Testimony of Geoff Smith before the Office of Banks and Real Estate Residential Mortgage Board regarding proposed changes to the Residential Mortgage Licensee Act

March 5, 2003

I am here to comment on proposed changes to the Residential Mortgage Licensee Act of 1987 suggested by the Residential Mortgage Board.

We approve of some of the proposed changes to the Residential Mortgage Licensee Act such as increasing the maximum fine administrable by OBRE from $10,000 to $25,000 per violation and increasing the net worth requirement for mortgage lenders and brokers. We feel these changes strengthen the Residential Mortgage Licensee Act and improve upon existing Illinois law. Also, we agree with requiring loan originators to register and be regulated, but specifics about how this regulation will function and how loan originators differ from mortgage brokers need to be made clearer before this section has any value.

We, however, strongly disagrees with the addition of the section on "High-Risk Home Loans." This section in no way improves on the administrative rules currently regulating high-risk loans and, in fact, weakens protections for Illinois consumers. Under the proposed changes:

- The interest rate trigger for high-risk loans will be set at 8 points over Treasury rate for first mortgages and at 10 points over Treasury rate for second mortgages. The fee trigger will be set at 6 percent of the loan amount for first mortgages and 8% of loan amount or $800 for second mortgages. These changes raise the triggers in place under the current Illinois regulations. Thus, fewer loans will be covered under the proposed changes than are currently under the regulations.

- Yield-spread premiums will be removed from the calculation of points and fees. This is harmful in that it reduces the effectiveness of the fee trigger by removing a significant fee. Yield-spread premiums are indirect fees paid to the mortgage broker by the lender, in essence, for giving the borrower a higher interest rate loan than they may have otherwise qualified. Yield-spread premiums are historically one of the fees most abused and hidden by mortgage brokers. Leaving it unregulated opens the door to inflated interest rates for Illinois consumers and excessive profits for brokers. Under this change fewer loans would be covered, and Illinois consumers could pay unnecessarily high interest rates.

- Additionally, it is unclear how Consumer Installment Loan Act (CILA) licensees and state banks and thrifts, who are currently covered by the state's high-risk lending rules, will be effected by these changes. Some of the worst predatory lenders, such as Household and Citifinancial, are CILA licensees and must have some form of regulation.

The proposed High-Risk Loan additions to the Residential Mortgage Licensee Act must be made stronger if they are to be put into law. At the minimum, they must have the same interest rate and fee triggers as the high-risk lending regulations currently in place and yield-spread premiums must be included in the calculation of points and fees. In addition, the following issues should be addressed:

- An explicit private right of action clause that allows for assignee liability must be added to any proposed changes. Consumers who have been taken advantage of must be allowed to privately purse their cases and not rely on the regulatory process to solve their problems. Also, the current holder of the loan, or the assignee, must be held liable if any private right of action clause is to have value.

- Similar changes must be made to the Consumer Installment Loan Act and acts covering other Illinois-regulated mortgage lenders or a separate piece of legislation must be proposed to cover all state regulated mortgage lenders. Without this, many of the worst predatory lenders will not be covered.

- Increased information must be made available to the public on licensee exam schedules and results. Currently, no such information is publicly available. We understand the limitations placed on OBRE by the FIOA statute, but feel that there is room for limited information to be made public. If the Residential Mortgage Licensee Act is to have any teeth as a consumer protection act, licensees must be made publicly accountable for their actions.

As they currently stand, the High-Risk Loan addition to the Residential Mortgage Licensee Act should be rejected. With foreclosure rates for high-risk loans continuing to rise and predatory lending continuing to be a problem, we advocate for increased enforcement of the existing high-risk loan regulations and strong legislation that would increase protections for Illinois consumers. The proposal above makes no effective improvements to current Illinois high-risk loan regulations, and actually reduces the scope and power of protections to Illinois consumers.