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**TITLE 750 DEPARTMENT OF FINANCIAL INSTITUTIONS**

**Emergency Rule**  
LSA Document #10-423(E)

DIGEST

Amends [750 IAC 9-1-1](#) concerning the term "mortgage transaction". Amends [750 IAC 9-3-1](#) concerning housing councilors for not for profit entities and not for profit entities originating zero-interest loans. Amends [750 IAC 9-3-8](#) to correct a citation. Effective June 24, 2010.

[750 IAC 9-1-1](#); [750 IAC 9-3-1](#); [750 IAC 9-3-8](#)

SECTION 1. [750 IAC 9-1-1](#) IS AMENDED TO READ AS FOLLOWS:

**[750 IAC 9-1-1](#) Definitions**

**Authority:** [IC 24-4.4-1-101](#)

**Affected:** [IC 24-4.4-1-301](#)

Sec. 1. The definitions in this rule apply throughout this article:

(1) "Affiliate", with respect to any person subject to this article, means a person that, directly or indirectly, through one (1) or more intermediaries:

- (A) controls;
- (B) is controlled by; or
- (C) is under common control with;

the person subject to this article.

(2) "Agreement" means the bargain of the parties in fact as found in the parties' language or by implication from other circumstances, including course of dealing or usage of trade or course of performance.

(3) "Agricultural products" includes:

- (A) agricultural;
- (B) horticultural;
- (C) viticultural;
- (D) dairy products;
- (E) livestock;
- (F) wildlife;
- (G) poultry;
- (H) bees;
- (I) forest products;
- (J) fish and shellfish;
- (K) any products raised or produced on farms; and
- (L) any products processed or manufactured from products raised or produced on farms.

(4) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products.

(5) "Civil court" means any court in Indiana having jurisdiction over civil cases.

(6) "Consumer credit sale" is a sale of goods, services, or an interest in land in which:

- (A) credit is granted by a person who engages as a seller in credit transactions of the same kind;
- (B) the buyer is a person other than an organization;
- (C) the goods, services, or interest in land are purchased primarily for a personal, family, or household purpose;
- (D) either the debt is payable in installments or a credit service charge is made; and
- (E) with respect to a sale of goods or services, either the amount financed does not exceed fifty thousand dollars (\$50,000) or the debt is secured by personal property used or expected to be used as the principal dwelling of the buyer.

(7) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(8) "Creditor" has the meaning set forth in:

- (A) [IC 24-4.4-1-301](#), which is incorporated by reference, for first lien mortgage transactions; and
- (B) [IC 24-4.5-1-301](#) [[IC 24-4.5-1-301](#) was repealed by P.L.35-2010, SECTION 209, effective July 1, 2010.],

which is incorporated by reference, for mortgage transactions not secured by a first lien.

(9) "Department" refers to the department of financial institutions.

(10) "Depository institution" has the meaning set forth in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)), which is incorporated by reference, and includes any credit union.

(11) "Director" refers to the director of the department of financial institutions or the director's designee.

(12) "Dwelling" means a residential structure that contains one (1) to four (4) units, regardless of whether the structure is attached to real property. The term includes an individual:

- (A) condominium unit;
- (B) cooperative unit;
- (C) mobile home; or
- (D) trailer;

that is used as a residence.

(13) "Employee" means an individual who is paid wages or other compensation by an employer required under federal income tax law to file Form W-2 on behalf of such employee.

(14) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(15) "Immediate family member" means:

- (A) spouse;
- (B) child;
- (C) sibling;
- (D) parent;
- (E) grandparent;
- (F) grandchild;
- (G) stepparents;
- (H) stepchildren;
- (I) stepsiblings; and
- (J) adoptive relationships.

(16) "Individual" means a natural person.

(17) "Licensee" means a person licensed as a mortgage loan originator under this article.

(18) "Loan" includes:

(A) the creation of debt by:

- (i) the creditor's payment of or agreement to pay money to the debtor or to a third party for the account of the debtor; or
- (ii) the extension of credit by a person who engages as a seller in credit transactions primarily secured by an interest in land;

(B) the creation of debt by a credit to an account with the creditor upon which the debtor is entitled to draw immediately; and

(C) the forbearance of debt arising from a loan.

(19) "Loan brokerage business" means activities by which any person, in return for any consideration from any source, procures, attempts to procure, or assists in procuring a mortgage transaction from a third party or any other person, whether or not the person seeking the loan actually obtains the loan.

(20) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of, and subject to the supervision and instruction of, a person licensed or exempt from licensing under [IC 24-4.4](#) or [IC 24-4.5](#). For purposes of this section, the term "clerical or support duties" may include, after the receipt of an application, the following:

(A) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a mortgage transaction.

(B) The communication with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that the communication does not include:

- (i) offering or negotiating loan rates or terms; or
- (ii) counseling consumers about mortgage transaction rates or terms.

An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

(21) "Mortgage loan originator" means an individual who for compensation or gain, or in the expectation of compensation or gain, engages in taking a mortgage transaction application or offering or negotiating terms of a mortgage transaction that is made either under [IC 24-4.4](#) or [IC 24-4.5](#) or by an employee of a person licensed or exempt from licensing under [IC 24-4.4](#) or [IC 24-4.5](#) while engaging in the loan brokerage business. The term does not include the following:

- (A) An individual engaged solely as a loan processor or underwriter as long as the individual works exclusively as an employee of a person licensed or exempt from licensing under [IC 24-4.4](#) or [IC 24-4.5](#).
  - (B) Unless the person or entity is compensated by:
    - (i) a creditor;
    - (ii) a loan broker;
    - (iii) another mortgage loan originator; or
    - (iv) any agent of the creditor, loan broker, or other mortgage loan originator described in items (i) through (iii);a person that performs only real estate brokerage activities and is licensed or registered in accordance with applicable state law.
  - (C) A person solely involved in extensions of credit relating to timeshare plans (as defined in 11 U.S.C. 101(53D), which is incorporated by reference).
- (22) "Mortgage transaction" means a loan or consumer credit sale that is or will be used by the debtor primarily for personal, family, or household purposes and is secured by a mortgage ~~and contract~~, or other equivalent consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling.
- (23) "Nationwide Mortgage Licensing System and Registry" or "NMLSR" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of creditors and mortgage loan originators.
- (24) "Nontraditional mortgage product" means any mortgage product other than a thirty (30) year fixed rate mortgage.
- (25) "Organization" means a corporation, a government or government subdivision, an agency, a trust, an estate, a partnership, a limited liability company, a cooperative, an association, a joint venture, an unincorporated organization, or any other entity, however organized.
- (26) "Payable in installments", with respect to a debt or an obligation, means that payment is required or permitted by written agreement to be made in more than four (4) installments not including a down payment.
- (27) "Person" includes an individual or an organization.
- (28) "Principal" of a mortgage transaction means the total of:
  - (A) the net amount paid to, receivable by, or paid or payable for the account of the debtor; and
  - (B) to the extent that payment is deferred, amounts actually paid or to be paid by the creditor for registration, certificate of title, or license fees if not included in clause (A).
- (29) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including the following:
  - (A) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property.
  - (B) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property.
  - (C) Negotiating, on behalf of any party, any part of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to the sale, purchase, lease, rental, or exchange of real property).
  - (D) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law.
  - (E) Offering to engage in any activity, or act in any capacity, described in this section.
- (30) "Registered mortgage loan originator" means any individual who:
  - (A) meets the definition of mortgage loan originator and is an employee of:
    - (i) a depository institution;
    - (ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or
    - (iii) an institution regulated by the Farm Credit Administration; and
  - (B) is registered with, and maintains a unique identifier through, the NMLSR.
- (31) "Residential real estate" means any real property, located in Indiana, upon which is constructed or intended to be constructed a dwelling.
- (32) "Revolving mortgage transaction" means an arrangement between a creditor and a debtor in which:
  - (A) the creditor permits the debtor to obtain advances from time to time;
  - (B) the unpaid balances of principal, finance charges, and other appropriate charges are debited to an account; and
  - (C) the debtor has the privilege of paying the balances in installments.
- (33) "Unique identifier" means a number or other identifier assigned by protocols established by the NMLSR.

*(Department of Financial Institutions; [750 IAC 9-1-1](#); emergency rule filed Jul 23, 2009, 4:14 p.m.: [20090729-IR-750090577ERA](#); emergency rule filed Nov 16, 2009, 2:13 p.m.: [20091125-IR-750090917ERA](#); emergency rule filed Feb 11, 2010, 2:49 p.m.: [20100217-IR-750100102ERA](#); emergency rule filed Jun 24, 2010, 2:45 p.m.: [20100707-IR-750100423ERA](#))*

SECTION 2. [750 IAC 9-3-1](#) IS AMENDED TO READ AS FOLLOWS:

**[750 IAC 9-3-1](#) Licensing of mortgage loan originators**

**Authority:** [IC 24-4.4-1-101](#)

**Affected:** [IC 24-4.4](#); [IC 24-4.5](#)

Sec. 1. (a) Except as provided in [750 IAC 9-2-5](#)(5) and ~~subsection~~ **subsections (b), (h), and (i)**, after June 30, 2010, an individual may not engage in the business of a mortgage loan originator without obtaining a mortgage loan originator license issued by the department under this article and annually maintaining the license.

(b) Notwithstanding the licensing requirements under this section, an individual acting exclusively as a servicer engaging in loss mitigation efforts with respect to an existing mortgage transaction is not required to meet the education, testing, background, and licensing standards of this article until July 1, 2011, to the extent that this extension of time is not denied by any guideline, rule, regulation, or interpretive letter issued by the United States Department of Housing and Urban Development.

(c) Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the NMLSR. Notwithstanding subsection (g), each licensed mortgage loan originator must be employed by either a licensed creditor or an entity exempt from licensing under [IC 24-4.4](#) or [IC 24-4.5](#), that is registered with the NMLSR, in order to originate loans.

(d) Applicants for a license must apply for a license under this article in a form prescribed by the director. Each form:

- (1) must contain content as set forth by rule, instruction, or procedure of the director; and
- (2) may be changed or updated as necessary by the director in order to carry out the purposes of this article.

(e) To fulfill the purposes of this article, the director may establish relationships or contracts with the NMLSR or other entities designated by the NMLSR to:

- (1) collect and maintain records; and
- (2) process transaction fees or other fees related to licensees or other persons subject to this article.

(f) For the purpose of participating in the NMLSR, the director may:

- (1) waive or modify, in whole or in part, by order, policy, or guidance, any or all of the requirements of this article; and
- (2) establish new requirements as reasonably necessary to participate in the NMLSR.

(g) A loan processor or underwriter who is not an employee of a person licensed or exempt from licensing under [IC 24-4.4](#) or [IC 24-4.5](#) may not engage in residential mortgage loan originator activities as a loan processor or underwriter unless such person obtains and maintains both a license under this section and a valid unique identifier issued by the NMLSR.

**(h) Notwithstanding the licensing requirements under this section, an individual acting exclusively as a housing counselor engaging in efforts to assist borrowers with respect to an existing mortgage transaction who is:**

- (1) employed by a bona fide not for profit entity that does not operate in a commercial context, as determined by the director, and that is certified by the United States Department of Housing and Urban Development; or**
  - (2) a housing counselor certified by the Indiana housing and community development authority, or a housing counselor who is employed by an entity approved as an Indiana Foreclosure Prevention Network Agency by the Indiana housing and community development authority that is deemed by the director to be a bona fide not for profit entity that does not operate in a commercial context;**
- is not required to meet the education, testing, background, and licensing standards of this article unless this exclusion is denied by any guideline, rule, regulation, or interpretive letter issued by the United States Department of Housing and Urban Development.**

**(i) Notwithstanding the licensing requirements under this section, an individual who exclusively originates zero-interest loans and is employed by a bona fide not for profit entity that does not operate in a commercial context, as determined by the director, is not required to meet the education, testing, background, and licensing standards of this article unless this exclusion is denied by any guideline, rule, regulation, or interpretive letter issued by the United States Department of Housing and Urban Development.**

*(Department of Financial Institutions; [750 IAC 9-3-1](#); emergency rule filed Jul 23, 2009, 4:14 p.m.: [20090729-IR-750090577ERA](#); emergency rule filed Nov 16, 2009, 2:13 p.m.: [20091125-IR-750090917ERA](#); emergency rule filed Feb 11, 2010, 2:49 p.m.: [20100217-IR-750100102ERA](#); emergency rule filed Jun 24, 2010, 2:45 p.m.: [20100707-IR-750100423ERA](#))*

SECTION 3. [750 IAC 9-3-8](#) IS AMENDED TO READ AS FOLLOWS:

**[750 IAC 9-3-8](#) Nationwide mortgage licensing system and registry**

**Authority:** [IC 24-4.4-1-101](#)

**Affected:** [IC 4-1-11](#); [IC 5-14-3](#); [IC 24-4.4](#); [IC 24-4.5](#); [IC 28-1-2-30](#)

Sec. 8. (a) Subject to subsection (f), the director shall designate the NMLSR to serve as the sole entity responsible for:

- (1) processing applications and renewals for licenses under this article;
- (2) issuing unique identifiers for:
  - (A) licensees under this article;
  - (B) creditors licensed under [IC 24-4.4](#) or [IC 24-4.5](#); and
  - (C) entities exempt from licensing under [IC 24-4.4](#) and [IC 24-4.5](#) that employ licensed mortgage loan originators; and
- (3) performing other services that the director determines are necessary for the orderly administration of the department's licensing system under this article.

(b) Subject to the confidentiality provisions contained in [IC 5-14-3](#), which is incorporated by reference, this section, and [IC 28-1-2-30](#), which is incorporated by reference, the director shall regularly report significant or recurring violations of this article to the NMLSR.

(c) Subject to the confidentiality provisions contained in [IC 5-14-3](#), which is incorporated by reference, this section, and [IC 28-1-2-30](#), which is incorporated by reference, the director may report complaints received regarding licensees under this article to the NMLSR.

(d) The director shall report publicly adjudicated licensure actions against a licensee to the NMLSR.

(e) The director shall establish a process in which licensees may challenge information reported to the NMLSR by the department.

(f) The director's authority to designate the NMLSR under subsection (a) is subject to the following:

- (1) Information stored in the NMLSR is subject to the confidentiality provisions of ~~[IC 28-1-2](#)~~ [IC 28-1-2-30](#) and [IC 5-14-3](#), which are incorporated by reference. A person may not:
  - (A) obtain information from the NMLSR, unless the person is authorized to do so by statute;
  - (B) initiate any civil action based on information obtained from the NMLSR if the information is not otherwise available to the person under any other state law; or
  - (C) initiate any civil action based on information obtained from the NMLSR if the person could not have initiated the action based on information otherwise available to the person under any other state law.
- (2) Documents, materials, and other forms of information in the control or possession of the NMLSR that are confidential under [IC 28-1-2-30](#), which is incorporated by reference and that are:
  - (A) furnished by the director, the director's designee, or a licensee; or
  - (B) otherwise obtained by the NMLSR;are confidential and privileged by law and are not subject to inspection under [IC 5-14-3](#), which is incorporated by reference, subject to subpoena, subject to discovery, or admissible in evidence in any civil action. However,



the director may use the documents, materials, or other information available to the director in furtherance of any action brought in connection with the director's duties under this article.

(3) Disclosure of documents, materials, and information:

- (A) to the director; or
- (B) by the director;

under this section does not result in a waiver of any applicable privilege or claim of confidentiality with respect to the documents, materials, or information.

(4) Information provided to the NMLSR is subject to [IC 4-1-11](#), which is incorporated by reference.

(5) This section does not limit or impair a person's right to:

- (A) obtain information;
- (B) use information as evidence in a civil action or proceeding; or
- (C) use information to initiate a civil action or proceeding;

if the information may be obtained from the director or the director's designee under any law.

(6) Except as otherwise provided in Public Law 110-289, Section 1512, which is incorporated by reference, the requirements under any federal law or [IC 5-14-3](#), which is incorporated by reference, regarding the privacy or confidentiality of any information or material provided to the NMLSR, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to the information or material, continues to apply to the information or material after the information or material has been disclosed to the NMLSR. The information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or [IC 5-14-3](#), which is incorporated by reference.

(7) For purposes of this section, the director may enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies as established by order, policy, or guidance of the director.

(8) Information or material that is subject to a privilege or confidentiality under subdivision (f)(6) [*subdivision (6)*] is not subject to:

- (A) disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or
- (B) subpoena, discovery, or admission into evidence in any private civil action or administrative process, unless with respect to any privilege held by the NMLSR with respect to the information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.

(9) [IC 5-14-3](#), which is incorporated by reference, relating to the disclosure of confidential supervisory information or any information or material described in subdivision (f)(6) [*subdivision (6)*] that is inconsistent with subdivision (f)(6) [*subdivision (6)*] is superseded by the requirements of this section.

(10) This section does not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, a licensed mortgage loan originator that are included in the NMLSR for access by the public.

(11) The director may require a licensee required to submit information to the NMLSR to pay a processing fee considered reasonable by the director. In determining whether a NMLSR processing fee is reasonable, the director shall:

- (A) require review of; and
- (B) make available;

the audited financial statements of the NMLSR.

*(Department of Financial Institutions; [750 IAC 9-3-8](#); emergency rule filed Jul 23, 2009, 4:14 p.m.: [20090729-IR-750090577ERA](#); emergency rule filed Jun 24, 2010, 2:45 p.m.: [20100707-IR-750100423ERA](#))*

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