company Fund from the State Pensions Fund for that year, plus all other amounts collected by the Commissioner for that year under any other provision of this Act, plus the aggregate of all fees collected for that year by the Commissioner under the Corporate Fiduciary Act, excluding the receivership fees provided for in Section 5-10 of the Corporate Fiduciary Act, and the Foreign Banking Office Act. The aggregate amount of the contingent fee thus arrived at for any fiscal year shall be apportioned amongst, assessed upon, and paid by the State banks and foreign banking corporations, respectively, in the same proportion that the fee of each under paragraph (a) of subsection (3), respectively, for that year bears to the aggregate for that year of the fees collected under paragraph (a) of subsection (3). The aggregate amount of the contingent fee, and the portion thereof to be assessed upon each State bank and foreign banking corporation, respectively, shall be determined by the Commissioner and

shall be paid by each, respectively, within 120 days of the close of the period for which the contingent fee is computed and is payable, and the Commissioner shall give 20 days advance notice of the amount of the contingent fee payable by the State bank and of the date fixed by the Commissioner for payment of the fee.

(c) The "administration expenses" for any fiscal year shall mean the ordinary and contingent expenses for that year incident to making the examinations provided for by, and for otherwise administering, this Act, the Corporate Fiduciary Act, excluding the expenses paid from the Corporate Fiduciary Receivership account in the Bank and Trust Company Fund, the Foreign Banking Office Act, the Electronic Fund Transfer Act, and the Illinois Bank Examiners' Education Foundation Act, including all salaries and other compensation paid for personal services rendered for the State by officers or employees of the State, including the Commissioner and the Deputy Commissioners, all expenditures for telephone and telegraph charges, postage and postal charges, office stationery, supplies and services, and office furniture and equipment, including typewriters and copying and duplicating machines and filing equipment, surety bond premiums, and travel expenses of those officers and employees, employees, expenditures or charges for the acquisition, enlargement or improvement of, or for the use

of, any office space, building, or structure, or expenditures for the maintenance thereof or for furnishing heat, light, or power with respect thereto, all to the extent that those expenditures are directly incidental to such examinations or administration. The Commissioner shall not be required by paragraphs (c) or (d-1) of this subsection (3) to maintain in any fiscal year's budget appropriated reserves for accrued vacation and accrued sick leave that is required to be paid to employees of the Commissioner upon termination of their service with the Commissioner in an amount that is more than is reasonably anticipated to be necessary for any anticipated turnover in employees, whether due to normal attrition or due to layoffs, terminations, or resignations.

(d) The aggregate of all fees collected by the Secretary ~~Commissioner~~ under this Act, the Corporate Fiduciary Act, or the Foreign Banking Office Act on and after July 1, 1979, shall be paid promptly after receipt of the same, accompanied by a detailed statement thereof, into the State treasury and shall be set apart in a special fund to be known as the "Bank and Trust Company Fund", except as provided in paragraph (c) of subsection (11) of this Section. All earnings received from investments of funds in the Bank and Trust Company Fund shall be deposited in the Bank and Trust Company Fund and may be used for the same purposes as fees deposited in that Fund. The amount from

time to time deposited into the Bank and Trust Company Fund shall be used: (i) to offset the ordinary administrative expenses of the ~~Secretary Commissioner of Banks and Real Estate~~ as defined in this Section or (ii) as a credit against fees under paragraph (d-1) of this subsection (3). Nothing in this amendatory Act of 1979 shall prevent continuing the practice of paying expenses involving salaries, retirement, social security, and State-paid insurance premiums of State officers by appropriations from the General Revenue Fund. However, the General Revenue Fund shall be reimbursed for those payments made on and after July 1, 1979, by an annual transfer of funds from the Bank and Trust Company Fund. Moneys in the Bank and Trust Company Fund may be transferred to the Professions Indirect Cost Fund, as authorized under Section 2105-300 of the Department of Professional Regulation Law of the Civil Administrative Code of Illinois.

Notwithstanding provisions in the State Finance Act, as now or hereafter amended, or any other law to the contrary, the sum of \$18,788,847 shall be transferred from the Bank and Trust Company Fund to the Financial Institutions Settlement of 2008 Fund on the effective date of this amendatory Act of the 95th General Assembly, or as soon thereafter as practical.

Notwithstanding provisions in the State Finance Act, as now or hereafter amended, or any other law to the

contrary, the Governor may, during any fiscal year through January 10, 2011, from time to time direct the State Treasurer and Comptroller to transfer a specified sum not exceeding 10% of the revenues to be deposited into the Bank and Trust Company Fund during that fiscal year from that Fund to the General Revenue Fund in order to help defray the State's operating costs for the fiscal year. Notwithstanding provisions in the State Finance Act, as now or hereafter amended, or any other law to the contrary, the total sum transferred during any fiscal year through January 10, 2011, from the Bank and Trust Company Fund to the General Revenue Fund pursuant to this provision shall not exceed during any fiscal year 10% of the revenues to be deposited into the Bank and Trust Company Fund during that fiscal year. The State Treasurer and Comptroller shall transfer the amounts designated under this Section as soon as may be practicable after receiving the direction to transfer from the Governor.

(d-1) Adequate funds shall be available in the Bank and Trust Company Fund to permit the timely payment of administration expenses. In each fiscal year the total administration expenses shall be deducted from the total fees collected by the Commissioner and the remainder transferred into the Cash Flow Reserve Account, unless the balance of the Cash Flow Reserve Account prior to the transfer equals or exceeds one-fourth of the total initial

appropriations from the Bank and Trust Company Fund for the subsequent year, in which case the remainder shall be credited to State banks and foreign banking corporations and applied against their fees for the subsequent year. The amount credited to each State bank and foreign banking corporation shall be in the same proportion as the Call Report Fees paid by each for the year bear to the total Call Report Fees collected for the year. If, after a transfer to the Cash Flow Reserve Account is made or if no remainder is available for transfer, the balance of the Cash Flow Reserve Account is less than one-fourth of the total initial appropriations for the subsequent year and the amount transferred is less than 5% of the total Call Report Fees for the year, additional amounts needed to make the transfer equal to 5% of the total Call Report Fees for the year shall be apportioned amongst, assessed upon, and paid by the State banks and foreign banking corporations in the same proportion that the Call Report Fees of each, respectively, for the year bear to the total Call Report Fees collected for the year. The additional amounts assessed shall be transferred into the Cash Flow Reserve Account. For purposes of this paragraph (d-1), the calculation of the fees collected by the Commissioner shall exclude the receivership fees provided for in Section 5-10 of the Corporate Fiduciary Act.

(e) The Commissioner may upon request certify to any

public record in his keeping and shall have authority to levy a reasonable charge for issuing certifications of any public record in his keeping.

(f) In addition to fees authorized elsewhere in this Act, the Commissioner may, in connection with a review, approval, or provision of a service, levy a reasonable charge to recover the cost of the review, approval, or service.

(4) Nothing contained in this Act shall be construed to limit the obligation relative to examinations and reports of any State bank, deposits in which are to any extent insured by the United States or any agency thereof, nor to limit in any way the powers of the Commissioner with reference to examinations and reports of that bank.

(5) The nature and condition of the assets in or investment of any bonus, pension, or profit sharing plan for officers or employees of every State bank or, after May 31, 1997, branch of an out-of-state bank shall be deemed to be included in the affairs of that State bank or branch of an out-of-state bank subject to examination by the Commissioner under the provisions of subsection (2) of this Section, and if the Commissioner shall find from an examination that the condition of or operation of the investments or assets of the plan is unlawful, fraudulent, or unsafe, or that any trustee has abused his trust, the Commissioner shall, if the situation so found by the Commissioner shall not be corrected to his satisfaction within

60 days after the Commissioner has given notice to the board of directors of the State bank or out-of-state bank of his findings, report the facts to the Attorney General who shall thereupon institute proceedings against the State bank or out-of-state bank, the board of directors thereof, or the trustees under such plan as the nature of the case may require.

(6) The Commissioner shall have the power:

(a) To promulgate reasonable rules for the purpose of administering the provisions of this Act.

(a-5) To impose conditions on any approval issued by the Commissioner if he determines that the conditions are necessary or appropriate. These conditions shall be imposed in writing and shall continue in effect for the period prescribed by the Commissioner.

(b) To issue orders against any person, if the Commissioner has reasonable cause to believe that an unsafe or unsound banking practice has occurred, is occurring, or is about to occur, if any person has violated, is violating, or is about to violate any law, rule, or written agreement with the Commissioner, or for the purpose of administering the provisions of this Act and any rule promulgated in accordance with this Act.

(b-1) To enter into agreements with a bank establishing a program to correct the condition of the bank or its practices.

(c) To appoint hearing officers to execute any of the

powers granted to the Commissioner under this Section for the purpose of administering this Act and any rule promulgated in accordance with this Act and otherwise to authorize, in writing, an officer or employee of the Office of Banks and Real Estate to exercise his powers under this Act.

(d) To subpoena witnesses, to compel their attendance, to administer an oath, to examine any person under oath, and to require the production of any relevant books, papers, accounts, and documents in the course of and pursuant to any investigation being conducted, or any action being taken, by the Commissioner in respect of any matter relating to the duties imposed upon, or the powers vested in, the Commissioner under the provisions of this Act or any rule promulgated in accordance with this Act.

(e) To conduct hearings.

(7) Whenever, in the opinion of the Commissioner, any director, officer, employee, or agent of a State bank or any subsidiary or bank holding company of the bank or, after May 31, 1997, of any branch of an out-of-state bank or any subsidiary or bank holding company of the bank shall have violated any law, rule, or order relating to that bank or any subsidiary or bank holding company of the bank, shall have obstructed or impeded any examination or investigation by the Commissioner, shall have engaged in an unsafe or unsound practice in conducting the business of that bank or any

subsidiary or bank holding company of the bank, or shall have violated any law or engaged or participated in any unsafe or unsound practice in connection with any financial institution or other business entity such that the character and fitness of the director, officer, employee, or agent does not assure reasonable promise of safe and sound operation of the State bank, the Commissioner may issue an order of removal. If, in the opinion of the Commissioner, any former director, officer, employee, or agent of a State bank or any subsidiary or bank holding company of the bank, prior to the termination of his or her service with that bank or any subsidiary or bank holding company of the bank, violated any law, rule, or order relating to that State bank or any subsidiary or bank holding company of the bank, obstructed or impeded any examination or investigation by the Commissioner, engaged in an unsafe or unsound practice in conducting the business of that bank or any subsidiary or bank holding company of the bank, or violated any law or engaged or participated in any unsafe or unsound practice in connection with any financial institution or other business entity such that the character and fitness of the director, officer, employee, or agent would not have assured reasonable promise of safe and sound operation of the State bank, the Commissioner may issue an order prohibiting that person from further service with a bank or any subsidiary or bank holding company of the bank as a director, officer, employee, or agent. An order issued pursuant to this subsection

shall be served upon the director, officer, employee, or agent. A copy of the order shall be sent to each director of the bank affected by registered mail. The person affected by the action may request a hearing before the State Banking Board within 10 days after receipt of the order. The hearing shall be held by the Board within 30 days after the request has been received by the Board. The Board shall make a determination approving, modifying, or disapproving the order of the Commissioner as its final administrative decision. If a hearing is held by the Board, the Board shall make its determination within 60 days from the conclusion of the hearing. Any person affected by a decision of the Board under this subsection (7) of Section 48 of this Act may have the decision reviewed only under and in accordance with the Administrative Review Law and the rules adopted pursuant thereto. A copy of the order shall also be served upon the bank of which he is a director, officer, employee, or agent, whereupon he shall cease to be a director, officer, employee, or agent of that bank. The Commissioner may institute a civil action against the director, officer, or agent of the State bank or, after May 31, 1997, of the branch of the out-of-state bank against whom any order provided for by this subsection (7) of this Section 48 has been issued, and against the State bank or, after May 31, 1997, out-of-state bank, to enforce compliance with or to enjoin any violation of the terms of the order. Any person who has been the subject of an order of removal or an order of prohibition issued by the

Commissioner under this subsection or Section 5-6 of the Corporate Fiduciary Act may not thereafter serve as director, officer, employee, or agent of any State bank or of any branch of any out-of-state bank, or of any corporate fiduciary, as defined in Section 1-5.05 of the Corporate Fiduciary Act, or of any other entity that is subject to licensure or regulation by the Commissioner or the Office of Banks and Real Estate unless the Commissioner has granted prior approval in writing.

For purposes of this paragraph (7), "bank holding company" has the meaning prescribed in Section 2 of the Illinois Bank Holding Company Act of 1957.

(8) The Commissioner may impose civil penalties of up to \$10,000 against any person for each violation of any provision of this Act, any rule promulgated in accordance with this Act, any order of the Commissioner, or any other action which in the Commissioner's discretion is an unsafe or unsound banking practice.

(9) The Commissioner may impose civil penalties of up to \$100 against any person for the first failure to comply with reporting requirements set forth in the report of examination of the bank and up to \$200 for the second and subsequent failures to comply with those reporting requirements.

(10) All final administrative decisions of the Commissioner hereunder shall be subject to judicial review pursuant to the provisions of the Administrative Review Law. For matters involving administrative review, venue shall be in

either Sangamon County or Cook County.

(11) The endowment fund for the Illinois Bank Examiners' Education Foundation shall be administered as follows:

(a) (Blank).

(b) The Foundation is empowered to receive voluntary contributions, gifts, grants, bequests, and donations on behalf of the Illinois Bank Examiners' Education Foundation from national banks and other persons for the purpose of funding the endowment of the Illinois Bank Examiners' Education Foundation.

(c) The aggregate of all special educational fees collected by the Commissioner and property received by the Commissioner on behalf of the Illinois Bank Examiners' Education Foundation under this subsection (11) on or after June 30, 1986, shall be either (i) promptly paid after receipt of the same, accompanied by a detailed statement thereof, into the State Treasury and shall be set apart in a special fund to be known as "The Illinois Bank Examiners' Education Fund" to be invested by either the Treasurer of the State of Illinois in the Public Treasurers' Investment Pool or in any other investment he is authorized to make or by the Illinois State Board of Investment as the board of trustees of the Illinois Bank Examiners' Education Foundation may direct or (ii) deposited into an account maintained in a commercial bank or corporate fiduciary in the name of the Illinois Bank Examiners' Education

Foundation pursuant to the order and direction of the Board of Trustees of the Illinois Bank Examiners' Education Foundation.

(12) (Blank).

(Source: P.A. 94-91, eff. 7-1-05.)

(205 ILCS 5/48.05 new)

Sec. 48.05. Regulatory fees. For the fiscal year beginning July 1, 2007 and every year thereafter, each state bank regulated by the Department shall pay a regulatory fee to the Department based upon its total assets as shown by its year-end Call Report at the following rates:

19.295¢ per \$1,000 of the first \$5,000,000 of total assets;

18.16¢ per \$1,000 of the next \$20,000,000 of total assets;

15.89¢ per \$1,000 of the next \$75,000,000 of total assets;

10.7825¢ per \$1,000 of the next \$400,000,000 of total assets;

8.5125¢ per \$1,000 of the next \$500,000,000 of total assets;

6.2425¢ per \$1,000 of the next \$19,000,000,000 of total assets;

2.27¢ per \$1,000 of the next \$30,000,000,000 of total assets;

1.135¢ per \$1,000 of the next \$50,000,000,000 of total assets; and

0.5675¢ per \$1,000 of all assets in excess of \$100,000,000,000 of the state bank.

Section 15. The Illinois Savings and Loan Act of 1985 is amended by adding Sections 1-10.39 and 7-3.05 and by changing Sections 7-3 and 7-19.1 as follows:

(205 ILCS 105/1-10.39 new)

Sec. 1-10.39. Secretary of the Department of Financial and Professional Regulation. For purposes of this Act, "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.

(205 ILCS 105/7-3) (from Ch. 17, par. 3307-3)

Sec. 7-3. Personnel, records, files, actions and duties, etc.

(a) The Secretary ~~Commissioner~~ shall appoint, subject to applicable provisions of the Personnel Code, a supervisor, such examiners, employees, experts and special assistants as may be necessary to carry out effectively this Act. The Secretary ~~Commissioner~~ shall require each supervisor, examiner, expert and special assistant employed or appointed by him to give bond, with security to be approved by the Secretary

~~Commissioner~~, not less in any case than \$15,000, conditioned for the faithful discharge of his duties. The premium on such bond shall be paid by the Secretary ~~Commissioner~~ from funds appropriated for that purpose. The bond, along with verification of payment of the premium on such bond, shall be filed in the office of the Secretary of State.

(b) The Secretary ~~Commissioner~~ shall have the following duties and powers:

(1) To exercise the rights, powers and duties set forth in this Act or in any other related Act;

(2) To establish such regulations as may be reasonable or necessary to accomplish the purposes of this Act;

(3) To direct and supervise all the administrative and technical activities of this office and create an Advisory Committee which upon request will make recommendations to him;

(4) To make an annual report regarding the work of his office as he may consider desirable to the Governor, or as the Governor may request;

(5) To cause a suit to be filed in his name to enforce any law of this State that applies to an association, subsidiary of an association, or holding company operating under this Act and shall include the enforcement of any obligation of the officers, directors or employees of any association;

(6) To prescribe a uniform manner in which the books and records of every association are to be maintained; and

(7) To establish reasonable and rationally based fee

structures for each association and holding company operating under this Act and for their service corporations and subsidiaries, which fees shall include but not be limited to annual fees, application fees, regular and special examination fees, and such other fees as the Secretary ~~Commissioner~~ establishes and demonstrates to be directly resultant from his responsibilities under this Act and as are directly attributable to individual entities operating under this Act.

(Source: P.A. 85-313.)

(205 ILCS 105/7-3.05 new)

Sec. 7-3.05. Regulatory fees.

(a) For the fiscal year beginning July 1, 2007 and every year thereafter, each association and each service corporation operating under the provisions of this Act shall pay a fixed fee of \$520, plus a variable fee based on the total assets of the association or service corporation at the following rates:

28.75¢ per \$1,000 of the first \$2,000,000 of total assets;

24.97¢ per \$1,000 of the next \$3,000,000 of total assets;

22.70¢ per \$1,000 of the next \$5,000,000 of total assets;

19.295¢ per \$1,000 of the next \$15,000,000 of total assets;

17.025¢ per \$1,000 of the next \$25,000,000 of total

assets;

13.62¢ per \$1,000 of the next \$50,000,000 of total

assets;

11.35¢ per \$1,000 of the next \$400,000,000 of total

assets;

7.945¢ per \$1,000 of the next \$500,000,000 of total

assets; and

5.675¢ per \$1,000 of all total assets in excess of
\$1,000,000,000 of such association or service corporation.

(b) The Secretary shall receive and there shall be paid to
the Secretary an additional fee as an adjustment to the
supervisory fee, based upon the difference between the total
assets of the association or service corporation as shown by
its financial report filed with the Secretary for the reporting
period of the calendar year ended December 31 on which the
supervisory fee was based and the total assets of the
association or service corporation as shown by its financial
report filed with the Secretary for the reporting period of the
calendar year ended December 31 in which the quarterly payments
are made according to the following schedule:

28.75¢ per \$1,000 of the first \$2,000,000 of total

assets;

24.97¢ per \$1,000 of the next \$3,000,000 of total

assets;

22.70¢ per \$1,000 of the next \$5,000,000 of total

assets;

19.295¢ per \$1,000 of the next \$15,000,000 of total assets;

17.025¢ per \$1,000 of the next \$25,000,000 of total assets;

13.62¢ per \$1,000 of the next \$50,000,000 of total assets;

11.35¢ per \$1,000 of the next \$400,000,000 of total assets;

7.945¢ per \$1,000 of the next \$500,000,000 of total assets; and

5.675¢ per \$1,000 of all total assets in excess of \$1,000,000,000 of such association or service corporation.

(c) The Secretary shall receive and there shall be paid to the Secretary by each association and each service corporation a fee of \$520 for each approved branch office or facility office established under the Illinois Administrative Code. The determination of the fees shall be made annually as of the close of business of the prior calendar year ended December 31.

(205 ILCS 105/7-19.1) (from Ch. 17, par. 3307-19.1)

Sec. 7-19.1. Savings and Residential Finance Regulatory Fund.

(a) The aggregate of all fees collected by the Secretary ~~Commissioner~~ under this Act shall be paid promptly after receipt of the same, accompanied by a detailed statement thereof, into the State treasury and shall be set apart in the

Savings and Residential Finance Regulatory Fund, a special fund hereby created in the State treasury. The amounts deposited into the Fund shall be used for the ordinary and contingent expenses of the Department of Financial and Professional Regulation and the Division of Banking, or their successors, in administering and enforcing the Illinois Savings and Loan Act of 1985, the Savings Bank Act, and the Residential Mortgage License Act of 1987 and other laws, rules, and regulations as may apply to the administration and enforcement of the foregoing laws, rules, and regulations as amended from time to time ~~Office of Banks and Real Estate~~. Nothing in this Act shall prevent continuing the practice of paying expenses involving salaries, retirement, social security, and State-paid insurance of State officers by appropriation from the General Revenue Fund.

(b) Except as otherwise provided in subsection (b-5), moneys in the Savings and Residential Finance Regulatory Fund may not be appropriated, assigned, or transferred to another State fund. The moneys in the Fund shall be for the sole benefit of the institutions assessed.

(b-5) Moneys in the Savings and Residential Finance Regulatory Fund may be transferred to the Professions Indirect Cost Fund, as authorized under Section 2105-300 of the Department of Professional Regulation Law of the Civil Administrative Code of Illinois.

(b-10) Notwithstanding provisions in the State Finance

Act, as now or hereafter amended, or any other law to the contrary, the sum of \$27,481,638 shall be transferred from the Savings and Residential Finance Regulatory Fund to the Financial Institutions Settlement of 2008 Fund on the effective date of this amendatory Act of the 95th General Assembly, or as soon thereafter as practical.

Notwithstanding provisions in the State Finance Act, as now or hereafter amended, or any other law to the contrary, the Governor may, during any fiscal year through January 10, 2011, from time to time direct the State Treasurer and Comptroller to transfer a specified sum not exceeding 10% of the revenues to be deposited into the Savings and Residential Finance Regulatory Fund during that fiscal year from that Fund to the General Revenue Fund in order to help defray the State's operating costs for the fiscal year. Notwithstanding provisions in the State Finance Act, as now or hereafter amended, or any other law to the contrary, the total sum transferred during any fiscal year through January 10, 2011, from the Savings and Residential Finance Regulatory Fund to the General Revenue Fund pursuant to this provision shall not exceed during any fiscal year 10% of the revenues to be deposited into the Savings and Residential Finance Regulatory Fund during that fiscal year. The State Treasurer and Comptroller shall transfer the amounts designated under this Section as soon as may be practicable after receiving the direction to transfer from the Governor.

(c) All earnings received from investments of funds in the Savings and Residential Finance Regulatory Fund shall be deposited into the Savings and Residential Finance Regulatory Fund and may be used for the same purposes as fees deposited into that Fund.

(d) When the balance in the Savings and Residential Finance Regulatory Fund at the end of a fiscal year apportioned to the fees collected under the Illinois Savings and Loan Act of 1985 and the Savings Bank Act exceeds 25% of the total actual administrative and operational expenses incurred by the State for that fiscal year in administering and enforcing the Illinois Savings and Loan Act of 1985 and the Savings Bank Act and such other laws, rules, and regulations as may apply to the administration and enforcement of the foregoing laws, rules, and regulations, the excess shall be credited to the appropriate institutions and entities and applied against their regulatory fees for the subsequent fiscal year. The amount credited to each institution or entity shall be in the same proportion that the regulatory fees paid by the institution or entity for the fiscal year in which the excess is produced bear to the aggregate amount of all fees collected by the Secretary under the Illinois Savings and Loan Act of 1985 and the Savings Bank Act for the same fiscal year. For the purpose of this Section, "fiscal year" means the period beginning July 1 of any year and ending June 30 of the next calendar year.

(Source: P.A. 94-91, eff. 7-1-05.)

Section 20. The Savings Bank Act is amended by adding Sections 1007.135 and 9002.5 and by changing Section 9002 as follows:

(205 ILCS 205/1007.135 new)

Sec. 1007.135. Secretary of the Department of Financial and Professional Regulation. "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.

(205 ILCS 205/9002) (from Ch. 17, par. 7309-2)

Sec. 9002. Powers of Secretary ~~Commissioner~~. The Secretary ~~Commissioner~~ shall have the following powers and duties:

(1) To exercise the rights, powers, and duties set forth in this Act or in any related Act.

(2) To establish regulations as may be reasonable or necessary to accomplish the purposes of this Act.

(3) To make an annual report regarding the work of his office under this Act as he may consider desirable to the Governor, or as the Governor may request.

(4) To cause a suit to be filed in his name to enforce any law of this State that applies to savings banks, their service corporations, subsidiaries, affiliates, or holding companies

operating under this Act, including the enforcement of any obligation of the officers, directors, agents, or employees of any savings bank.

(5) To prescribe a uniform manner in which the books and records of every savings bank are to be maintained.

(6) To establish a reasonable fee structure for savings banks and holding companies operating under this Act and for their service corporations and subsidiaries. The fees shall include, but not be limited to, annual fees, application fees, regular and special examination fees, and other fees as the Secretary ~~Commissioner~~ establishes and demonstrates to be directly resultant from the Secretary's ~~Commissioner's~~ responsibilities under this Act and as are directly attributable to individual entities operating under this Act. The aggregate of all fees collected by the Secretary ~~Commissioner~~ on and after the effective date of this Act shall be paid promptly after receipt of the same, accompanied by a detailed statement thereof, into the Savings and Residential Finance Regulatory Fund subject to the provisions of Section 7-19.1 of the Illinois Savings and Loan Act of 1985 including without limitation the provision for credits against regulatory fees. The amounts deposited into the Fund shall be used for the ordinary and contingent expenses of the Office of Banks and Real Estate. Nothing in this Act shall prevent continuing the practice of paying expenses involving salaries, retirement, social security, and State-paid insurance of State

officers by appropriation from the General Revenue Fund.

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

(205 ILCS 205/9002.5 new)

Sec. 9002.5. Regulatory fees.

(a) For the fiscal year beginning July 1, 2007 and every year thereafter, each savings bank and each service corporation operating under this Act shall pay a fixed fee of \$520, plus a variable fee based on the total assets of the savings bank or service corporation at the following rates:

24.97¢ per \$1,000 of the first \$2,000,000 of total assets;

22.70¢ per \$1,000 of the next \$3,000,000 of total assets;

20.43¢ per \$1,000 of the next \$5,000,000 of total assets;

17.025¢ per \$1,000 of the next \$15,000,000 of total assets;

14.755¢ per \$1,000 of the next \$25,000,000 of total assets;

12.485¢ per \$1,000 of the next \$50,000,000 of total assets;

10.215¢ per \$1,000 of the next \$400,000,000 of total assets;

6.81¢ per \$1,000 of the next \$500,000,000 of total assets; and

4.54¢ per \$1,000 of all total assets in excess of \$1,000,000,000 of such savings bank or service corporation.

(b) The Secretary shall receive and there shall be paid to the Secretary an additional fee as an adjustment to the supervisory fee, based upon the difference between the total assets of each savings bank and each service corporation as shown by its financial report filed with the Secretary for the reporting period of the calendar year ended December 31 on which the supervisory fee was based and the total assets of each savings bank and each service corporation as shown by its financial report filed with the Secretary for the reporting period of the calendar year ended December 31 in which the quarterly payments are made according to the following schedule:

24.97¢ per \$1,000 of the first \$2,000,000 of total assets;

22.70¢ per \$1,000 of the next \$3,000,000 of total assets;

20.43¢ per \$1,000 of the next \$5,000,000 of total assets;

17.025¢ per \$1,000 of the next \$15,000,000 of total assets;

14.755¢ per \$1,000 of the next \$25,000,000 of total assets;

12.485¢ per \$1,000 of the next \$50,000,000 of total

assets;

10.215¢ per \$1,000 of the next \$400,000,000 of total

assets;

6.81¢ per \$1,000 of the next \$500,000,000 of total

assets; and

4.54¢ per \$1,000 of all total assets in excess of
\$1,000,000,000 of such savings bank or service
corporation.

(c) The Secretary shall receive and there shall be paid to
the Secretary by each savings bank and each service corporation
a fee of \$520 for each approved branch office or facility
office established under the Illinois Administrative Code. The
determination of the fees shall be made annually as of the
close of business of the prior calendar year ended December 31.

Section 25. The Illinois Credit Union Act is amended by
changing Sections 1.1 and 12 as follows:

(205 ILCS 305/1.1) (from Ch. 17, par. 4402)

Sec. 1.1. Definitions.

Credit Union - The term "credit union" means a cooperative,
non-profit association, incorporated under this Act, under the
laws of the United States of America or under the laws of
another state, for the purposes of encouraging thrift among its
members, creating a source of credit at a reasonable rate of
interest, and providing an opportunity for its members to use

and control their own money in order to improve their economic and social conditions. The membership of a credit union shall consist of a group or groups each having a common bond as set forth in this Act.

Common Bond - The term "common bond" refers to groups of people who meet one of the following qualifications:

(1) Persons belonging to a specific association, group or organization, such as a church, labor union, club or society and members of their immediate families which shall include any relative by blood or marriage or foster and adopted children.

(2) Persons who reside in a reasonably compact and well defined neighborhood or community, and members of their immediate families which shall include any relative by blood or marriage or foster and adopted children.

(3) Persons who have a common employer or who are members of an organized labor union or an organized occupational or professional group within a defined geographical area, and members of their immediate families which shall include any relative by blood or marriage or foster and adopted children.

Shares - The term "shares" or "share accounts" means any form of shares issued by a credit union and established by a member in accordance with standards specified by a credit union, including but not limited to common shares, share draft accounts, classes of shares, share certificates, special

purpose share accounts, shares issued in trust, custodial accounts, and individual retirement accounts or other plans established pursuant to Section 401(d) or (f) or Section 408(a) of the Internal Revenue Code, as now or hereafter amended, or similar provisions of any tax laws of the United States that may hereafter exist.

Credit Union Organization - The term "credit union organization" means any organization established to serve the needs of credit unions, the business of which relates to the daily operations of credit unions.

Department - The term "Department" means the Illinois Department of Financial Institutions.

Director - The term "Director" means the Director of the Illinois Department of Financial Institutions, except that beginning on the effective date of this amendatory Act of the 95th General Assembly, all references in this Act to the Director of the Department of Financial Institutions are deemed, in appropriate contexts, to be references to the Secretary of Financial and Professional Regulation.

NCUA - The term "NCUA" means the National Credit Union Administration, an agency of the United States Government charged with the supervision of credit unions chartered under the laws of the United States of America.

Central Credit Union - The term "central credit union" means a credit union incorporated primarily to receive shares from and make loans to credit unions and Directors, Officers,

committee members and employees of credit unions. A central credit union may also accept as members persons who were members of credit unions which were liquidated and persons from occupational groups not otherwise served by another credit union.

Corporate Credit Union - The term "corporate credit union" means a credit union which is a cooperative, non-profit association, the membership of which is limited primarily to other credit unions.

Insolvent - "Insolvent" means the condition that results when the total of all liabilities and shares exceeds net assets of the credit union.

Danger of insolvency - For purposes of Section 61, a credit union is in "danger of insolvency" if its net worth to asset ratio falls below 2%. In calculating the danger of insolvency ratio, secondary capital shall be excluded. For purposes of Section 61, a credit union is also in "danger of insolvency" if the Department is unable to ascertain, upon examination, the true financial condition of the credit union.

Net Worth - "Net worth" means the retained earnings balance of the credit union, as determined under generally accepted accounting principles, and forms of secondary capital approved by the Director pursuant to rulemaking.

Secretary - The term "Secretary" means the Secretary of the Department of Financial and Professional Regulation, or a person authorized by the Secretary or this Act to act in the

Secretary's stead.

(Source: P.A. 92-608, eff. 7-1-02.)

(205 ILCS 305/12) (from Ch. 17, par. 4413)

Sec. 12. Regulatory fees.

(1) For the fiscal year beginning July 1, 2007, a ~~A~~ credit union regulated by the Department shall pay a regulatory fee to the Department based upon its total assets as shown by its Year-end Call Report at the following rates or at a lesser rate established by the Secretary in a manner proportionately consistent with the following rates and sufficient to fund the actual administrative and operational expenses of the Credit Union Section pursuant to subsection (4) of this Section:

TOTAL ASSETS	REGULATORY FEE
\$25,000 or less	\$100
Over \$25,000 and not over	
\$100,000	\$100 plus \$4 per
	\$1,000 of assets in excess of
	\$25,000
Over \$100,000 and not over	
\$200,000	\$400 plus \$3 per
	\$1,000 of assets in excess of
	\$100,000
Over \$200,000 and not over	
\$500,000	\$700 plus \$2 per
	\$1,000 of assets in excess of

\$200,000

Over \$500,000 and not over

\$1,000,000 \$1,300 plus \$1.40

per \$1,000 of assets in excess
of \$500,000

Over \$1,000,000 and not

over \$5,000,000 \$2,000 plus \$0.50

per \$1,000 of assets in
excess of \$1,000,000

Over \$5,000,000 and not

over \$30,000,000 \$4,540 ~~\$5,080~~ plus \$0.397 ~~\$0.44~~

per \$1,000 assets
in excess of \$5,000,000

Over \$30,000,000 and not over

\$100,000,000 \$14,471 ~~\$16,192~~ plus \$0.34

~~\$0.38~~ per \$1,000 of assets
in excess of \$30,000,000

Over \$100,000,000 and not

over \$500,000,000 \$38,306 ~~\$42,862~~ plus \$0.17

~~\$0.19~~ per \$1,000 of assets
in excess of \$100,000,000

Over \$500,000,000 \$106,406 ~~\$140,625~~ plus \$0.056

~~\$0.075~~ per \$1,000 of assets
in excess of \$500,000,000

(2) The Secretary ~~Director~~ shall review the regulatory fee

schedule in subsection (1) and the projected earnings on those fees on an annual basis and adjust the fee schedule no more than 5% annually if necessary to defray the estimated administrative and operational expenses of the Credit Union Section of the Department as defined in subsection (5). However, the fee schedule shall not be increased if the amount remaining in the Credit Union Fund at the end of any fiscal year is greater than 25% of the total actual and operational expenses incurred by the State in administering and enforcing the Illinois Credit Union Act and other laws, rules, and regulations as may apply to the administration and enforcement of the foregoing laws, rules, and regulations as amended from time to time for the preceding fiscal year. The regulatory fee for the next fiscal year shall be calculated by the Secretary based on the credit union's total assets as of December 31 of the preceding calendar year. The Secretary ~~Director~~ shall provide credit unions with written notice of any adjustment made in the regulatory fee schedule.

(3) Beginning with the calendar quarter commencing on January 1, 2009 ~~Not later than March 1 of each calendar year,~~ a credit union shall pay to the Department a regulatory fee in quarterly installments equal to one-fourth of the regulatory fee due for that calendar year in accordance with the regulatory fee schedule in subsection (1), on the basis of assets as of the Year-end Call Report of the preceding calendar year. The total annual regulatory fee shall not be less than

\$100 or more than \$141,875 ~~\$187,500~~, provided that the regulatory fee cap of \$141,875 ~~\$187,500~~ shall be adjusted to incorporate the same percentage increase as the Secretary ~~Director~~ makes in the regulatory fee schedule from time to time under subsection (2). No regulatory fee shall be collected from a credit union until it has been in operation for one year. The regulatory fee shall be billed to credit unions on a quarterly basis commencing with the quarter ending March 31, 2009, and it shall be payable by credit unions on the due date for the Call Report for the subject quarter.

(4) The aggregate of all fees collected by the Department under this Act shall be paid promptly after they are received, accompanied by a detailed statement thereof, into the State Treasury and shall be set apart in the Credit Union Fund, a special fund hereby created in the State treasury. The amount from time to time deposited in the Credit Union Fund and shall be used to offset the ordinary administrative and operational expenses of the Credit Union Section of the Department under this Act. All earnings received from investments of funds in the Credit Union Fund shall be deposited into the Credit Union Fund and may be used for the same purposes as fees deposited into that Fund. Moneys deposited in the Credit Union Fund may be transferred to the Professions Indirect Cost Fund, as authorized under Section 2105-300 of the Department of Professional Regulation Law of the Civil Administrative Code of Illinois.

Notwithstanding provisions in the State Finance Act, as now or hereafter amended, or any other law to the contrary, the sum of \$4,404,515 shall be transferred from the Credit Union Fund to the Financial Institutions Settlement of 2008 Fund as of the effective date of this amendatory Act of the 95th General Assembly, or as soon thereafter as practical.

Notwithstanding provisions in the State Finance Act, as now or hereafter amended, or any other law to the contrary, the Governor may, during any fiscal year through January 10, 2011, from time to time direct the State Treasurer and Comptroller to transfer a specified sum not exceeding 10% of the revenues to be deposited into the Credit Union Fund during that fiscal year from that Fund to the General Revenue Fund in order to help defray the State's operating costs for the fiscal year. Notwithstanding provisions in the State Finance Act, as now or hereafter amended, or any other law to the contrary, the total sum transferred from the Credit Union Fund to the General Revenue Fund pursuant to this provision shall not exceed during any fiscal year 10% of the revenues to be deposited into the Credit Union Fund during that fiscal year. The State Treasurer and Comptroller shall transfer the amounts designated under this Section as soon as may be practicable after receiving the direction to transfer from the Governor.

(5) The administrative and operational expenses for any fiscal ~~calendar~~ year shall mean the ordinary and contingent expenses for that year incidental to making the examinations

provided for by, and for administering, this Act, including all salaries and other compensation paid for personal services rendered for the State by officers or employees of the State to enforce this Act; all expenditures for telephone and telegraph charges, postage and postal charges, office supplies and services, furniture and equipment, office space and maintenance thereof, travel expenses and other necessary expenses; all to the extent that such expenditures are directly incidental to such examination or administration.

(6) When the balance in the Credit Union Fund at the end of a fiscal year exceeds 25% ~~aggregate of all fees collected by the Department under this Act and all earnings thereon for any calendar year exceeds 150%~~ of the total administrative and operational expenses incurred by the State in administering and enforcing the Illinois Credit Union Act and other laws, rules, and regulations as may apply to the administration and enforcement of the foregoing laws, rules, and regulations as amended from time to time ~~under this Act~~ for that fiscal year, such excess shall be credited to credit unions and applied against their regulatory fees for the subsequent fiscal year. The amount credited to each ~~a~~ credit union shall be in the same proportion as the regulatory fee paid by such credit union for the fiscal ~~calendar~~ year in which the excess is produced bears to the aggregate amount of all ~~the~~ fees collected by the Department under this Act for the same fiscal year.

(7) (Blank). ~~Examination fees for the year 2000 statutory~~

~~examinations paid pursuant to the examination fee schedule in effect at that time shall be credited toward the regulatory fee to be assessed the credit union in calendar year 2001.~~

(8) Nothing in this Act shall prohibit the General Assembly from appropriating funds to the Department from the General Revenue Fund for the purpose of administering this Act.

(9) For purposes of this Section, "fiscal year" means a period beginning on July 1 of any calendar year and ending on June 30 of the next calendar year.

(Source: P.A. 93-32, eff. 7-1-03; 93-652, eff. 1-8-04; 94-91, eff. 7-1-05.)

Section 30. The Residential Mortgage License Act of 1987 is amended by changing Sections 1-4, 2-2, 2-6, and 4-11 as follows:

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

Sec. 1-4. Definitions.

(a) "Residential real property" or "residential real estate" shall mean real property located in this State improved by a one-to-four family dwelling used or occupied, wholly or partly, as the home or residence of one or more persons and may refer, subject to regulations of the Commissioner, to unimproved real property upon which those kinds dwellings are to be constructed.

(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) any pension trust, bank trust, or bank trust company; (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.

(2) Any person or entity that does not originate mortgage loans in the ordinary course of business making or acquiring residential mortgage loans with his or her or its

own funds for his or her or its own investment without intent to make, acquire, or resell more than 10 residential mortgage loans in any one calendar year.

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

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

(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 with regard to the nature and amount of compensation.

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

licensee and the preparer that:

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

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

(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 a loan to or for the benefit of any natural person made primarily for personal, family, or household use, primarily secured by either a mortgage on residential real property or certificates of stock or other evidence of ownership interests in and proprietary leases from, corporations, partnerships, or limited liability companies formed for the purpose of cooperative ownership of residential real property, all located in Illinois.

(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 the effective date of this amendatory Act of the 95th General Assembly, 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 a person authorized by the Commissioner, the Office of Banks and Real Estate Act, or this Act to act in the Commissioner's stead.~~

(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) and (o) 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.

(r) "Full service office" shall mean office 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 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.

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

(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.

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

(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) "Loan originator" means any natural person who, for compensation or in the expectation of compensation, either directly or indirectly makes, offers to make, solicits, places, or negotiates a residential mortgage loan.

(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) "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.

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

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

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

(a) The Secretary ~~Commissioner~~ shall issue a license upon completion of all of the following:

(1) The filing of an application for license.

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

(3) The payment, in certified funds, of investigation and application fees, the total of which shall be in an amount equal to \$2,043 ~~\$2,700~~ annually, ~~however, the Commissioner may increase the investigation and application fees by rule as provided in Section 4-11.~~

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

Section 3-5.

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

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

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

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

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

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

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

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

(a) Beginning July 1, 2003, licenses shall be renewed every year on the anniversary of the date of issuance of the original license. Properly completed renewal application forms and filing fees must be received by the Secretary ~~Commissioner~~ 60 days prior to the renewal date.

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

(1) A fee of \$567.50 ~~\$750~~ will be assessed to the licensee 30 days after the proper renewal date and \$1,135 ~~\$1,500~~ each month thereafter, until the license is either renewed or expires pursuant to Section 2-6, subsections (c) and (d), of this Act.

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

(c) A license which is not renewed by the date required in this Section shall automatically become inactive. No activity

regulated by this Act shall be conducted by the licensee when a license becomes inactive. The Commissioner may require the licensee to provide a plan for the disposition of any residential mortgage loans not closed or funded when the license becomes inactive. The Commissioner may allow a licensee with an inactive license to conduct activities regulated by this Act for the sole purpose of assisting borrowers in the closing or funding of loans for which the loan application was taken from a borrower while the license was active. An inactive license may be reactivated by the Commissioner upon payment of the renewal fee, and payment of a reactivation fee equal to the renewal fee.

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

(e) A licensee ceasing an activity or activities regulated by this Act and desiring to no longer be licensed shall so inform the Commissioner in writing and, at the same time, convey the license and all other symbols or indicia of licensure. The licensee shall include a plan for the withdrawal from regulated business, including a timetable for the disposition of the business. Upon receipt of such written notice, the Commissioner shall issue a certified statement canceling the license.

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

(205 ILCS 635/4-11) (from Ch. 17, par. 2324-11)

Sec. 4-11. Costs of Supervision; Examination and Investigative Fees. The expenses of administering this Act, including investigations and examinations provided for in this Act shall be borne by and assessed against entities regulated by this Act. Subject to the limitations set forth in Section 2-2 of this Act, the Secretary ~~The Commissioner~~ shall establish fees by regulation in at least the following categories:

- (1) application fees;
- (2) investigation of license applicant fees;
- (3) examination fees;
- (4) contingent fees;

and such other categories as may be required to administer this Act.

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

Section 35. The Code of Civil Procedure is amended by adding Section 15-1502.5 as follows:

(735 ILCS 5/15-1502.5 new)

Sec. 15-1502.5. Homeowner protection.

(a) As used in this Section:

"Approved counseling agency" means a housing counseling agency approved by the U.S. Department of Housing and Urban Development.

"Approved Housing Counseling" means in-person counseling

provided by a counselor employed by an approved counseling agency to all borrowers, 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 approved counseling agency. In instances of telephone counseling, the borrower must supply all necessary documents to the counselor at least 72 hours prior to the scheduled telephone counseling session.

"Delinquent" means past due with respect to a payment on a mortgage secured by residential real estate.

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

"Secretary" means the Secretary of Financial and Professional Regulation or other person authorized to act in the Secretary's stead.

"Sustainable loan workout plan" means a plan that the mortgagor and approved counseling agency believe shall enable the mortgagor to stay current on his or her mortgage payments for the foreseeable future when taking into account the mortgagor income and existing and foreseeable debts. A sustainable loan workout plan may include, but is not limited to, (1) a temporary suspension of payments, (2) a lengthened loan term, (3) a lowered or frozen interest rate, (4) a principal write down, (5) a repayment plan to pay the existing

loan in full, (6) deferred payments, or (7) refinancing into a new affordable loan.

(b) Except in the circumstance in which a mortgagor has filed a petition for relief under the United States Bankruptcy Code, no mortgagee shall file a complaint to foreclose a mortgage secured by residential real estate until the requirements of this Section have been satisfied.

(c) Notwithstanding any other provision to the contrary, with respect to a particular mortgage secured by residential real estate, the procedures and forbearances described in this Section apply only once per subject mortgage.

Except for mortgages secured by residential real estate in which any mortgagor has filed for relief under the United States Bankruptcy Code, if a mortgage secured by residential real estate becomes delinquent by more than 30 days the mortgagee shall send via U.S. mail a notice advising the mortgagor that he or she may wish to seek approved housing counseling. Notwithstanding anything to the contrary in this Section, nothing shall preclude the mortgagor and mortgagee from communicating with each other during the initial 30 days of delinquency or reaching agreement on a sustainable loan workout plan, or both.

No foreclosure action under Part 15 of Article XV of the Code of Civil Procedure shall be instituted on a mortgage secured by residential real estate before mailing the notice described in this subsection (c).

The notice required in this subsection (c) shall state the date on which the notice was mailed, shall be headed in bold 14-point type "GRACE PERIOD NOTICE", and shall state the following in 14-point type: "YOUR LOAN IS MORE THAN 30 DAYS PAST DUE. YOU MAY BE EXPERIENCING FINANCIAL DIFFICULTY. IT MAY BE IN YOUR BEST INTEREST TO SEEK APPROVED HOUSING COUNSELING. YOU HAVE A GRACE PERIOD OF 30 DAYS FROM THE DATE OF THIS NOTICE TO OBTAIN APPROVED HOUSING COUNSELING. DURING THE GRACE PERIOD, THE LAW PROHIBITS US FROM TAKING ANY LEGAL ACTION AGAINST YOU. YOU MAY BE ENTITLED TO AN ADDITIONAL 30 DAY GRACE PERIOD IF YOU OBTAIN HOUSING COUNSELING FROM AN APPROVED HOUSING COUNSELING AGENCY. A LIST OF APPROVED COUNSELING AGENCIES MAY BE OBTAINED FROM THE ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION."

The notice shall also list the Department's current consumer hotline, the Department's website, and the telephone number, fax number, and mailing address of the mortgagee. No language, other than language substantially similar to the language prescribed in this subsection (c), shall be included in the notice. Notwithstanding any other provision to the contrary, the grace period notice required by this subsection (c) may be combined with a counseling notification required under federal law.

The sending of the notice required under this subsection (c) means depositing or causing to be deposited into the United States mail an envelope with first-class postage prepaid that

contains the document to be delivered. The envelope shall be addressed to the mortgagor at the common address of the residential real estate securing the mortgage.

(d) Until 30 days after mailing the notice provided for under subsection (c) of this Section, no legal action shall be instituted under Part 15 of Article XV of the Code of Civil Procedure.

(e) If, within the 30-day period provided under subsection (d) of this Section, an approved counseling agency provides written notice to the mortgagee that the mortgagor is seeking approved counseling services, then no legal action under Part 15 of Article XV of the Code of Civil Procedure shall be instituted for 30 days after the date of that notice. The date that such notice is sent shall be stated in the notice, and shall be sent to the address or fax number contained in the Grace Period Notice required under subsection (c) of this Section. During the 30-day period provided under this subsection (e), the mortgagor or counselor or both may prepare and proffer to the mortgagee a proposed sustainable loan workout plan. The mortgagee will then determine whether to accept the proposed sustainable loan workout plan. If the mortgagee and the mortgagor agree to a sustainable loan workout plan, then no legal action under Part 15 of Article XV of the Code of Civil Procedure shall be instituted for as long as the sustainable loan workout plan is complied with by the mortgagor.

The agreed sustainable loan workout plan and any modifications thereto must be in writing and signed by the mortgagee and the mortgagor.

Upon written notice to the mortgagee, the mortgagor may change approved counseling agencies, but such a change does not entitle the mortgagor to any additional period of forbearance.

(f) If the mortgagor fails to comply with the sustainable loan workout plan, then nothing in this Section shall be construed to impair the legal rights of the mortgagee to enforce the contract.

(g) A counselor employed by a housing counseling agency or the housing counseling agency that in good faith provides counseling shall not be liable to a mortgagee or mortgagor for civil damages, except for willful or wanton misconduct on the part of the counselor in providing the counseling.

(h) There shall be no waiver of any provision of this Section.

(i) It is the General Assembly's intent that compliance with this Section shall not prejudice a mortgagee in ratings of its bad debt collection or calculation standards or policies.

(j) This Section shall not apply, or shall cease to apply, to residential real estate that is not occupied as a principal residence by the mortgagor.

(k) This Section is repealed 2 years after the effective date of this amendatory Act of the 95th General Assembly.

Section 40. The Mortgage Rescue Fraud Act is amended by changing Sections 5 and 50 and by adding Sections 7 and 70 as follows:

(765 ILCS 940/5)

Sec. 5. Definitions. As used in this Act:

"Distressed property" means residential real property consisting of one to 6 family dwelling units that is in foreclosure or at risk of loss due to nonpayment of taxes, or whose owner is more than 30 ~~90~~ days delinquent on any loan that is secured by the property.

"Distressed property consultant" means any person who, directly or indirectly, for compensation from the owner, makes any solicitation, representation, or offer to perform or who, for compensation from the owner, performs any service that the person represents will in any manner do any of the following:

(1) stop or postpone the foreclosure sale or stop or postpone the loss of the home due to nonpayment of taxes;

(2) obtain any forbearance from any beneficiary or mortgagee, or relief with respect to a tax sale of the property;

(3) assist the owner to exercise any right of reinstatement or right of redemption;

(4) obtain any extension of the period within which the owner may reinstate the owner's rights with respect to the property;

(5) obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a distressed property or contained in the mortgage;

(6) assist the owner in foreclosure, loan default, or post-tax sale redemption period to obtain a loan or advance of funds;

(7) avoid or ameliorate the impairment of the owner's credit resulting from the recording of a notice of default or the conduct of a foreclosure sale or tax sale; or

(8) save the owner's residence from foreclosure or save the owner from loss of home due to nonpayment of taxes.

A "distressed property consultant" does not include any of the following:

(1) a person or the person's authorized agent acting under the express authority or written approval of the Department of Housing and Urban Development;

(2) a person who holds or is owed an obligation secured by a lien on any distressed property, or a person acting under the express authorization or written approval of such person, when the person performs services in connection with the obligation or lien, if the obligation or lien did not arise as the result of or as part of a proposed distressed property conveyance;

(3) banks, savings banks, savings and loan associations, credit unions, and insurance companies

organized, chartered, or holding a certificate of authority to do business under the laws of this State or any other state or under the laws of the United States;

(4) ~~licensed~~ attorneys licensed in Illinois engaged in the practice of law;

(5) a Department of Housing and Urban Development approved mortgagee and any subsidiary or affiliate of these persons or entities, and any agent or employee of these persons or entities, while engaged in the business of these persons or entities;

(6) a 501(c)(3) nonprofit agency or organization, doing business for no less than 5 years, that offers counseling or advice to an owner of a distressed property, if they do not contract for services with for-profit lenders or distressed property purchasers, or any person who structures or plans such a transaction;

(7) (blank) ~~licensees of the Residential Mortgage License Act of 1987;~~

(8) licensees of the Consumer Installment Loan Act who are authorized to make loans secured by real property; or

(9) licensees of the Real Estate License Act of 2000 when providing licensed activities.

"Distressed property purchaser" means any person who acquires any interest in fee in a distressed property or a beneficial interest in a trust holding title to a distressed property while allowing the owner to possess, occupy, or retain

any present or future interest in fee in the property, or any person who participates in a joint venture or joint enterprise involving a distressed property conveyance. "Distressed property purchaser" does not mean any person who acquires distressed property at a short sale or any person acting in participation with any person who acquires distressed property at a short sale, if that person does not promise to convey an interest in fee back to the owner or does not give the owner an option to purchase the property at a later date.

"Distressed property conveyance" means a transaction in which an owner of a distressed property transfers an interest in fee in the distressed property or in which the holder of all or some part of the beneficial interest in a trust holding title to a distressed property transfers that interest; the acquirer of the property allows the owner of the distressed property to occupy the property; and the acquirer of the property or a person acting in participation with the acquirer of the property conveys or promises to convey an interest in fee back to the owner or gives the owner an option to purchase the property at a later date.

"Person" means any individual, partnership, corporation, limited liability company, association, or other group or entity, however organized.

"Service" means, without limitation, any of the following:

- (1) debt, budget, or financial counseling of any type;
- (2) receiving money for the purpose of distributing it

to creditors in payment or partial payment of any obligation secured by a lien on a distressed property;

(3) contacting creditors on behalf of an owner of a residence that is distressed property;

(4) arranging or attempting to arrange for an extension of the period within which the owner of a distressed property may cure the owner's default and reinstate his or her obligation;

(5) arranging or attempting to arrange for any delay or postponement of the time of sale of the distressed property;

(6) advising the filing of any document or assisting in any manner in the preparation of any document for filing with any court; or

(7) giving any advice, explanation, or instruction to an owner of a distressed property that in any manner relates to the cure of a default or forfeiture or to the postponement or avoidance of sale of the distressed property.

(Source: P.A. 94-822, eff. 1-1-07; 95-691, eff. 6-1-08.)

(765 ILCS 940/7 new)

Sec. 7. Residential Mortgage License Act of 1987 licensees. Licensees of the Residential Mortgage License Act of 1987 are exempt from the requirements of Sections 10, 15, 20, 50(a)(4), 50(a)(5), 50(a)(6), and 50(a)(7). Licensees are also exempt

from the requirements of Section 50(a)(2) and Section 70 for any transaction resulting in the origination of a new mortgage loan extinguishing the existing mortgage loan.

(765 ILCS 940/50)

Sec. 50. Violations.

(a) It is a violation for a distressed property consultant to:

(1) claim, demand, charge, collect, or receive any compensation until after the distressed property consultant has fully performed each service the distressed property consultant contracted to perform or represented he or she would perform;

(2) claim, demand, charge, collect, or receive any fee, interest, or any other compensation ~~for any reason that does not comport with Section 70 exceeds 2 monthly mortgage payments of principal and interest or the most recent tax installment on the distressed property, whichever is less;~~

(3) take a wage assignment, a lien of any type on real or personal property, or other security to secure the payment of compensation. Any such security is void and unenforceable;

(4) receive any consideration from any third party in connection with services rendered to an owner unless the consideration is first fully disclosed to the owner;

(5) acquire any interest, directly or indirectly, or by

means of a subsidiary or affiliate in a distressed property from an owner with whom the distressed property consultant has contracted;

(6) take any power of attorney from an owner for any purpose, except to inspect documents as provided by law; or

(7) induce or attempt to induce an owner to enter a contract that does not comply in all respects with Sections 10 and 15 of this Act.

(b) A distressed property purchaser, in the course of a distressed property conveyance, shall not:

(1) enter into, or attempt to enter into, a distressed property conveyance unless the distressed property purchaser verifies and can demonstrate that the owner of the distressed property has a reasonable ability to pay for the subsequent conveyance of an interest back to the owner of the distressed property and to make monthly or any other required payments due prior to that time;

(2) fail to make a payment to the owner of the distressed property at the time the title is conveyed so that the owner of the distressed property has received consideration in an amount of at least 82% of the property's fair market value, or, in the alternative, fail to pay the owner of the distressed property no more than the costs necessary to extinguish all of the existing obligations on the distressed property, as set forth in subdivision (b)(10) of Section 45, provided that the

owner's costs to repurchase the distressed property pursuant to the terms of the distressed property conveyance contract do not exceed 125% of the distressed property purchaser's costs to purchase the property. If an owner is unable to repurchase the property pursuant to the terms of the distressed property conveyance contract, the distressed property purchaser shall not fail to make a payment to the owner of the distressed property so that the owner of the distressed property has received consideration in an amount of at least 82% of the property's fair market value at the time of conveyance or at the expiration of the owner's option to repurchase.

(3) enter into repurchase or lease terms as part of the subsequent conveyance that are unfair or commercially unreasonable, or engage in any other unfair conduct;

(4) represent, directly or indirectly, that the distressed property purchaser is acting as an advisor or a consultant, or in any other manner represent that the distressed property purchaser is acting on behalf of the homeowner, or the distressed property purchaser is assisting the owner of the distressed property to "save the house", "buy time", or do anything couched in substantially similar language;

(5) misrepresent the distressed property purchaser's status as to licensure or certification;

(6) do any of the following until after the time during

which the owner of a distressed property may cancel the transaction:

(A) accept from the owner of the distressed property an execution of any instrument of conveyance of any interest in the distressed property;

(B) induce the owner of the distressed property to execute an instrument of conveyance of any interest in the distressed property; or

(C) record with the county recorder of deeds any document signed by the owner of the distressed property, including but not limited to any instrument of conveyance;

(7) fail to reconvey title to the distressed property when the terms of the conveyance contract have been fulfilled;

(8) induce the owner of the distressed property to execute a quit claim deed when entering into a distressed property conveyance;

(9) enter into a distressed property conveyance where any party to the transaction is represented by power of attorney;

(10) fail to extinguish all liens encumbering the distressed property, immediately following the conveyance of the distressed property, or fail to assume all liability with respect to the lien in foreclosure and prior liens that will not be extinguished by such foreclosure, which

assumption shall be accomplished without violations of the terms and conditions of the lien being assumed. Nothing herein shall preclude a lender from enforcing any provision in a contract that is not otherwise prohibited by law;

(11) fail to complete a distressed property conveyance before a notary in the offices of a title company licensed by the Department of Financial and Professional Regulation, before an agent of such a title company, a notary in the office of a bank, or a licensed attorney where the notary is employed; or

(12) cause the property to be conveyed or encumbered without the knowledge or permission of the distressed property owner, or in any way frustrate the ability of the distressed property owner to complete the conveyance back to the distressed property owner.

(c) There is a rebuttable presumption that an appraisal by a person licensed or certified by an agency of this State or the federal government is an accurate determination of the fair market value of the property.

(d) "Consideration" in item (2) of subsection (b) means any payment or thing of value provided to the owner of the distressed property, including reasonable costs paid to independent third parties necessary to complete the distressed property conveyance or payment of money to satisfy a debt or legal obligation of the owner of the distressed property.

"Consideration" shall not include amounts imputed as a

downpayment or fee to the distressed property purchaser, or a person acting in participation with the distressed property purchaser.

(e) An evaluation of "reasonable ability to pay" under subsection (b)(1) of this Section 50 shall include debt to income ratio, fair market value of the distressed property, and the distressed property owner's payment history. There is a rebuttable presumption that the distressed property purchaser has not verified reasonable payment ability if the distressed property purchaser has not obtained documents of assets, liabilities, and income, other than a statement by the owner of the distressed property.

(Source: P.A. 94-822, eff. 1-1-07.)

(765 ILCS 940/70 new)

Sec. 70. Distressed property consultant compensation. In transactions that reduce the existing payment on a homeowner's mortgage loan for a period of no less than 5 years, a distressed property consultant shall not claim, demand, charge, collect, or receive any fee, interest, or any other compensation that exceeds the lesser of the homeowner's:

(1) existing monthly principal and interest mortgage payment; or

(2) total net savings derived from the lowered monthly principal and interest mortgage payment over the succeeding 12 months.

For all other transactions, a distressed property consultant shall not claim, demand, charge, collect, or receive any fee, interest, or any other compensation for any reason that exceeds 50% of the owner's existing monthly principal and interest mortgage payments.

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

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