TITLE 750 DEPARTMENT OF FINANCIAL INSTITUTIONS

Emergency Rule
LSA Document #11-778(E)

DIGEST

Amends 750 IAC 9-1-1 concerning the terms "employee", "federal banking agencies", "loan processor or underwriter", "mortgage loan originator", "mortgage transaction", "Nationwide Mortgage Licensing System and Registry" or "NMLSR", and "unique identifier" and adding the terms "American Association of Residential Mortgage Regulators" or "AARMR", "bona fide nonprofit organization", "Conference of State Bank Supervisors" or "CSBS", "Consumer Financial Protection Bureau" or "CFPB", "expungement", "Farm Credit Administration", "housing finance agency", "independent contractor", "land contract", "regularly engaged", and "state". Amends 750 IAC 9-2-2 to add a reference to policies and guidance. Amends 750 IAC 9-2-5 relating to the exclusions for registered mortgage loan originators and governmental agencies and instrumentalities. Amends 750 IAC 9-2-6 to change the reference from Housing and Urban Development to the CFPB and to change the reference from guidelines to guidance. Amends 750 IAC 9-2-7 to add a reference to policy and guidance. Amends 750 IAC 9-3-1 relating to licensing of persons regularly engaged in the origination of mortgage loan transactions and exempting from licensing employees of bona fide nonprofit organizations. Amends 750 IAC 9-3-2 concerning the duty to update inaccurate or incomplete information. Amends 750 IAC 9-3-3 to provide that an expunged criminal conviction is not considered a conviction for licensing purposes, but the director may consider the expunged conviction in determining licensee's eligibility. Amends 750 IAC 9-3-6 to change the number of times an individual may retake a test from three to two consecutive times. Amends 750 IAC 9-3-8 to provide that records filed through NMLSR are official records when reduced to paper. Amends 750 IAC 9-3-9 to require licensees to certify they are meeting the minimum standards and to update information provided on the renewal application. Amends 750 IAC 9-3-11 to revise the revocation and suspension provisions so that they are uniform in all state consumer credit laws. Amends 750 IAC 9-4-2 to require mortgage loan originators to provide prompt and accurate information to their employers to enable timely filing of annual reports of condition. Effective December 15, 2011.

750 IAC 9-1-1; 750 IAC 9-2-2; 750 IAC 9-2-5; 750 IAC 9-2-6; 750 IAC 9-2-7; 750 IAC 9-3-1; 750 IAC 9-3-2; 750 IAC 9-3-3; 750 IAC 9-3-6; 750 IAC 9-3-8; 750 IAC 9-3-9; 750 IAC 9-3-11; 750 IAC 9-4-2

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) "American Association of Residential Mortgage Regulators" or "AARMR" is the national association of executives and employees of the various states who are charged with the responsibility for administration and regulation of residential mortgage lending, servicing, and brokering, and dedicated to the goals described at www.aarmr.org.

(6) "Bona fide nonprofit organization" means an organization determined by the director under criteria and pursuant to processes established by the director that meet the following criteria:

(A) Maintains tax-exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986.

(B) Promotes affordable housing or provides homeownership education, or similar services.

(C) Conducts its activities in a manner that serves public or charitable purposes.

(D) Receives funding and revenue and charges fees in a manner that does not incentivize the organization or its employees to act other than in the best interests of its clients.

(E) Compensates employees in a manner that does not incentivize employees to act other than in the best interests of its clients.

(F) Provides to or identifies for the borrower residential mortgage loans with terms that are favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs.

(G) Is certified by the Department of Housing and Urban Development (HUD) or is approved as an Indiana Foreclosure Prevention Network agency by the Indiana housing and community development association (IHCDA) or employs one (1) or more housing counselors certified by the IHCDA.

~~(5)~~ **(7)** "Civil court" means any court in Indiana having jurisdiction over civil cases.

(8) "Conference of State Bank Supervisors" or "CSBS" is the national organization composed of state bank supervisors dedicated to maintaining the state banking system and state regulation of financial services in accordance with the CSBS statement of principles described at www.csbs.org.

~~(6)~~ **(9)** "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.

(10) "Consumer Financial Protection Bureau" or "CFPB" is the federal agency whose stated central mission is to make markets for consumer financial products and services work for Americans.

~~(7)~~ **(11)** "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)~~ **(12)** "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 24-4.5-1-301.5, which is incorporated by reference, for mortgage transactions not secured by a first lien.

~~(9)~~ **(13)** "Department" refers to the department of financial institutions.

~~(10)~~ **(14)** "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)~~ **(15)** "Director" refers to the director of the department of financial institutions or the director's designee.

~~(12)~~ **(16)** "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)~~ **(17)** "Employee" means an individual: ~~who is paid wages or other~~

(A) whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person; and

(B) whose compensation ~~by an employer required under federal income tax law to file Form~~ **is reported on a** W-2 ~~on behalf of such employee.~~ **form issued by the controlling person.**

(18) "Expungement" with respect to a record of criminal conviction entered in this state means that no one, including law enforcement, can be permitted access to the record even by court order. With respect to criminal convictions entered in another state that state's definition of expungement will apply.

(19) "Farm Credit Administration" means the independent federal agency, authorized by the Farm Credit Act of 1971, to examine and regulate the Farm Credit System.

~~(14)~~ **(20)** "Federal banking agencies" means the Board of Governors of the Federal Reserve System, **Office of** the Comptroller of the Currency, ~~the Office of Thrift Supervision,~~ the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(21) "Housing finance agency" means any authority that is:

(A) chartered by a state to help meet the affordable housing needs of the residents of the state;

(B) supervised directly or indirectly by the state government; and

(C) subject to audit and review by the state in which it operates.

~~(15)~~ **(22)** "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.

(23) "Independent contractor" means an individual who performs his or her duties other than at the direction of and subject to the supervision and instruction of a person licensed as a mortgage loan originator under this article.

~~(16)~~ **(24)** "Individual" means a natural person.

(25) "Land contract" means a contract for the sale of real estate in which the seller of the real estate retains legal title to the real estate until the total contract price is paid by the buyer.

~~(17)~~ **(26)** "Licensee" means a person licensed as a mortgage loan originator under this article.

~~(18)~~ **(27)** "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)~~ **(28)** "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)~~ **(29)** "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~~ **subdivision,** "clerical or support duties":

(A) may include, after the receipt of an application: ~~the following:~~

~~(A)~~ **(i)** the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a mortgage transaction; **and**

~~(B)~~ **(ii)** 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~~

(B) does not include:

(i) taking a residential mortgage loan application; or

(ii) offering or negotiating terms of a mortgage ~~loan originator.~~ **transaction.**

~~(21)~~ **(30)** "Mortgage loan originator" means an individual who for compensation or gain, or in the expectation of compensation or gain, engages **in a commercial context and habitually or repeatedly:**

(A) 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; **or**

(B) representing 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 such individual can or will perform the activities described in clause (A).

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).

(D) An individual who is an employee of a federal, state, or local government agency or housing finance agency and who acts as a loan originator only pursuant to his or her official duties as an employee of the federal, state, or local government agency or housing finance agency.

~~(22)~~ **(31)** "Mortgage transaction" means:

(A) a **consumer** loan; or

(B) consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and **that** is secured by a mortgage, **land contract,** or other equivalent consensual security interest on a dwelling or residential real estate upon which **a dwelling** is constructed or intended to be constructed. ~~a dwelling.~~

~~(23)~~ **(32)** "Nationwide Mortgage Licensing System and Registry" or "NMLSR" means a mortgage licensing system developed and maintained by ~~the Conference of State Bank Supervisors~~ **CSBS** and ~~the American Association of Residential Mortgage Regulators~~ **AARMR** for the licensing and registration of creditors and mortgage loan originators.

~~(24)~~ **(33)** "Nontraditional mortgage product" means any mortgage product other than a thirty (30) year fixed rate mortgage.

~~(25)~~ **(34)** "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)~~ **(35)** "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)~~ **(36)** "Person" includes an individual or an organization.

~~(28)~~ **(37)** "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)~~ **(38)** "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)~~ **(39)** "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.

(40) "Regularly engaged" means a person who:
(A) engaged in the business of a mortgage loan originator on more than five (5) mortgage transactions in the previous calendar year, or who expects to engage in the business of a mortgage loan originator on more than five (5) mortgage transactions in the current calendar year; or
(B) serves as the prospective source of financing on more than five (5) mortgage transactions in the previous calendar year, or who expects to serve as the prospective source of financing, or perform other phases of originations, on more than five (5) mortgage transactions in the current calendar year.

~~(31)~~ **(41)** "Residential real estate" means any real property, located in Indiana, upon which is constructed or intended to be constructed a dwelling.

~~(32)~~ **(42)** "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.

(43) "State" means:
(A) any state of the United States;
(B) the District of Columbia;
(C) any territory of the United States;
(D) Puerto Rico;
(E) Guam;
(F) American Samoa;
(G) the Virgin Islands; and
(H) the Commonwealth of the Northern Mariana Islands.

~~(33)~~ **(44)** "Unique identifier" means a number or other identifier **that:**
(A) permanently identifies a loan originator;
(B) is assigned by protocols established by the NMLSR **and the federal banking agencies to facilitate electronic tracking of loan originators and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against loan originators; and**
(C) shall not be used for purposes other than those set forth under the SAFE Act.

(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.: 20110119-IR-750110043ERA; emergency rule filed Dec 15, 2011, 2:54 p.m.: 20111221-IR-750110778ERA)

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, **policies, and guidance.**

(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, ~~2010.~~ **2011.**

(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; emergency rule filed Dec 15, 2011, 2:54 p.m.: 20111221-IR-750110778ERA)

SECTION 3. 750 IAC 9-2-5 IS AMENDED TO READ AS FOLLOWS:

750 IAC 9-2-5 Exclusions

Authority: IC 24-4.4-1-101
Affected: IC 24-4.4; IC 24-4.5

Sec. 5. This article does not apply to the following:
(1) Extensions of credit to government or governmental agencies or instrumentalities.
(2) A mortgage transaction in which the debt is incurred primarily for a purpose other than a personal, family, or household purpose.
(3) An extension of credit primarily for a business, a commercial, or an agricultural purpose.
(4) An extension of credit originated by:
(A) a depository institution;
(B) subsidiaries that are:
(i) owned and controlled by a depository institution; and
(ii) regulated by a federal banking agency; or
(C) an institution regulated by the Farm Credit Administration.
(5) A mortgage transaction originated by a registered mortgage loan originator, ~~or an individual who is eligible to be a registered mortgage loan originator,~~ when acting for an entity described in subdivision (4). ~~However,~~ A privately insured state chartered credit union must comply with the system of mortgage loan originator registration developed by the Federal Financial Institutions Examinations Council under Section 1507 of the ~~Safe~~ **Secure** and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE), which is incorporated by reference.
(6) An individual who offers or negotiates terms of a mortgage transaction with or on behalf of an immediate family member of the individual.
(7) An individual who offers or negotiates terms of a mortgage transaction secured by a dwelling that served as the individual's residence.
(8) Unless the attorney is compensated by:
(A) a lender;
(B) a mortgage broker;
(C) another mortgage loan originator; or
(D) any agent of the lender, mortgage broker, or other mortgage loan originator described in clauses (A) through (C);
a licensed attorney who negotiates the terms of a mortgage transaction on behalf of a client as an ancillary matter to the attorney's representation of the client.
(9) ~~Agencies, instrumentalities, and government owned corporations of~~ The United States, including United States government sponsored enterprises, **any state or local government, or any agency or instrumentality of any governmental entity.**

(Department of Financial Institutions; 750 IAC 9-2-5; 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 Dec 15, 2011, 2:54 p.m.: 20111221-IR-750110778ERA)

SECTION 4. 750 IAC 9-2-6 IS AMENDED TO READ AS FOLLOWS:

750 IAC 9-2-6 Manufactured housing retailers

Authority: IC 24-4.4-1-101
Affected: IC 24-4.4; IC 24-4.5

Sec. 6. Unless the ~~United States Department of Housing and Urban Development,~~ **CFPB,** through ~~guidelines,~~ **guidance,** rules, regulations, or interpretive letters, determines otherwise, this article does not apply to a manufactured housing retailer that sells a mobile, manufactured, or modular home if the manufactured housing retailer only assists a consumer in filling out a credit application and does not:

(1) offer or negotiate loan rates or terms;
(2) provide any counseling with the consumer about residential mortgage loan rates or terms; or
(3) receive any payment or fee from any company or individual for assisting the consumer.

(Department of Financial Institutions; 750 IAC 9-2-6; 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 Dec 15, 2011, 2:54 p.m.: 20111221-IR-750110778ERA)

SECTION 5. 750 IAC 9-2-7 IS AMENDED TO READ AS FOLLOWS:

750 IAC 9-2-7 Applicability of state and federal laws, regulations, and rules

Authority: IC 24-4.4-1-101
Affected: IC 24-4.4; IC 24-4.5

Sec. 7. (a) A violation of a state or federal law, regulation, ~~or~~ rule, **policy, or guidance** applicable to mortgage transactions is a violation of this article.

(b) The department may enforce penalty provisions set forth in 15 U.S.C. 1640, which is incorporated by reference, for violations of disclosure requirements applicable to mortgage transactions.

(Department of Financial Institutions; 750 IAC 9-2-7; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729-IR-750090577ERA; emergency rule filed Dec 15, 2011, 2:54 p.m.: 20111221-IR-750110778ERA)

SECTION 6. 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 24-4.4-1-202; IC 24-4.5-1-202

Sec. 1. (a) Except as provided in 750 IAC 9-2-5(5) and subsections (b), (h), and (i), after June 30, 2010, an individual may not **regularly** engage in the business of a mortgage loan originator **and shall not engage in the origination of mortgage transactions on behalf of any person who regularly engages in serving as the prospective source of financing with respect to any dwelling located in this state** 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, 2012, 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.~~ **unless this exclusion is denied by any guideline, rule, regulation, or interpretive letter issued by the CFPB.**

(c) Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the NMLSR. Notwithstanding subsection ~~(g),~~ **(h),** 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~~ **nonprofit organization** 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;~~ **CFPB;** or
(2) a housing counselor certified by the ~~Indiana housing and community development authority~~ **IHCDA,** or a housing counselor who is employed by an ~~entity~~ **organization** approved as an Indiana Foreclosure Prevention Network Agency by the ~~Indiana housing and community development authority~~ **IHCDA** that is deemed by the director to be a bona fide ~~not for profit entity~~ **nonprofit organization** 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,~~ **guidance,** rule, regulation, or interpretive letter issued by the ~~United States Department of Housing and Urban Development.~~ **CFPB.**

(i) Notwithstanding the licensing requirements under this section, an individual who exclusively originates zero-interest loans ~~and is employed by~~ **as an employee of** a bona fide ~~not for profit entity that does not operate in a commercial context, as determined by the director,~~ **nonprofit organization exempt from licensing under IC 24-4.4-1-202(14) or IC 24-4.5-1-202(14)** is not required to meet the education, testing, background, and licensing standards of this article unless this exclusion is denied by any ~~guideline,~~ **guidance,** rule, regulation, or interpretive letter issued by the ~~United States Department of Housing and Urban Development.~~ **CFPB.**

(j) Notwithstanding the licensing requirements under this section, an individual who exclusively originates mortgage transactions as an employee of a bona fide nonprofit organization exempt from licensing under IC 24-4.4-1-202(15) or IC 24-4.5-1-202(15) is not required to meet the education, testing, background, and licensing standards and requirements of this article unless this exclusion is denied by any guidance, rule, regulation, or interpretive letter issued by the CFPB.

(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; emergency rule filed Mar 17, 2011, 1:54 p.m.: 20110323-IR-750110156ERA; emergency rule filed Dec 15, 2011, 2:54 p.m.: 20111221-IR-750110778ERA)

SECTION 7. 750 IAC 9-3-2 IS AMENDED TO READ AS FOLLOWS:

750 IAC 9-3-2 Licensing qualifications

Authority: IC 24-4.4-1-101
Affected: IC 4-21.5; IC 10-13-3-12; IC 24-4.4; IC 24-4.5; IC 28-11-3-5

Sec. 2. (a) The department shall receive and act on all applications for licenses to engage as mortgage loan originators in mortgage transactions. Applications must be made as prescribed by the director.

(b) A license may not be issued unless the department finds that the professional training and experience, financial responsibility, character, and fitness of the applicant is such as to warrant belief that the mortgage loan originator will operate honestly and fairly within the purposes of this article.

(c) The director is entitled to request evidence of compliance with this section at:
(1) the time of application;
(2) the time of renewal of a license; or
(3) any other time considered necessary by the director.

(d) Evidence of compliance with this section must include:
(1) criminal background checks, as described in section 3 of this rule, including a national criminal history background check (as defined in IC 10-13-3-12, which is incorporated by reference) by the Federal Bureau of Investigation, for the applicant;
(2) credit histories as described in section 4 of this rule;
(3) prelicensing education requirements as described in section 5 of this rule;
(4) prelicensing written test requirements as described in section 6 of this rule;
(5) surety bond requirements as described in section 7 of this rule;
(6) a review of licensure actions in this and other states; and
(7) other background checks considered necessary by the director.

(e) An individual who has had a mortgage loan originator license revoked in any state may not be licensed as a mortgage loan originator under this article, except that a subsequent formal vacation of such revocation shall not be deemed a revocation. The individual must submit personal history and experience information in a form prescribed by the NMLSR, including the submission of authorization for the NMLSR and the director to obtain information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(f) For purposes of this section and in order to reduce the points of contact that the director may have to maintain for purposes of this section, the director may use the NMLSR as a channeling agent for requesting and distributing information to and from any source so directed by the director.

(g) Upon written request, an applicant is entitled to a hearing on the question of the qualifications of the applicant for a license in the manner provided in IC 4-21.5.

(h) The applicant shall pay the following fees at the time designated by the department:
(1) An initial license fee as established by the director, to be effective until June 30, 2010. Thereafter, the fee will be established by the department under IC 28-11-3-5, which is incorporated by reference.
(2) An annual renewal fee as established by the department under IC 28-11-3-5, which is incorporated by reference.
(3) Examination fees as established by the department under IC 28-11-3-5, which is incorporated by reference.

(i) A fee as established by the department under IC 28-11-3-5, which is incorporated by reference, may be charged for each day a fee under subsection (h)(2) or (h)(3) is delinquent.

(j) A license issued under this section is not assignable or transferable.

(k) If the information or record contained in an application filed under this rule is or becomes inaccurate or incomplete in a material respect, the applicant shall promptly file a correcting amendment.

(Department of Financial Institutions; 750 IAC 9-3-2; 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 Dec 15, 2011, 2:54 p.m.: 20111221-IR-750110778ERA)

SECTION 8. 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 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 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 **or expungement** of a conviction shall not be a conviction for purposes of this subsection, **resulting in an automatic denial or revocation of a mortgage loan originator license. The director may consider the underlying crime, facts, or circumstances of a pardoned or expunged felony conviction when determining the eligibility of an applicant for licensure under this rule.**

(d) For purposes of this section, the level of offense of the crime and the status of any conviction, pardon, or expungement shall be determined by reference to the law of the jurisdiction where the case was prosecuted. In the event that such jurisdiction does not use the term "felony", "pardon", or "expungement", references to those terms shall include legally equivalent events.

(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; emergency rule filed Dec 15, 2011, 2:54 p.m.: 20111221-IR-750110778ERA)

SECTION 9. 750 IAC 9-3-6 IS AMENDED TO READ AS FOLLOWS:

750 IAC 9-3-6 Prelicensing testing

Authority: IC 24-4.4-1-101
Affected: IC 24-4.4; IC 24-4.5

Sec. 6. (a) To meet the written test requirement referred to in section 2(d)(4) of this rule, an individual must pass, in accordance with the standards established under this section, a qualified written test developed by the NMLSR and administered by a test provider approved by the NMLSR based upon reasonable standards.

(b) A written test may not be treated as a qualified written test for purposes of subsection (a) unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:
(1) ethics;
(2) federal law and regulation pertaining to mortgage origination;
(3) state law and regulation pertaining to mortgage origination; and
(4) federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(c) This section does not prohibit a test provider approved by the NMLSR from providing a test at the location of:
(1) the employer of the applicant;
(2) any subsidiary or affiliate of the employer of the applicant; or
(3) any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(d) The following are the standards for demonstrating minimum competence with respect to the testing requirement:
(1) Passing Score - An individual does not pass a qualified written test unless the individual achieves a test score of at least seventy-five percent (75%) correct answers to questions.
(2) Initial Retests - An individual may retake a test ~~three (3)~~ **two (2)** consecutive times with each consecutive test taken at least thirty (30) days after the preceding test.
(3) Subsequent Retests - After failing three (3) consecutive tests, an individual must wait at least six (6) months before taking the test again.
(4) Retest After Lapse of License - A licensed mortgage loan originator who fails to maintain a valid license for a period of at least five (5) years must retake the test to be issued a new license, not taking into account any time during which the individual is a registered mortgage loan originator.

(Department of Financial Institutions; 750 IAC 9-3-6; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729-IR-750090577ERA; emergency rule filed Dec 15, 2011, 2:54 p.m.: 20111221-IR-750110778ERA)

SECTION 10. 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 28-1-2-30 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)~~ **(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)~~ **(6)** that is inconsistent with subdivision ~~(f)(6)~~ **(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.

(12) Notwithstanding any other provision of law, any applications, renewals, or other forms or documents relating to licenses issued pursuant to this rule, or documents that are filed as an electronic record pursuant to a nationwide central repository for licensing or registration of mortgage lenders, brokers, or loan originators, or any electronic record filed through the NMLS, shall be deemed to be a valid original document upon reproduction to paper form by the department.

(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; emergency rule filed Dec 15, 2011, 2:54 p.m.: 20111221-IR-750110778ERA)

SECTION 11. 750 IAC 9-3-9 IS AMENDED TO READ AS FOLLOWS:

750 IAC 9-3-9 License renewal

Authority: IC 24-4.4-1-101
Affected: IC 24-4.4; IC 24-4.5

Sec. 9. (a) Mortgage loan originator licenses must be renewed as of December 31 of each calendar year.

(b) The minimum standards for license renewal for mortgage loan originators include the following:
(1) The mortgage loan originator **has certified to the department that he or she** continues to meet the minimum standards for license issuance under section 2 of this rule.
(2) The mortgage loan originator has satisfied the annual continuing education requirements described in section 10 of this rule.
(3) The mortgage loan originator has satisfied the regulatory reporting requirements described in 750 IAC 9-4-2.
(4) The mortgage loan originator has paid all required fees for renewal of the license.
(5) The mortgage loan originator shall provide in the renewal application any information describing material changes in the information contained in the original license application or any previous application and such other information the director may require in order to evaluate the renewal of the license issued under this rule.

(c) If a mortgage loan originator fails to satisfy the minimum standards for license renewal, the mortgage loan originator's license expires. The director may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the NMLSR.

(Department of Financial Institutions; 750 IAC 9-3-9; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729-IR-750090577ERA; emergency rule filed Dec 15, 2011, 2:54 p.m.: 20111221-IR-750110778ERA)

SECTION 12. 750 IAC 9-3-11 IS AMENDED TO READ AS FOLLOWS:

750 IAC 9-3-11 Suspension or revocation of license

Authority: IC 24-4.4-1-101
Affected: IC 4-21.5-4; IC 24-4.4; IC 24-4.5

Sec. 11. (a) The department may issue to a person licensed **as a mortgage loan originator** to engage in a mortgage transaction ~~as a mortgage loan originator~~ an order to show cause why the person's license should not be revoked or suspended for a period determined by the department.

(b) The order must:
(1) State:
(A) The place and time for a meeting with the department that is not less than ten (10) days after the date of the order.
(B) A description of the contemplated action.
(C) A statement of the facts or conduct supporting the issuance of the order.
(2) Be accompanied by a notice to the licensee that the licensee shall have a reasonable opportunity to be heard and to show at the meeting the licensee's compliance with the lawful requirements for retention of the license.

(c) After the meeting, the department ~~shall~~ **may** revoke or suspend the license if the department finds that:
(1) the licensee has repeatedly and willfully violated:

(A) this article or any order, policy, or guidance ~~lawfully~~ adopted or issued; ~~under this article;~~ or
(B) any other state or federal law, regulation, or rule applicable to a mortgage transaction;
(2) the licensee does not meet the licensing qualifications contained in section 2 of this rule; ~~or~~
(3) the licensee obtained the license for the benefit of, or on behalf of, a person who does not qualify for a license;
(4) the licensee knowingly or intentionally made material misrepresentations to, or concealed material information from, the department; or
~~(3)~~ **(5)** facts or conditions exist that would clearly have justified the department in refusing to grant a license had the facts or conditions been known to exist at the time the application for the license was made.

~~(b) Except as provided in section 9(c) of this rule, a suspension or revocation of a license is not authorized under this article unless before instituting proceedings to suspend or revoke the license, the:~~
~~(1) department gives notice to the licensee of the conduct or facts that warrant the intended suspension or revocation; and~~
~~(2) licensee is given an opportunity to show compliance with all lawful requirements for retention of the license.~~

~~(c) If the department finds that probable cause for revocation of a license exists and that enforcement of this article requires immediate suspension of the license pending investigation, the department may, after a hearing with the licensee upon five (5) days written notice to the licensee, enter an order suspending the license for not more than thirty (30) days.~~

(d) Whenever the department revokes or suspends a license, the department shall enter an order to that effect and notify the licensee of the revocation or suspension, **the duration of the suspension, the procedure for appealing the revocation or suspension under IC 4-21.5-3, and such other terms and conditions relating to the revocation or suspension of the license.** Not later than five (5) days after an order is entered to suspend or revoke a license, the department shall deliver to the licensee a copy of the order and the findings supporting the order.

(e) Any person holding a license to engage in a mortgage transaction as a mortgage loan originator may relinquish the license by notifying the department in writing of the relinquishment. However, a relinquishment under this subsection does not affect the person's liability for acts previously committed and coming within the scope of this article.

(f) If the director determines it to be in the public interest, the director may pursue revocation of a license of a licensee who has relinquished the license under subsection ~~(e).~~ **(d)** *[redesignated subsection (e) by the Publisher]***.**

(g) A revocation, suspension, or relinquishment of a license does not impair or affect the obligation of any preexisting lawful contract between:
(1) the person whose license has been revoked, suspended, or relinquished; and
(2) any debtor.

~~(h) The department may reinstate a license to or terminate a suspension of a license of a person whose license has been suspended if the director determines that, at the time the determination is made, there is no fact or condition that exists that clearly would justify the department in refusing to reinstate a license.~~

~~(i)~~ **(h)** If the director
~~(1)~~ has just cause to believe an emergency exists from which it is necessary to protect the interests of the public ~~or~~
~~(2) determines that a license was obtained for the benefit of, or on behalf of, a person who does not qualify for a license;~~
the director may proceed **under circumstances warranting special proceedings** with the revocation of the license under ~~IC 4-21.5-3-6~~, **IC 4-21.5-4,** which is incorporated by reference.

(Department of Financial Institutions; 750 IAC 9-3-11; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729-IR-750090577ERA; emergency rule filed Dec 15, 2011, 2:54 p.m.: 20111221-IR-750110778ERA)

SECTION 13. 750 IAC 9-4-2 IS AMENDED TO READ AS FOLLOWS:

750 IAC 9-4-2 Regulatory reporting

Authority: IC 24-4.4-1-101
Affected: IC 24-4.4; IC 24-4.5

Sec. 2. (a) Each creditor or mortgage loan originator shall submit to the NMLSR reports of condition, which must be in a form and must contain information as required by the NMLSR. If a mortgage loan originator is an employee ~~or exclusive agent~~ of:

(1) a person subject to licensing under IC 24-4.4 or IC 24-4.5; or

(2) an entity exempt from licensing under IC 24-4.4 or IC 24-4.5 that registers with the NMLSR;

the reports of condition submitted by the person subject to licensing under IC 24-4.4 or IC 24-4.5 or entity exempt from licensing under IC 24-4.4 or IC 24-4.5 that registers with the NMLSR may be used instead of the mortgage loan originator's reports of condition requirement under this section. **If the mortgage loan originator's employer submits reports of condition on his or her behalf consistent with this section, the mortgage loan originator shall timely and accurately report all required information in his or her possession to his or her employer for purposes of enabling his or her employer to fulfill its reporting obligation. Failure of a mortgage loan originator to timely and accurately report this required information to his or her employer shall constitute a violation of this section.**

(b) Each creditor or mortgage loan originator shall file with the department additional financial statements relating to all mortgage transactions originated, as required by the department, but not more frequently than annually, in the form prescribed by the department. If a mortgage loan originator is an employee ~~or exclusive agent~~ of:

(1) a person subject to licensing under IC 24-4.4 or IC 24-4.5; or

(2) an entity exempt from licensing under IC 24-4.4 or IC 24-4.5 that registers with the NMLSR;

additional financial statements submitted by the person subject to licensing under IC 24-4.4 or IC 24-4.5 or entity exempt from licensing under IC 24-4.4 or IC 24-4.5 that registers with the NMLSR may be used instead of the mortgage loan originator's additional financial statements required under this section.

(Department of Financial Institutions; 750 IAC 9-4-2; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729-IR-750090577ERA; emergency rule filed Dec 15, 2011, 2:54 p.m.: 20111221-IR-750110778ERA)

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