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**TITLE 750 DEPARTMENT OF FINANCIAL INSTITUTIONS**

**Emergency Rule**  
LSA Document #11-43(E)

DIGEST

Amends [750 IAC 9-1-1](#) to correct an outdated citation. Amends [750 IAC 9-2-2](#) concerning the date of applicable federal law. Amends [750 IAC 9-3-3](#) concerning criminal background checks. Amends [750 IAC 9-4-1](#) concerning notification of the department of felony convictions. Effective January 13, 2011.

[750 IAC 9-1-1](#); [750 IAC 9-2-2](#); [750 IAC 9-3-3](#); [750 IAC 9-4-1](#)

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](#); [IC 24-4.5-1-301.5](#)

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 24-4.5-1-301.5](#), 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 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](#); emergency rule filed Jan 13, 2011, 2:44 p.m.:*

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

**[750 IAC 9-2-2 Construction](#)**

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

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

Sec. 2. (a) This article shall be liberally construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of this article are:

- (1) to permit and encourage the development of fair and economically sound mortgage lending practices; and
- (2) to conform the regulation of mortgage lending practices to applicable state and federal laws, rules, and regulations.

(c) A reference to a requirement imposed by this article includes references to a related law or rule, or to any policy or guidance document of the department adopted under this article.

(d) To carry out the purposes of this article, the director has the broad administrative authority to administer, interpret, and enforce this article.

(e) A reference to a federal law in this article is a reference to the law in effect December 31, 2009- 2010.

*(Department of Financial Institutions; [750 IAC 9-2-2](#); emergency rule filed Jul 23, 2009, 4:14 p.m.: [20090729-IR-750090577ERA](#); emergency rule filed Feb 11, 2010, 2:49 p.m.: [20100217-IR-750100102ERA](#); emergency rule filed Jan 13, 2011, 2:44 p.m.: [20110119-IR-750110043ERA](#))*

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

**[750 IAC 9-3-3 Criminal background checks](#)**

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

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

Sec. 3. (a) When the director requests a national criminal history background check under section 2(d)(1) of this rule, the director shall require the individual to submit fingerprints to the department, state police department, or NMLSR, as directed, at the time evidence of compliance is requested under section 2(c) of this rule. The individual to whom the request is made shall pay any fees or costs associated with processing and evaluating the fingerprints and the national criminal history background check. The national criminal history background check may be used by the director to determine the individual's compliance with this section. The director or the department may not release the results of the national criminal history background check to any private entity.

(b) For purposes of this section and in order to reduce the points of contact that the Federal Bureau of Investigation may have to maintain for purposes of this section, the director may use the NMLSR as a channeling agent for requesting information from and distributing information to the United States Department of Justice or any governmental agency.

(c) If an individual:

(1) has been convicted of ~~or pleaded guilty or nolo contendere to~~ a felony during the seven (7) year period preceding the date of the application; or

(2) has, at any time preceding the date of application, been convicted of ~~or pleaded guilty or nolo contendere to~~ a felony involving an act of fraud, dishonesty, breach of trust, or money laundering;

the individual may not be approved for licensing as a mortgage loan originator under this article; provided that any pardon of a conviction shall not be a conviction for purposes of this subsection.

(Department of Financial Institutions; [750 IAC 9-3-3](#); emergency rule filed Jul 23, 2009, 4:14 p.m.: [20090729-IR-750090577ERA](#); emergency rule filed Jan 13, 2011, 2:44 p.m.: [20110119-IR-750110043ERA](#))

SECTION 4. [750 IAC 9-4-1](#) IS AMENDED TO READ AS FOLLOWS:

**[750 IAC 9-4-1](#) Record keeping and notification requirements**

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

**Affected:** [IC 24-4.4](#); [IC 24-4.5](#); [IC 28-1-2-30](#)

Sec. 1. (a) Every licensee shall maintain records in a manner that will enable the department to determine whether the licensee is complying with this article. The record keeping system of a licensee is sufficient if the licensee makes the required information reasonably available. The department shall determine the sufficiency of the records and whether the licensee has made the required information reasonably available. The department shall be given free access to the records wherever the records are located. Records concerning any mortgage transaction shall be retained for two (2) years after the making of the final entry relating to the transaction, but, in the case of a revolving mortgage transaction, the two (2) years required under this subsection is measured from the date of each entry relating to the transaction.

(b) The unique identifier of any person originating a mortgage transaction must be clearly shown on all mortgage transaction application forms and any other documents as required by the director.

(c) Every licensee shall use automated examination and regulatory software designated by the director, including third party software. Use of the software consistent with guidance and policies issued by the director is not a violation of [IC 28-1-2-30](#), which is incorporated by reference.

(d) A licensed mortgage loan originator shall file notification with the department if the licensed mortgage loan originator:

- (1) files for bankruptcy or is served in a foreclosure action; or
- (2) is subject to revocation or suspension proceedings by a state government authority with regard to the mortgage loan originator's activities;

not later than thirty (30) days after the date of the event described in this subsection.

(e) A licensee shall file notification with the department if the licensee has been convicted of ~~or pleaded guilty or not contended~~ to a felony under the laws of Indiana or any other jurisdiction not later than thirty (30) days after the date of the event described in this subsection, provided that any pardon of a conviction shall not be a conviction for purposes of this subsection.

(Department of Financial Institutions; [750 IAC 9-4-1](#); emergency rule filed Jul 23, 2009, 4:14 p.m.: [20090729-IR-750090577ERA](#); emergency rule filed Jan 13, 2011, 2:44 p.m.: [20110119-IR-750110043ERA](#))

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