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ASSOCIATION OF  
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May 18, 2007

Mr. Dean Martinez, Secretary  
Illinois Department of Financial and  
Professional Regulation  
James R. Thompson Center  
100 West Randolph, Suite 9-300  
Chicago, Illinois 60607-3290

Dear Secretary Martinez:

I am writing to respectfully submit the comments of the Illinois Association of REALTORS® regarding the proposed amendments to rules implementing Public Act 94-280. The amendments to the rules were published in the Illinois Register on April 6, 2007 (Volume 31, Issue 14). The amendments, as proposed, would re-establish the Predatory Lending Database Program ("PLD Program") that was effectively suspended by your action on January 19, 2007.

Our members were pleased with your actions rescinding the zip codes identified in the original rules. As we have discussed and expressed in previous written comments, the best possible solution is to repeal the underlying Public Act and to establish a statewide database that merely tracks the loan originator/mortgage broker licensee, the buyer of the loan product, and the loan product as a means to address and regulate the conduct of mortgage practitioners.

The proposed amendments are movement towards an understanding that regulation is and should be geared toward the mortgage brokerage industry, not the consumer. However, the proposed amendments present serious issues and practical concerns that, if enacted, will have a direct and detrimental impact on the home buying public.

As previously noted, the best future direction is to salvage the application of the database but to shift the burden of regulation to the conduct, fiduciary relationships, and disciplinary actions available on the regulated industry, not the mortgage consumer. Nevertheless, our specific comments as to the proposed amendments are as follows:

### **Expansion to Cook County**

One of the underlying reasons provided for the Public Act was the high foreclosure rates as identified in certain zip codes in Cook County; however, the practical impact of the previous identification of ten contiguous zip codes was the appearance of "redlining". The expansion of the PLD Program to all of Cook County reduces the discrimination argument but does not factor in the reality that certain other Illinois counties have foreclosure rates equal to or greater than Cook County. The point is that the issue to be addressed is not one based on geography but rather on certain aspects of the mortgage brokerage industry. This issue is best addressed by regulation of the mortgage brokerage industry.

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### **Availability of Counselors-Practical Impact of Expanding to Cook County**

The expansion of the PLD Program area to Cook County exacerbates the fact that there are not enough HUD certified counselors to address the demand that will be generated by the PLD Program. The inability to have a sufficient number of HUD certified counselors will greatly impact the length of time that a prospective first-time home buyer or a refinance purchaser will have to wait until closing.

### **Type of Counseling**

In the Association's previous comment letter, dated December 5, 2006, it was stated that "we must find a way to make available more comprehensive homebuyer education for high-risk borrowers, especially first-time buyers". It would be far better to have the counseling follow the individual rather than a specific loan product and thus be an educational tool rather than a document review. This type of approach would stop multiple counseling sessions when the terms of the loan product change, reduce the costs of counseling, and limit the strain on the available HUD certified counselors. At the same time buyers would receive the counseling and education, what the HUD certified counselor is trained to do, as opposed to a document review, which could be automated through the database process. Also, a counseling certificate should be issued to the buyer for a period of time, such as six or twelve months, as opposed to the certificate just being based on one proposed mortgage loan product.

### **Definitions**

There are several definitions that the Association believes need to be addressed. The following are the terms and the issues that need to be addressed in the final rules:

**Adjustable rate mortgage.** Modify this definition so that it does not apply to all "ARMs" but just those in which there is a high loan to value (LTV) ratio.

**Counseling sessions.** This definition needs to take into consideration first time homebuyers living out of county or out of state but who are moving into Cook County. For example, how are the counseling sessions to take place?

**HUD-Certified Credit Counselor.** This definition indicates that the agency which employs the counselor needs to be certified by the U.S. Department of Housing and Urban Development. No certification is apparently necessary for the counselor but only the employing agency under this definition.

**Interest only.** It is very common in residential real estate transactions that the first monthly payment or partial monthly payment is interest only. This definition needs to be modified so as not to include all mortgage loans under this definition.

**Prepayment penalty.** Change the word "when" to "because". There may be several charges imposed, such as to record a release, that arise "when" a mortgage loan is prepaid but not "because" it is prepaid.

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**Stated income.** As with the definition of an adjustable rate mortgage we suggest that a high loan to value (LTV) ratio be tied to this definition.

The Association would also suggest that a definition of "first time homebuyer" be added to the Rules. There are a number of mortgage assistance programs which use that term and the definition of that term tends to vary according to the program.

The Association also has comments with regard to two other provisions in the Rules. In Section 346.15 it would seem that subparagraph "c" should be deleted as that information is no longer the basis for counseling or any other action under the PLD Program. Section 346.40 has been modified by the amendments to exempt certain buyers applying for reverse mortgages. However, notwithstanding this exemption, these borrowers are still required to provide a certificate in order to comply with the PLD Program. It would seem that either such borrowers are exempt or must comply, but not both. Section 346.40 should be modified accordingly.

The members of the Illinois Association of REALTORS® have a long history of working within the regulatory framework of state government to further protect the public in the homebuying process. We urge you to look at the mortgage provider as the primary focus of a regulatory scheme to combat predatory lending practices. We believe that a comprehensive licensing and disciplinary process offers the best alternate to regulate an industry while protecting the public. As in the past, we are always available to provide assistance to you and your Department.

Sincerely,



Gary L. Clayton, CAE  
Chief Executive Officer