

FACT SHEET

Predatory Lending Database Pilot Program (HB 4050)



Summary of the Program

Public Act 94-280, otherwise known as House Bill 4050, was passed by the Illinois General Assembly and signed into law by the Governor in 2005. The law establishes a screening and credit counseling program for mortgage borrowers in southwest Chicago neighborhoods, and will impact the home buying and selling process in these areas.

The bill requires that information about mortgage borrowers seeking a loan through most mortgage brokers or loan originators for a home located within an area defined by ten Chicago zip codes to be submitted to the Illinois Department of Financial and Professional Regulation (“DFPR” or “Department”). The DFPR will then determine, based on established criteria, if the borrower must undergo mandatory credit counseling prior to obtaining the mortgage loan.

Implementation of the program is expected to take place in the late summer of 2006. Unless the law is amended, the program will be in place for four years following its implementation.

Who must be screened?

The law requires all borrowers who apply for a loan through a mortgage broker or loan originator that is not exempt under the Residential Mortgage License Act of 1987, for a home within ten targeted zip codes, to obtain a “certificate of compliance” from the Department before they can close on their loan.

- The Predatory Lending Database Pilot Program area is a contiguous area defined by ten southwest Chicago zip codes: 60620, 60621, 60623, 60628, 60629, 60632, 60636, 60638, 60643 and 60652.
- Borrowers who are seeking a loan through a mortgage broker or loan originator, unless the mortgage broker or loan originator is exempt under the Residential Mortgage License Act of 1987, for a home within the ten targeted zip codes will have to undergo credit counseling with a HUD-certified credit counselor if they fall within the criteria for mandatory counseling. If the borrower or loan product meets the following criteria, counseling is mandatory:
 - The borrower has a FICO credit score of 620 or less.
 - The borrower has a FICO credit score of 621 through 650, combined with ANY or ALL the following factors:
 - The home was financed within the 12 months prior to the date of the current loan application;
 - The payment for the loan being applied for is “interest-only”;
 - The interest rate for the loan adjusts within 3 years or less;

- The loan uses a stated income for the borrower, rather than verifying the borrower's income through means of tax returns, pay stubs, accounting statements, or other prudent means.
- The loan includes any of the following, regardless of the borrower's FICO score:
 - A prepayment penalty;
 - Results in "negative amortization";
 - The total points and fees payable by the borrower at or before closing will exceed 5%.

So borrowers that obtain financing other than through a mortgage broker or loan originator do not have to undergo the screening or counseling?

That's correct. For example, if a borrower for a property in the pilot program area obtains financing through a conventional bank, or a first-tier subsidiary of that bank, the loan would not be subject to review under this program.

What does the process consist of?

The process outlined in the legislation and rules is very complex, but in essence, there are various requirements and duties created for loan brokers, loan originators, credit counselors, title insurance companies, and closing agents to gather and submit data to the predatory lending database in an online format. There are also requirements for title companies to record certain information, including a certificate of compliance, once the loan closes. *While the program will certainly have an impact on REALTORS® servicing buyers and sellers in the pilot program area, there are no specific requirements imposed on real estate licensees in the statute or rules.*

The following is a general summary of the process (hopefully the Department will provide further clarity to the process prior to the beginning of the program):

- 1) Within 10 days of taking a mortgage application, the mortgage broker or loan originator (mortgage brokers and loan originators are regulated by state law under the Residential Mortgage License Act – contact DFPR for more information) must submit (electronically, on-line) all information required under Section 72 of the law to the Predatory Lending Database.
- 2) Within 7 days of receipt of the data, the DFPR is to determine, based on the borrower and loan criteria outlined above, whether the borrower must undergo counseling with a HUD-certified credit counselor, and the DFPR will notify the mortgage broker or loan originator of that determination. If the Department determines that **NO COUNSELING IS REQUIRED**, then the transaction may proceed, as long as no changes are made to the terms of the loan.
- 3) If the DFPR recommends counseling, then **COUNSELING IS REQUIRED**. The Department shall notify the borrower of all HUD-certified counseling agencies in the state, and direct the borrower to interview with a counselor at one of those agencies.

- 4) Within 10 days after receipt of the notice from the Department, the borrower shall select one of the counseling agencies and engage in an interview (it is not clear as of this time whether the interview must be in person or occur within that 10 day period).
- 5) Within 7 days of the interview, the counseling agency must submit to the Department all information required in the law and in the rules. Once this information is submitted, the transaction may proceed.

OTHER NOTEWORTHY ISSUES AND INFORMATION REGARDING THE PROCESS:

- The law prohibits the mortgage broker or loan originator from taking any “legally binding” action concerning the loan transaction until the later of:
 - 1) The Department issues a determination not to recommend counseling, or;
 - 2) The Department determines counseling IS required, and the counselor has submitted all required information to the Department.
- At any point in the process – from the time of application to closing – if the terms of the loan change, information will have to be resubmitted to the DFPR and a new assessment will have to be made as to whether new or additional counseling is required.
- The statute requires a “certificate of compliance”, “generated by the database” to be recorded with the mortgage by the title company or closing agent (on all loans covered by the law, whether counseling was required or not). As of this time there are no details as to the process for issuing and distributing the certificates of compliance

What information is required to be submitted to the database?

The legislation and rules provide an extensive list of information to be provided to the database by the loan originator or mortgage broker. The statute and rules provide that the loan originator or mortgage broker must submit all of the following information to the database:

- 1) The borrower's name, address, social security number or taxpayer identification number, date of birth, and income and expense information contained in the mortgage application.
- 2) The address, permanent index number, and a description of the collateral and information about the loan or loans being applied for and the loan terms, including the amount of the loan, the rate and whether the rate is fixed or adjustable, amortization or loan period terms, and any other material terms.
- 3) The borrower's credit score at the time of application.
- 4) Information about the originator and the company the originator works for, including the originator's license number and address, fees being charged, whether the fees are being charged as points up front, the yield spread premium payable outside closing, and other charges made or remuneration required by the broker or originator or its affiliates or the broker's or originator's employer or its affiliates for the mortgage loans.

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

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

7) Annual real estate taxes for the property, together with any assessments payable in connection with the property to be secured by the collateral and the proposed monthly principal and interest charge of all loans to be taken by the borrower and secured by the property of the borrower.

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

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

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

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

12) Loan information, including interest rate, term, purchase price, down payment, closing costs and prepayment penalty, if any.

Who pays for the credit counseling?

The law and rules provide that the costs of credit counseling shall be paid by the mortgage broker or loan originator.

What does the counseling consist of, and what happens after counseling?

As of this time, there are no details on the content of counseling, the length or extent of the counseling, or whether the counseling must be in person. The law states that nothing shall prevent a borrower from making his or her own determination as to whether to proceed with a transaction. However, the law and rules do provide some detail on the information to be provided to DFPR by the counselor after the counseling, including:

- 1) Whether the loan should be “approved”, or should not be “approved” due to indicia of fraud;
- 2) Whether the borrower can afford the loan, and whether the borrower is “precipitously close” to not being able to afford the loan;
- 3) Whether the borrower understands the transaction;
- 4) Whether the rate of the loan is above “market rate”;
- 5) Whether the borrower should seek a competitive bid from another mortgage broker or loan originator;
- 6) Whether there are discrepancies between the borrower’s verbal understanding of the loan and the originator’s completed form;
- 7) Whether the borrower understands the true cost of debt consolidation and the need for credit card discipline.

How long will this “Pilot Program” be in effect?

Unless the law is repealed or modified, the program will be in effect for four years from its inception date.

Are there penalty and enforcement provisions in the law?

Yes. The law provides that any person who violates any provision of the law commits an unlawful practice under the Consumer Fraud and Deceptive Business Practices Act. In addition, the mortgage is not recordable unless a certificate of compliance is recorded with the mortgage.

Where can I view the actual text of the law and rules?

- ❑ Go to the DFPR Web site:
www.idfpr.com/newsrsls/012706IDFPRHomeLoanProtectionLaw.asp
- ❑ Click on the Predatory Lending Database information link at
www.IARactioncenter.org

Where Can I Go With Further Questions:

- ❑ Department of Financial and Professional Regulation:
 - 312-793-8704
 - www.idfpr.com
- ❑ Chicago Association of REALTORS®:
 - 312-214-5520
 - www.chicagorealtor.com
- ❑ Illinois Association of REALTORS®
 - 217-529-2600
 - www.IARactioncenter.org

The above is intended as general information concerning the Predatory Lending Database Pilot Program and is not intended as legal advice concerning the requirements of the statute or rules. Please contact your own attorney to seek specific legal advice concerning the program.