

Illinois Mortgage Bankers Association

Overview: HB 4050

Background: As is the case in many other states, Illinois, and particularly certain neighborhoods in Chicago, have experienced a significant increase in foreclosure rates in the last decade. A number of factors have contributed to this condition, including the prevalence of abusive lending practices involving sub-prime loans, inadequate enforcement of existing consumer protection laws and insufficient consumer financial literacy. Not surprisingly, this situation has had a disproportionate and significant impact on low-income and minority communities and elderly homeowners.

The Illinois Mortgage Bankers Association unequivocally condemns predatory lending practices, which undermine the good work that our member companies have done to increase homeownership opportunities in Cook County and in communities across Illinois and the nation. These practices harm innocent borrowers and diminish trust in the financial marketplace. They put legitimate lenders at a competitive disadvantage to those willing to ignore existing laws and regulations. It is important to note that while most predatory transactions involve sub-prime loans, the two terms are not synonymous. The vast majority of sub-prime lending is conducted by legitimate professionals in an appropriate manner that can empower people, create opportunities and enhance the quality of neighborhoods. A relatively small percentage of irresponsible practitioners cause harm not only to consumers, but also to the reputation of responsible lenders.

A variety of legislative remedies have been enacted in an attempt to resolve this problem. Among these are anti-predatory lending ordinances in Chicago and Cook County, the Illinois High Risk Home Loan Act, amendments to the Illinois Fairness in Lending Act and amendments to the Residential Mortgage License Act of 1987, requiring the registration of all Originators employed by RMLA Licensees. House Bill 4050 was signed into law by the Governor on July 21, as a means of addressing the lack of financial education that may lead some consumers into unsound financial decisions regarding mortgage loans. It takes effect January 1, 2006.

General Provisions and Requirements of HB 4050:

- HB 4050 creates a four-year pilot program. It will apply only to loans on properties located within a designated geographic area and only to loans originated by entities licensed under the RMLA.
- Its general objective is to ensure that applicants do not proceed with a questionable transaction without benefit of advice from an impartial financial counselor. To accomplish this, transactions that are deemed to have a high potential for eventual default and foreclosure will be identified early in the application process. Before these transactions may be consummated, the applicants will be required to participate in an interview with a counseling agency representative. The counselor will provide information on the advisability of continuing with the transaction based on the applicant's financial circumstances, however, the applicant may elect to proceed regardless of the counselor's advice.
- A pilot area will be identified, based on certain factors including the prevalence of residential mortgage foreclosures.
- A "Predatory Lending Database" (PLD) will be established and maintained by the IDFPR. It will contain a broad range of information about mortgage applicants and their proposed transactions. The PLD data will be submitted by originators, credit counselors and title insurance companies during the course of the transaction via an internet portal.
 - For loans to be secured by properties within the pilot area, the originator must enter required information into the PLD within ten days of the application date. If loan parameters change, the originator must resubmit the required information within five days for reevaluation.
 - The IDFPR will review the data and determine whether counseling will be required.
 - If counseling is required, the IDFPR will provide the applicant with a list of HUD approved counselors in the area.
 - The applicant will have ten days to arrange for and participate in the counseling session.
 - The counselor will have seven days to enter required information into the PLD.
 - No legally binding action may be taken unless the required counseling has occurred or the IDFPR has determined that counseling is not required.
 - The closing agent must enter required information into the PLD within ten days after closing.
 - The PLD will generate a certificate of compliance that must be recorded along with the mortgage in order for the mortgage to be recordable.
 - Significant penalties would result from violations of these requirements.

Concerns about HB 4050

- The size and location of the pilot area have yet to be determined.
- Transactions would be halted if the borrower refuses to participate in counseling.
- Originating entities would be required to pay the cost of counseling.
- The collection and submission of personal and financial information to DFPR raises concerns involving consumer privacy and civil liberties and has the potential to make the application process even more intimidating to many applicants.
- The criteria for determining which loans will require counseling are yet to be confirmed.
- The proposed data submission requirements are extensive, time-consuming and cumbersome.
- This new initiative is being executed before sufficient time has been allowed to evaluate the effectiveness of the many recently enacted anti-predatory lending measures referenced earlier.
- The title insurance industry has indicated that they may not be able to insure or close loans in the pilot area due to unacceptable risks under the statute's current language.

The Road Ahead

- Since it already has oversight responsibility for two of the three key parties, Credit Counselors and Title Insurance Companies, the Department of Financial Institutions (DFI) has been tasked with promulgating rules to implement HB 4050, which will include the boundaries of the pilot area and the criteria for counseling requirements.
- In order to address the concerns listed above, the IMBA has made a formal request to DFI Director Michele Latz to participate in discussions about the development of the rules along with representatives of other trade associations, consumer organizations and other interested parties.
- Representatives of the title insurance trade association are working with DFI to try to resolve their members' concerns.
- **The IMBA has elected to join several other trade associations in exploring the feasibility of taking legal action** to oppose the implementation of some or all of the provisions of the new statute. At least two law firms will be engaged to undertake this research, the total estimated cost for which is not expected to exceed \$20,000 and will be shared among the participating associations.
- The rationale for undertaking these due diligence efforts:
 - IMBA leaders have a responsibility to be vigilant and prepared to respond to legislative and legal challenges in a way that will best serve our membership.
 - **Participating in legal due diligence should not be confused with taking legal action** nor should the assumption be made that this step will lead to the filing of a lawsuit. Rather, this research will enable the IMBA to act rapidly, effectively and decisively in the event that such action becomes necessary. It is the IMBA's strong preference to work together with regulators, legislators, industry leaders and other impacted parties to achieve a reasonable solution.
 - Opting to not lend in the pilot area would potentially place lenders at odds with the anti-discrimination provisions of various statutes including the RMLA of 1987, the Illinois Fairness in Lending and Illinois Human Rights Act.
- After the legal research has been completed, the findings will be evaluated and next steps determined.
- The IMBA will continue to provide updates on developments as they occur. Please contact the IMBA with related comments or questions or to contribute to the fund that has been established to pay for the costs associated with the due diligence effort. Input from members on this important matter is essential and appreciated.