

PREDATORY LENDING IN ILLINOIS

- An Overview -

**By: The Association of
Illinois Public
Retirement Systems**

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Preface

Beginning in February 2006, the Speaker of the House of Representatives for the Illinois General Assembly began contacting public pension systems requesting they cease investing with or depositing public funds with financial institutions (or their affiliates) unless the financial institutions certify in writing that they do not engage in predatory lending practices.

This White Paper is intended to give the pension systems greater insight into the problem of predatory lending, and to assist in developing an appropriate response to the Speaker's request.

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Section 1 Definition

“Predatory Lending” may be viewed as a process (set of practices) in contrast to a clearly identified product. More than two dozen loan terms and lending practices have been described as predatory.

Predatory lending is typically a subset of subprime lending. Such lending may be practiced by banks, thrifts, insurance companies or independent mortgage/finance companies.

The Woodstock Institute has defined “predatory mortgage lending” by identifying its characteristics:

- Excessive fees and interest rates (beyond those necessary to cover costs and reasonable, risk-adjusted returns);
- Marketing which may be misleading, high-pressure or fraudulent;
- Packing and financing of unnecessary fees such as credit life insurance;
- Frequent refinancing with repeated incursion of new fees which are rolled into the new loan (flipping);
- Terms which trap borrowers into unaffordable financing such as balloon payments and prepayment penalties.¹

The Institute has found that predatory lending frequently depletes equity in homes; reduces a household’s cash flow, placing severe strain on household finances; worsens the borrower’s credit rating; and, can lead to foreclosure, abandoned homes and blighted neighborhoods.

The High Risk Home Loan Act (815 ILCS 137/1 et seq.) effective January 1, 2004, defines the term “High Risk Home Loan” (a predatory loan) as a home equity loan which:

- for a first lien, exceeds the yield on U.S. Treasury securities (yield) by 6 percentage points;
- for a second lien (or other liens), exceeds the yield by 8 percentage points;
- has points and fees which exceed the greater of \$800 or 5% of the total loan.

¹ [“Two Steps Back: The Dual Mortgage Market, Predatory Lending and the Undoing of Community Development.”](#)

This definition and Act do not apply to business loans, and do not apply to the initial purchase of a home.

Initial home purchases are obtained through conventional prime lenders, conventional subprime lenders, or Federal Housing Authority (FHA), and Veterans Administration (VA) guaranteed loans. These are not the problem loans/lenders. Rather, the bulk of the predatory loans have been in the home equity and refinancing arenas where lenders and brokers tend to make their revenue mostly on points and fees.

The Act applies to lenders. It does not apply to any public or private pension plan. It does not apply to purchasers, assignees or subsequent holders of predatory loans. Lenders include Banks, Credit Unions, Insurance Companies, Mortgage Banking Companies, Savings Banks, Savings and Loan Associations, other residential mortgage lenders, or creditors and brokers who transfer, deal in, offer or make high-risk home loans.

Please note: The retirement systems have been requested to adopt policies which cover the making, investing (purchasing) or servicing of Predatory Loans or Notes.

The Woodstock Institute found that most predatory lending occurred in lower income and minority communities. These are communities in which lending is often viewed as an isolated line of business focusing on the short-term transaction and associated fees.²

Unchecked, predatory lending threatens promotion of homeownership as a means of wealth creation and neighborhood stabilization.³

Please Note: The terms “predatory loans” and “high risk home loans” are used interchangeably for purposes of this white paper.

² id page ii

³ id page 39.

Section 2 Regulatory Environment

The United States has a two-tiered system of regulating lenders. Federally chartered institutions are regulated by federal agencies such as the Office of the Comptroller of the Currency. State chartered institutions are regulated by State agencies such as the Illinois Office of Banks and Real Estate.

Similarly, federal laws are focused on initial loans to purchase homes. Congress has been slow to address refinancing and home equity loan practices through new enactments.

Moreover, federal laws such as the “Depository Institutions Deregulation and Monetary Control Act of 1980” (regulates interest rates on first mortgages) and the “Alternative Mortgage Transactions Parity Act of 1983” (regulates loan terms such as balloon payments and negative amortizations), preempt most state laws. And, when the federal government has not acted or has acted in a limited or inadequate fashion, federally chartered institutions claim exemptions from local state statutes affecting predatory lending.

Herein lies the rub in Illinois. State chartered banks are complying with the Illinois High Risk Home Loan Act, and the federally chartered banks are not. Since federally chartered banks provide both loans and buy bundles of mortgages, the Illinois Act cannot be as effective as hoped. It is recognized that state efforts can reduce predatory lending, but not eradicate it without strengthening federal laws and regulations.

The Woodstock Institute has recommended strengthening federal consumer protection laws such as the Home Ownership and Equity Protection Act of 1994 (HOEPA) and Community Reinvestment Act of 1977 (CRA).

It also recommends stronger state regulations especially in the areas of licensing mortgage lenders and reporting data on loans, including rates, fees, and other features.

Acts

- Federal
 - Home Mortgage Disclosure Act (HMDA)
 - Home Ownership and Equity Protection Act (HOEPA) of 1994
 - Community Reinvestment Act (CRA)
 - Tax Reform Act of 1986
- State
 - High Risk Home Loan Act of 2003

* * * * *

Departments

- Federal
 - U.S. Department of Housing and Urban Development (HUD)
 - Federal Trade Commission (FTC)
 - Department of Justice
- State
 - Department of Financial and Professional Regulation/Division of Banking and Division of Financial Institutions
 - Office of Banks and Real Estate
 - Attorney General's Office

Section 3 Investments of Illinois Public Pension Plans

Illinois has approximately 602 public pension plans with assets of approximately \$116 billion. Together, these plans use the services of banks as custodians of assets and as service providers. They utilize investment consultants, investment managers and mutual funds.

Investments are made in domestic and foreign equities; domestic and foreign fixed income; real estate; alternative investments; mutual funds; U.S. Treasury Bills and Notes; commercial paper, repurchase agreements, banker's acceptances and certificates of deposit.

The smaller Article 3 police and Article 4 firefighter plans are limited to direct investments in obligations of the U.S.; obligations guaranteed by the U.S.; bonds, notes, debentures, obligations of U.S. agencies; savings accounts or certificates of deposit; investments in credit unions; State of Illinois bonds; the Illinois Treasurer's Investment Pool; municipal bonds; money market mutual funds; and general accounts of life insurance companies.⁴

Some large Article 3 and Article 4 funds can invest in equities (§ 3-113.3 & 4-113.4), but it is only the very large ones, so it is likely not many of them do.

Investments are made through several vehicles:

COMMINGLED FUND

A vehicle in which the assets of several accounts are pooled to permit more efficient management of the investments at a reduced administrative cost. This vehicle is also called a collective investment trust, common fund or pooled fund. This vehicle is used by many pension systems to replicate index returns such as the S&P 500 Index.

DIRECT

Ownership is in the name of the retirement fund or a nominee. One thousand shares of Citigroup owned by a pension system is an example.

⁴ 3 40 ILCS 5/1-113.2

GUARANTEED INVESTMENT CONTRACT (GIC)

A debt instrument, usually issued by an insurance company, and often purchased by retirement plans. The interest rate and principal are generally guaranteed by the issuer. It provides stability of value and return, and may be used as a substitute for money market accounts and bonds.

MUTUAL FUNDS

An investment fund in which an investment company raises money from shareholders and invests in stocks, bonds, options, futures, currencies, commodities or other types of investments. These funds offer the advantage of diversification and professional management to smaller pension plans and individual investors.

PARTNERSHIP

An organization composed of a group of investors, usually one general partner that manages the investment and several limited partners who have limited liability and are not involved in the day-to-day operation of the investment. Private equity, venture capital and real estate are examples of investments that use this vehicle.

* * * *

Approximately 22% of the Wilshire 5000 Index, 59% of the Lehman Brothers Aggregate Bond Index and 28% of the MSCI World Ex-US Index are financial institutions. A number of publicly traded financial institutions both in the U.S. and in overseas markets, have varying degrees of exposure to the sub-prime lending market. Many have no exposure to sub-prime lending. Given the complex/numerous lines of business these institutions are engaged in, there may not be sufficient transparency to identify with any level of precision what portion of an entity's business is attributable to sub-prime lending.

Conservatively, 22% of the investments of the larger Illinois pension systems and over 22% of the local Police and Fire pension fund investments may be affected by predatory lending certification requirements. \$25 billion in Illinois public pension fund investments could potentially be prohibited if certifications renouncing predatory lending cannot be obtained.

When the financial sector of the investment market is performing well, the Illinois Pension Systems would likely not participate if certification is required. These Pension Systems will also lose the benefits of sector diversification, because many high quality financial and financial service companies such as GE, GMAC, Bank of America, Morgan Stanley and others, may not be available for investment if they are unwilling to certify their predatory lending status.

Section 4 **Fiduciary Standards**

All public pension plans in Illinois are trusts. The common law of trusts is applicable to their operation, supplemented by their governing articles and Article 1 of the Illinois Pension Code.

There are thirteen reciprocal pension systems in Illinois which comprise “The Association of Illinois Public Retirement Systems”. Articles 3 and 4 of the Illinois Pension Code establish local Police and Fire plans which number in excess of 589 and are not reciprocal systems. Articles 5 and 6 establish the Chicago Police and Fire plans.

Twelve of the thirteen reciprocal plans and the Chicago Police and Fire funds invest assets following the prudent man standard, generally with no limitation on the types or amounts of investments made. Article 3 and 4 funds and the Metropolitan Water Reclamation District Retirement Fund have limited investment authority.

In all cases, however, trustees, staff, investment consultants and investment managers are deemed fiduciaries as defined in Section 1-101.2 of the Illinois Pension Code.⁵ Those retirement systems and pension funds are charged with investing assets solely in the interest of their participants for the exclusive purpose of providing benefits and defraying reasonable expenses. They are to follow the care, skill, prudence and diligence that a prudent man would apply while investing. Trustees are required to diversify investments so as to minimize the risk of loss in accordance with the provisions of the applicable articles of the Illinois Pension Code⁶.

Investment decisions that are inconsistent with the exclusive benefit requirements in the Illinois Pension Code risk breaching a trustee’s fiduciary responsibility and could result in potential liability.

Since the establishment of these fiduciary duties in 1982, any socially responsible investment initiatives have necessitated amendment to Article 1 of the Illinois Pension Code (1986 - South African Divestiture; 1993 – Emerging Investment Managers; 2005 – Sudan Divestiture).

⁵ 40 ILCS 5/1-101.2

⁶ 40 ILCS 5/1-109

Section 5 Local Initiatives

◦ City of Chicago

The City of Chicago amended Chapter 2-32 of the Municipal Code to address predatory lending in August 2000.⁷ Depositories of municipal funds and underwriters on municipal bonds are asked to execute an Anti-Predatory Lending Pledge. The pledge applies to both the financial institution and its affiliates as defined by the Federal Bank Holding Company Act of 1956.⁸

The financial institution is advised that it may lose its designation as a municipal depository or underwriter if it undertakes or becomes affiliated with a predatory lender.

The Code defines a predatory loan as a loan which involves:

- (1) Fraudulent or deceptive practices;
- (2) Prepayment penalties;
- (3) Balloon payments;
- (4) Loan flipping;
- (5) Negative amortization;
- (6) Financing/points/fees in excess of 6% of the loan amount;
- (7) Financing life, disability, unemployment or health insurance;
- (8) Disregarding repayment ability of lender;
- (9) Payments to contractors; or
- (10) Other practices deemed predatory in nature by the City.

The city retirement systems have not been asked to obtain pledges. However, the City Treasurer, who is also treasurer of four City retirement systems, has already obtained pledges through the City Treasurer's Office. Pledges are obtained with each bid submitted by a financial institution for any contract with the City.

◦ County of Cook

The County's ordinance was passed in April 2001. It closely resembles the City of Chicago's Ordinance in many respects, including the identification of predatory practices.

⁷ Chicago Municipal Code §2-32-455 (2000)

⁸ 12 USC 1841 et seq.

The predatory lending prohibition (and pledge requirements) apply to both contracts and deposits.

Section 6 State Initiative

The State initiative is patterned after the Chicago Ordinance. It is found in Public Act 93-0561, effective January 1, 2004, and is known as the High Risk Home Loan Act. It applies to home equity and refinancing loans, not first mortgages. It prohibits lenders from engaging in predatory practices identified by the Woodstock Institute and in the Chicago and Cook County Ordinances. It does not include purchasers, assignees, or subsequent holders of high-risk home loans.

Please note: The retirement systems have been requested to adopt policies which cover the making, investing (purchasing) or servicing of Predatory Loans or Notes.

It undertakes a comprehensive approach to prevent predatory lending including provisions for notices during mortgage closings, counseling and reporting of default and foreclosure rates. Violation of the Act constitutes a violation of the Consumer Fraud and Deceptive Business Practices Act⁹, enforceable by the Illinois Attorney General.

As comprehensive and as potentially effective as the High Risk Home Loan Act is, it is preempted by less stringent federal laws applicable to national banks and thrifts. Speaker Madigan's request of the public retirement systems in the State is an effort to plug that gap.

◦ Attorney General's Office

The Office was contacted to obtain insight and guidance. The salient comments were:

1. The United States has a dual banking system with the federal government regulating financial institutions at one level and state and local regulations at another. Typically, banks operating in multiple states will be federally regulated. However, there may be institutions which subject themselves to both levels of regulation.

⁹ 815 ILCS 505/1 et seq.

2. The Attorney General's Office undertakes enforcement actions under the High Risk Home Loan Act, but cannot sue a national bank for violation of an Illinois law due to preemption by the federal government. There are no pending lawsuits. There is no list of predatory lenders.
3. Speaker Madigan's letter should be interpreted as not doing business with a financial institution unless they sign a certification. Public funds may not be able to buy Ginnie Maes. Index funds may be acceptable investments.

◦ Legislative Insight

Legislative staff in Speaker Madigan's office discussed the provisions of the letter to provide guidance in its implementation for the Funds. According to staff, the Speaker's letter and proposed Board policy are to be read literally. The focus of the initiative is on investing "with" financial firms, as opposed to investing "in" those firms. It does cover deposits and working with firms as bond underwriters. The policy is also broad and applies to state chartered institutions; national banks (even if not doing business in Illinois) and international banks. Ownership of the equities of financial institutions is not affected (i.e. permissible without obtaining certifications), however, ownership of fixed income is uncertain. The proposed policy should also be adopted verbatim.

Section 7 Federal Initiatives

Several Bills have been introduced before Congress. And, at least one Bill has been drafted but not yet introduced. None have passed.

HR 1182 – Introduced March 9, 2005 by Representative Brad Miller of North Carolina. Co-Sponsors include the following members of the Illinois delegation: Costello; Davis; Evans; Gutierrez; Jackson; Rush; and, Schakowsky.

It sets a federal floor for minimum standards. And, it retains the rights of states to address mortgage lending abuses. It is supported by consumer groups.

Summary

Prohibit Predatory Lending Act – Amends the Truth in Lending Act in connection with consumer credit cost disclosure to redefine: (1) high-cost mortgage; (2) the formula used to adjust certain percentage points in connection with a consumer credit transaction secured by the consumer's principal dwelling; and (3) related points and fees.

Sets forth a formula to calculate: (1) points and fees for open-end loans; and (2) bona fide discount points and prepayment penalties.

Revises requirements for: (1) prepayment penalties; (2) balloon payments; and (3) extension of credit without regard to consumer's payment ability.

Prohibits in connection with high-cost mortgages: (1) a lender from recommending a default on an existing debt prior to and in connection with the closing of a high-cost mortgage that refinances all or any portion of such existing loan or debt; (2) specified late fees; (3) certain accelerations of debt; (4) certain evasions, structuring of transactions, and reciprocal arrangements; (5) certain modification and deferral fees; and (6) mandatory arbitration or other nonjudicial procedures.

Mandates pre-loan counseling as a prerequisite for a high-loan mortgage.

Revises guidelines governing lender liability for correction of errors.

Prohibits a lender from knowingly or intentionally engaging in the unfair act or practice of flipping (the making of a loan or extension of credit to a consumer which refinances an existing mortgage when the new loan or credit extension does not have reasonable, tangible net benefit to the consumer, considering all of the circumstances, including the terms of both the new and the refinanced loans or credit, the cost of the new loan or credit, and the consumer's circumstances).

Prohibits single premium credit insurance.

Doubles civil money penalties for certain violations.

Extends to three years the statute of limitations for violation of certain statutory disclosure requirements.

HR 1295 – Introduced March 15, 2005 by Representative Robert Ney of Ohio. Co-Sponsors include the following members of the Illinois delegation: LaHood.

It addresses predatory lending at a federal level, but supersedes state laws (further expanding federal preemption). It is not supported by consumer groups.

Summary

Responsible Lending Act – Mortgage Lending Improvements and Uniform National Standards Act – Amends the Truth in Lending Act to define higher-cost mortgage.

Sets forth related provisions with respect to: (1) requirements for higher-cost mortgages; (2) dispute and error resolution; (3) damages, rescission and liability; (4) State law coordination; (5) State enforcement authority; (6) prepayment penalties and late charges; and (7) consumer counseling.

Expanding Housing Opportunities Through Education and Counseling Act – Amends the Department of Housing and Urban Development Act to establish, in the Office of the Secretary of Housing and Urban Development (HUD), the Office of Housing Counseling. Directs the Office to carry out HUD homeownership and rental counseling functions, including related research, grant administration, public outreach, and development policy and performance measures.

Amends the Housing and Urban Development Act of 1968 to direct the Secretary to: (1) establish homeownership and rental counseling procedures, and a related toll-free telephone number and World Wide Web site; (2) certify computer software programs for consumer evaluation of residential mortgage loans; (3) establish a housing counseling multimedia outreach program for vulnerable populations; (4) assist States, local government, and non-profit organizations with consumer education programs about mortgage, refinancing, home equity, or home repair loans; and (5) make grants for State, local government, and nonprofit organization housing counseling assistance.

Requires organizations to use HUD-certified counselors in order to qualify for specified HUD assistance.

Amends the Real Estate Settlement Procedures Act of 1974 to: (1) revise the mortgage information booklet; (2) set forth prohibitions on a servicer of a federally related mortgage; and (3) prohibit a creditor from providing a higher-cost mortgage to any consumer without first obtaining a written appraisal of the property.

Amends the Truth in Lending Act to require a creditor in certain transactions secured by a residence to establish an escrow or impound account for taxes and hazard insurance payments.

Directs: (1) the Secretary to conduct studies of mortgage servicing fraud, and home loan default and foreclosures; and (2) the Government Accountability Office (GAO) to conduct an appraisal process study.

Directs the Secretary to establish: (1) a national mortgage broker database; and (2) Federal mortgage broker requirements. Sets forth uniform State mortgage broker law guidelines, and states that Federal requirements shall apply to those States that have not enacted uniform laws.

Sets forth liability provisions for intentional unlawful disclosures, with a good faith exception.

HR 3426 – Introduced July 26, 2005 by Luis Gutierrez of Illinois. Co-sponsors include the following members of the Illinois delegation: Schakowsky

It reduces federal preemption subjecting federally chartered financial institutions to state predatory lending laws.

Summary

Preservation of Federalism in Banking Act – Amends the Revised Statutes of the United States and the Home Owners’ Loan Act to declare applicable to either a national bank or federal savings association any consumer protection in state consumer law of general application (including unfair or deceptive acts or practices, consumer fraud law and repossession, foreclosure, and collection).

Declares that when a national bank or federal savings association avails itself of state law for its benefit, all related consumer protections in such state law shall apply.

Declares applicable to a national bank or federal savings association: (1) state banking or thrift laws enacted pursuant to federal law; and (2) state laws providing greater protection in high cost mortgage loans (predatory mortgage loans).

Permits the Comptroller of the Currency to preempt state law only when a comparable federal statute or regulation pursuant to a federal statute, other than this Act, expressly governs the activity.

States that any federal law relating to visitorial powers or which otherwise limits or restricts the supervisory, examination, or regulatory authority to which a national bank or federal savings association is subject shall not be construed as restricting the authority of any chief state law enforcement officer to bring an action on behalf of state residents to enforce federal or state law, or to seek relief and recover damages for violations by a national bank or federal savings association.

Prescribes procedural guidelines requiring the Comptroller and the Director of the Office of Thrift Supervision to record and monitor consumer complaints regarding either a national bank or a federal savings association, respectively.

HR 4471 – Introduced December 8, 2005 by Representative Wm. Lacy Clay of Missouri. Co-sponsors: None.

Summary

Fair and Responsible Lending Act – Uniform National Mortgage Lending Standards Act – Amends the Truth in Lending Act to define high-cost home loans.

Revises guidelines regarding: (1) requirements for high-cost home loans; (2) dispute and error resolution; (3) damages, rescission, and liability; (4) state law coordination; (5) state enforcement authority; and (6) disclosure guidelines.

Prescribes consumer counseling requirements.

Expanding Housing Opportunities Through Education and Counseling Act – Amends the Department of Housing and Urban Development Act to establish, in the Office of the Secretary of Housing and Urban Development (HUD), the Office of Housing Counseling to carry out homeownership and rental counseling functions, including related research, grant administration, public outreach, and development of policy and performance measures.

Amends the Housing and Urban Development Act of 1968 to direct the Secretary to: (1) establish homeownership and rental counseling procedures, and a related toll-free telephone number and World Wide Web site; (2) certify computer software programs for consumer evaluation of residential mortgage loans; (3) establish a housing counseling multimedia outreach program for vulnerable populations; (4) assist states, local government, and non-profit organizations with consumer education programs about mortgage, refinancing, home equity, or home repair loans; and (5) make grants for state, local government, and nonprofit organization housing counseling assistance.

Requires organizations to use HUD-certified counselors in order to qualify for specified HUD assistance.

Amends the Real Estate Settlement Procedures Act of 1974 to: (1) direct the Secretary to prepare an updated booklet to help consumers applying for federally related mortgage loans to understand the nature and costs of real estate settlement services; and (2) prescribe guidelines governing an option for notice of foreclosure prevention counseling availability.

Section 8 Woodstock Institute

Incorporated in 1973, it is a non-profit organization which promotes community reinvestment and economic development in lower-income and minority communities. It is a think tank which has published significant research on the topic of predatory lending. Papers include:

- Two Steps Back: The Dual Mortgage Market, Predatory Lending, and the Undoing of Community Development (1999)
- Risky Business – An Economic Analysis of the Relationship Between Subprime Lending and Neighborhood Foreclosures (2004)
- There Goes the Neighborhood: The Effect of Single-Family Mortgage Foreclosures on Property Values (2005)

The “Two Steps Back:...” article is recommended reading. It gives a good definition of predatory lending as well as its negative affects on families and neighborhoods. It can be obtained from the Institute’s website (www.woodstockinst.org).

Malcolm Bush, the Institute’s President, was contacted for insight and guidance.

1. He noted the City of Chicago approach (focusing on firms the City does business with) was simpler than the State’s initiative through Speaker Madigan.
2. The State’s initiative was not intended to be unduly burdensome on the pension plans. The plans would request/receive certifications. The plans would have no responsibility to investigate whether the certification was in fact legitimate. There would be no on-going requirement to continuously monitor financial institution compliance with certifications once obtained.
3. He interpreted the Speaker’s phrase “investment with” to include owning shares of the financial institution, and that “financial institution” should be broadly interpreted (as defined in the Illinois High Risk Home Loan Act). However, owning shares of an international bank not doing business in the United States, may be permissible.

Section 9: Issues: Open and Closed

As a preliminary point, it is important to acknowledge that predatory lending is a practice which needs to be stopped in Illinois, as well as nationwide. It is not in the best interests of taxpayers or public pension plans for this activity to continue. The Association of Illinois Public Retirement Systems is working to square sound public policy with established fiduciary responsibilities placed on trustees, staff and investment managers.

That said, there are several open issues which the pension plans will need to address, perhaps without the benefit of further guidance from the State or the Community Advisory Groups. Similarly, there are some issues which may be deemed settled as a practical matter.

- Open Issues (Is Certification Required?)
None at this time.
- Closed Issues
 1. There is no definitive, exhaustive list of predatory lenders, nor will there be one.
 2. A predatory lender can be any financial institution which makes, offers, deals in or transfers, high-risk loans.
 3. Predatory lenders do not include purchasers, assignees or subsequent holders of high-risk loans.
 4. “Financial institution” means a bank, savings and loan association, thrift, credit union, mortgage banker, mortgage broker, a trust company, a savings bank, an investment bank, a securities broker, a municipal securities broker, a securities dealer, a municipal securities dealer, a securities underwriter, a municipal securities underwriter, an investment trust, a venture capital company, a bank holding company, a financial services holding company, or any licensee under the Consumer Installment Loan Act, the Sales Finance Agency Act, or the Residential Mortgage Licensing Act which makes residential loans. However, “financial institution” specifically shall not include any entity whose predominant business is the providing of tax deferred, defined contribution, pension plans to public employees in accordance with

5. Sections 403(b) and 457 of the Internal Revenue Code.¹⁰
6. Only financial institutions doing business in the United States are covered.
7. Depositories of pension assets must provide certifications.
8. If the Fund does business with a financial institution, as an investment manager, certification is required.
9. Certification is not required of financial institutions in which the Fund has invested through an investment manager. (Funds will not look through the investment management relationship to determine if instruments it owns were issued by a predatory lender.).

¹⁰ Chicago Municipal Code §2-32-455 (2000)

Section 10: Approach

Given the broad range of public pension plans in Illinois, the diversity of investments and the open issues, it may be impossible to develop one consistent approach which furthers a worthy public goal, while at the same time shielding the trustees, staff and investment managers from fiduciary liability.

That said, the various retirement systems agree to develop, as much as practicable, a consistent approach and action plan.

Action Plan

1. Boards of Trustees will adopt the resolution proposed by the Speaker condemning predatory lending, including the certification. The resolution should be distributed to all custodians, consultants and investment managers.
2. Require the Fund's Master Trustee or bank depositories to execute the certification adopted by your Board.
3. Require the Fund's consultants to acknowledge in writing the Board's position condemning predatory lending.
4. Send a questionnaire to each investment manager to determine which are/are not financial institutions engaged in sub-prime lending.
5. Require the Fund's investment managers (which are financial institutions) to execute the certification. If they cannot, determine the reason. Work for a compromise, an amended certification, or terminate the investment manager.
6. Support federal legislation which either curtails federal preemption thereby allowing state regulation of predatory lending, or which establishes a federal prohibition of predatory lending.

