

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED AMENDMENTS

TITLE 38: FINANCIAL INSTITUTIONS

CHAPTER II: DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

PART 346

PREDATORY LENDING DATABASE

Section

346.10	Definitions
346.15	Information Required
346.20	Standards for Credit Counseling (<u>Repealed</u>)
<u>346.21</u>	<u>Standards for Counseling; First-Time Homebuyers</u>
<u>346.22</u>	<u>Standards for Counseling; Refinancing Primary Residence</u>
346.25	Disclosure of Information Prohibited
346.30	Credit Counselor Costs
346.35	Declaration of Inception Date
346.36	Inception Date of the Pilot Program
346.40	Exemption

AUTHORITY: Implementing and authorized by Section 70 of the Residential Real Property Disclosure Act [765 ILCS 77/70].

SOURCE: Adopted by emergency rulemaking at 30 Ill. Reg. 208, effective January 1, 2006, for a maximum of 150 days; adopted at 30 Ill. Reg. 1867, effective January 26, 2006; emergency amendment at 30 Ill. Reg. 13524, effective July 28, 2006, for a maximum of 150 days; amended at 30 Ill. Reg. 14262, effective August 18, 2006; amended at 31 Ill. Reg. 114, effective December 21, 2006; amended at 31 Ill. Reg. _____, effective _____.

Section 346.10 Definitions

"Act" means the Residential Real Property Disclosure Act [765 ILCS 77].

"Adjustable rate mortgage" or "ARM" means a mortgage that allows adjustments of the loan interest rate during the first five years of the loan term.

"Counseling session" means in-person counseling provided by a counselor to all borrowers, or documented telephone counseling where a hardship would be imposed on one or more borrowers. In instances of re-counseling, "counseling session" means counseling in-person or by documented telephone counseling. The Department shall consider a hardship to exist in instances in which the borrower is confined to his or her home due to medical conditions as verified in

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED AMENDMENTS

writing by a physician or the borrower resides 50 miles or more from the nearest available counselor.

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

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

"HUD-certified credit counselor" means a housing counselor employed by an agency certified by the U.S. Department of Housing and Urban Development (HUD).

"HUD-certified credit counseling" means counseling given to a borrower by a HUD-certified credit counselor pursuant to the Act, or as approved by the Department for counseling given to a borrower by a HUD-certified housing counseling agency pursuant to HUD counseling requirements for Federal Home Administration (FHA) programs.

"Interest only" means a loan that permits one or more payments of interest without any reduction of the principal balance of the loan.

"Negative Amortization" means a loan with terms under which the outstanding balance can increase at any time over the course of the loan because the regular periodic payment does not cover the full amount of interest due.

"Pilot Program" means the Cook County Predatory Lending Database Pilot Program created by Section 70 of the Act.

"Points and fees" means all items required to be disclosed as points and fees as defined in Section 10 of the High Risk Home Loan Act [815 ILCS 137/10].

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

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

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED AMENDMENTS

“Simultaneous 100% Second-Lien Loan” means a lending arrangement where either a closed-end second lien or a home equity line of credit (HELOC) is originated simultaneously or “piggy-backed” with the first lien mortgage such that the total amount financed is 100 percent of the real property’s value.

“Stated income” means a loan which is underwritten based on an income figure provided by the borrower and not verified through means of tax returns, pay stubs, official receipts of government benefits, accounting statements, or other verification means approved by the Secretary.

(Source: Amended at 31 Ill. Reg. _____, effective _____)

Section 346.15 Information Required

As part of the predatory lending database pilot program, the broker or originator must submit all of the following information for inclusion in the predatory lending database for each loan for which the originator takes an application:

- a) 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.
- b) 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.
- c) The borrower's credit score at the time of application.
- d) 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.
- e) 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

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED AMENDMENTS

and any moneys received from the broker or originator in connection with the transaction.

- f) All information indicated on the Good Faith Estimate and Truth in Lending statement disclosures given to the borrower by the broker or originator.
- g) 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.
- h) Information concerning how the broker or originator obtained the client and the name of its referral source, if any.
- i) Information concerning the notices provided by the broker or originator to the borrower as required by law and the date those notices were given.
- j) Information concerning whether a sale and leaseback is contemplated and the names of the lessor and lessee, seller, and purchaser.
- k) The broker or loan originator for any mortgage on residential property within the Pilot Program area must submit additional information to the database as follows:
 - 1) loan information, including interest rate, term, purchase price, down payment, and closing costs;
 - 2) whether the buyer is a first time homebuyer or refinancing a primary residence;
 - 3) whether the loan permits interest only payments;
 - 4) whether the loan may result in negative amortization;
 - 5) whether the total points and fees payable by the borrowers at or before closing will exceed 5%;
 - 6) whether the loan relies on stated income;
 - 7) whether the loan financing transaction includes a simultaneous 100% second-lien loan;

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED AMENDMENTS

- 8) whether the loan includes a pre-payment penalty; and
- 9) whether the loan is an ARM.

(Source: Amended at 31 Ill. Reg. _____, effective _____)

Section 346.20 Standards for Credit Counseling (Repealed)

~~A borrower or borrowers, subject to Article 3 of the Act, shall be recommended for HUD-certified credit counseling if, after reviewing the information on the Predatory Lending Database submitted under Section 72 of the Act and Section 346.15, the Department finds:~~

- a) ~~a FICO score of 620 or less for the middle score if three scores are used, or for the lowest score if fewer than three scores are used; or~~
- b) ~~a FICO score from 621 to 650 for the middle score if three scores are used, or for the lowest score if fewer than three scores are used, and one or more of the following factors exist:~~
 - 1) ~~the subject property was financed within 12 months prior to the date of application;~~
 - 2) ~~the loan payment is interest only;~~
 - 3) ~~the interest rate for the loan adjusts within 3 years or less;~~
 - 4) ~~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; or~~
- e) ~~the loan includes a prepayment penalty; or~~
- d) ~~the loan results in negative amortization; or~~
- e) ~~the total points and fees payable by the borrower at or before closing will exceed 5%.~~

(Source: Repealed at 31 Ill. Reg. _____, effective _____)

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED AMENDMENTS

Section 346.21 Standards for Counseling; First-Time Homebuyers

A borrower or borrowers, subject to Article 3 of the Act, shall be recommended for counseling if, after reviewing the information on the Predatory Lending Database submitted under Section 72 of the Act and Section 346.15, the Department finds the borrower or borrowers are all first-time homebuyers and the loan is a mortgage that includes one or more of the following:

- a) the loan permits interest only payments; or
- b) the loan may result in negative amortization; or
- c) the total points and fees payable by the borrower at or before closing will exceed 5%; or
- d) the loan relies on stated income; or
- e) the loan financing transaction includes a simultaneous 100% second-lien loan; or
- f) the loan includes a pre-payment penalty; or
- g) the loan is an ARM.

(Source: Added at 31 Ill. Reg. _____, effective _____)

Section 346.22 Standards for Counseling; Refinancing Primary Residence

A borrower or borrowers, subject to Article 3 of the Act, shall be recommended for counseling if, after reviewing the information on the Predatory Lending Database submitted under Section 72 of the Act and Section 346.15, the Department finds the borrower or borrowers are obtaining a re-financing that includes one or more of the following:

- a) the loan permits interest only payments; or
- b) the loan may result in negative amortization; or
- c) the total points and fees payable by the borrower at or before closing will exceed 5%; or
- d) the loan relies on stated income; or

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED AMENDMENTS

- e) the loan financing transaction includes a simultaneous 100% second-lien loan; or
- f) the loan includes a pre-payment penalty; or
- g) the loan is an ARM.

(Source: Added at 31 Ill. Reg. _____, effective _____)

Section 346.30 Credit Counselor Costs

Reasonable and customary costs not to exceed \$300 for a counseling session associated with credit counseling provided under the Act shall be paid by the broker or loan originator.

(Source: Amended at 31 Ill. Reg. _____, effective _____)

Section 346.40 Exemption

Borrowers applying for reverse mortgage financing of residential real estate including under programs regulated by the Federal Housing Authority (FHA) that require HUD-certified counseling are exempt from the Pilot Program and may submit a HUD counseling certificate to comply with the Pilot Program.

(Source: Amended at 31 Ill. Reg. _____, effective _____)