

TITLE 750 DEPARTMENT OF FINANCIAL INSTITUTIONS

Emergency Rule

LSA Document #19-416(E)

DIGEST

Amends [750 IAC 9-1-1](#), [750 IAC 9-2-2](#), [750 IAC 9-2-8](#), [750 IAC 9-3-1](#), [750 IAC 9-3-3](#), [750 IAC 9-3-5](#), [750 IAC 9-3-6](#), and [750 IAC 9-3-8](#), to incorporate federal changes to the federal SAFE Act, and to amend statutory references to the Indiana Loan Broker Act, pursuant to the emergency rulemaking authority granted under [IC 24-4.4-1-101](#). Adds [750 IAC 9-3-2.5](#), to incorporate federal changes to the federal SAFE Act, to establish the criteria by which a mortgage loan originator license applicant is eligible to operate as a mortgage loan originator in this state on temporary authority during pendency of the applicant's mortgage loan originator license application, pursuant to the emergency rulemaking authority granted under [IC 24-4.4-1-101](#). Statutory authority: [IC 24-4.4-1-101](#). Effective November 24, 2019.

[750 IAC 9-1-1](#); [750 IAC 9-2-2](#); [750 IAC 9-2-8](#); [750 IAC 9-3-1](#); [750 IAC 9-3-2.5](#); [750 IAC 9-3-3](#); [750 IAC 9-3-5](#); [750 IAC 9-3-6](#); [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](#); [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 home ownership 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.

(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.

(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.

(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.

(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.

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

(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.

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

(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.

(17) "Eligible mortgage loan originator applicant" means an individual that has applied for a mortgage loan originator license under this article, who is eligible to obtain temporary authority to operate in this state during the pendency of said applicant's application for mortgage lending originator licensure, for up to one hundred twenty (120) days. In order to be eligible for temporary authority to operate, a mortgage loan originator, must:

(A) have been:

(i) licensed as a mortgage loan originator in another state continuously during the past thirty (30) days; or

(ii) operating as a registered mortgage loan originator for a depository institution continuously for the past three hundred sixty-five (365) days;

(B) meet the criminal background check qualifications outlined in [750 IAC 9-3-3](#); and

(C) not have been issued a license application denial, had a license revoked or suspended, or been issued a cease and desist order in any state.

~~(17)~~ **(18)** "Employee" means an individual:

(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 is reported on a W-2 form issued by the controlling person.

~~(18)~~ **(19)** "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)~~ **(20)** "Farm Credit Administration" means the independent federal agency, authorized by the Farm Credit Act of 1971, to examine and regulate the Farm Credit System.
- ~~(20)~~ **(21)** "Federal banking agencies" means the Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.
- ~~(21)~~ **(22)** "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.
- ~~(22)~~ **(23)** "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)~~ **(24)** "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.
- ~~(24)~~ **(25)** "Individual" means a natural person.
- ~~(25)~~ **(26)** "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.
- ~~(26)~~ **(27)** "Licensee" means a person licensed as a mortgage loan originator under this article.
- ~~(27)~~ **(28)** "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.
- ~~(28)~~ **(29)** "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.
- ~~(29)~~ **(30)** "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 subdivision, "clerical or support duties":
- (A) may include, after the receipt of an application:
 - (i) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a mortgage transaction; and
 - (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 offering or negotiating loan rates or terms or counseling consumers about mortgage transaction rates or terms; **and**
 - (B) does not include:
 - (i) taking a residential mortgage loan application; or
 - (ii) offering or negotiating terms of a mortgage transaction.
- ~~(30)~~ **(31)** "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 ~~in~~ offering or negotiating ~~the~~ terms of a mortgage transaction that is made either under [IC 24-4.4](#) or [IC 24-4.5](#) or **is made** by an employee of a person licensed ~~or to engage in mortgage transactions or by an employee of a person that is~~ exempt from licensing under [IC 24-4.4](#) or [IC 24-4.5](#) while **the employee is** 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 this subdivision**. ~~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 **to engage in mortgage transactions or as an employee of a person** 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.

(E) An individual who is an eligible mortgage loan originator applicant that is operating under temporary authority to operate prior to the individual's application having been approved or denied.

~~(31)~~ **(32)** "Mortgage transaction" means a:

- (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.

~~(32)~~ **(33)** "Nationwide Multistate Licensing System and Registry" or "NMLSR" means a multistate licensing system developed and maintained by CSBS and AARMR and owned and operated by the State Regulatory Registry, LLC, or any successor or affiliated entity, for the licensing and registration of creditors and mortgage loan originators and other persons in the mortgage and financial services industries. The term includes any other name or acronym that may be assigned to the system by the State Regulatory Registry, LLC, or by any successor or affiliated entity.

~~(33)~~ **(34)** "Nontraditional mortgage product" means any mortgage product other than a thirty (30) year fixed rate mortgage.

~~(34)~~ **(35)** "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.

~~(35)~~ **(36)** "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.

~~(36)~~ **(37)** "Person" includes an individual or an organization.

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

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

~~(39)~~ **(40)** "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)~~ **(41)** "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.

~~(41)~~ **(42)** "Residential real estate" means any real property, located in Indiana, upon which is constructed or intended to be constructed a dwelling.

~~(42)~~ **(43)** "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)~~ **(44)** "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.

(45) "Temporary authority to operate" means the authority granted to the states by federal law through amendment to the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 by the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (S.2155, Title I, 12. U.S.C. 5101 et seq.), permitting an eligible mortgage loan originator applicant to engage in mortgage transactions in this state on a temporary basis concurrently with that eligible mortgage loan originator applicant's pending application for licensure in this state, for up to one hundred twenty (120) days or upon approval of the licensing application, whichever is sooner, beginning November 24, 2019.

~~(44)~~ **(46)** "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](#);

readopted filed Dec 1, 2015, 9:28 a.m.: [20151230-IR-750150336RFA](#); emergency rule filed Mar 1, 2016, 11:43

a.m.: [20160309-IR-750160090ERA](#); emergency rule filed Aug 20, 2019, 8:47 a.m.: [20190828-IR-750190416ERA](#), eff Nov 24, 2019)

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, 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, 2015~~. **as of January 1, 2019.**

(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](#); emergency rule filed Jan 2, 2013, 11:29 a.m.: [20130109-IR-750130001ERA](#); emergency rule filed Apr 21, 2014, 10:35 a.m.: [20140423-IR-750140133ERA](#); readopted filed Dec 1, 2015, 9:28 a.m.: [20151230-IR-750150336RFA](#); emergency rule filed Mar 1, 2016, 11:43 a.m.: [20160309-IR-750160090ERA](#); emergency rule filed Aug 20, 2019, 8:47 a.m.: [20190828-IR-750190416ERA](#), eff Nov 24, 2019)

SECTION 3. [750 IAC 9-2-8](#) IS AMENDED TO READ AS FOLLOWS:

[750 IAC 9-2-8](#) Coordination with securities commissioner

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

Affected: [IC 23-2.5](#); [IC 24-4.4](#); [IC 24-4.5](#)

Sec. 8. In the department's examination and regulatory activities related to licensees under this article, the department may cooperate with the Indiana securities commissioner in the regulation of individuals who, in addition to business conducted under this article, also conduct a loan broker business consistent with the ~~[IC 23-2-5](#)~~. [IC 23-2.5](#).

(Department of Financial Institutions; [750 IAC 9-2-8](#); emergency rule filed Jul 23, 2009, 4:14 p.m.: [20090729-IR-750090577ERA](#); readopted filed Dec 1, 2015, 9:28 a.m.: [20151230-IR-750150336RFA](#); emergency rule filed Aug 20, 2019, 8:47 a.m.: [20190828-IR-750190416ERA](#), eff Nov 24, 2019)

SECTION 4. [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 **first obtaining temporary authority to operate by the department or** 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 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 (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 nonprofit organization that does not operate in a commercial context, as determined by the director, and that is certified by the CFPB; or
- (2) a housing counselor certified by the IHCD, or a housing counselor who is employed by an organization approved as an Indiana Foreclosure Prevention Network Agency by the IHCD that is deemed by the director to be a bona fide 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 guidance, rule, regulation, or interpretive letter issued by the CFPB.

(i) Notwithstanding the licensing requirements under this section, an individual who exclusively originates zero-interest loans as an employee of a bona fide nonprofit organization exempt from licensing under ~~[IC 24-4.4-1-202\(14\)](#)~~ [IC 24-4.4-1-202\(b\)\(14\)](#) or ~~[IC 24-4.5-1-202\(14\)](#)~~ [IC 24-4.5-1-202\(b\)\(14\)](#) is not required to meet the education, testing, background, and licensing standards of this article unless this exclusion is denied by any guidance, rule, regulation, or interpretive letter issued by the 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\(15\)](#)~~ [IC 24-4.4-1-202\(b\)\(15\)](#) or ~~[IC 24-4.5-1-202\(15\)](#)~~ [IC 24-4.5-1-202\(b\)\(15\)](#) 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](#); readopted filed Dec 1, 2015, 9:28 a.m.: [20151230-IR-750150336RFA](#); emergency rule filed Aug 20, 2019, 8:47 a.m.: [20190828-IR-750190416ERA](#), eff Nov 24, 2019)

SECTION 5. [750 IAC 9-3-2.5](#) IS ADDED TO READ AS FOLLOWS:

[750 IAC 9-3-2.5](#) Temporary authority to operate as an eligible mortgage loan originator applicant

Authority: [IC 24-4.4-1-101](#); [IC 24-4.4-3-103](#)

Affected: [IC 4-21.5-3](#); [IC 24-4.4](#); [IC 24-4.5](#)

Sec. 2.5. (a) An eligible mortgage loan originator applicant's temporary authority to operate begins when:

- (1) an individual is determined by the department to be an eligible mortgage loan originator applicant;
- (2) an individual has completed and submitted to the NMLSR a mortgage lending originator license

application; and

(3) a mortgage loan originator licensee licensed in this state:

- (A) identifies the individual applicant as a W-2 employee; and
- (B) provides sponsorship for the individual applicant.

(b) Temporary authority to operate shall be terminated upon the earliest occurrence of the following:

- (1) An individual withdraws a pending mortgage lending originator application.
- (2) This state denies or issues a notice of intent to deny the application.
- (3) The application remains incomplete after one hundred twenty (120) days from the date that the application has elapsed.
- (4) The individual's application is approved and a mortgage loan originator license is granted.

(c) Any intent to deny temporary authority to operate issued to an individual applicant by the department shall be made in conformity with [IC 4-21.5-3](#).

(Department of Financial Institutions; [750 IAC 9-3-2.5](#); emergency rule filed Aug 20, 2019, 8:47 a.m.: [20190828-IR-750190416ERA](#), eff Nov 24, 2019)

SECTION 6. [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 temporary authority to operate or be licensed** 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](#); readopted filed Dec 1, 2015, 9:28 a.m.: [20151230-IR-750150336RFA](#); emergency rule filed Aug 20, 2019, 8:47 a.m.: [20190828-IR-750190416ERA](#), eff Nov 24, 2019)

SECTION 7. [750 IAC 9-3-5](#) IS AMENDED TO READ AS FOLLOWS:

750 IAC 9-3-5 Prelicensing education requirements

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

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

Sec. 5. (a) To meet the prelicensing education requirements referred to in section 2(d)(3) of this rule, a person shall complete at least twenty (20) hours of education approved in accordance with subsection (b), which must include at least the following:

- (1) Three (3) hours of federal law and regulations.
- (2) Three (3) hours of ethics, which must include instruction on fraud, consumer protection, and fair lending issues.
- (3) Two (2) hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) For purposes of subsection (a), prelicensing education courses shall be reviewed and approved by the NMLSR based upon reasonable standards. Review and approval of a prelicensing education course must include review and approval of the course provider.

(c) The NMLSR may approve a prelicensing education course that is provided by an employer of the applicant or an entity that is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of the employer or entity.

(d) Prelicensing education may be offered in a classroom, online, or by any other means approved by the NMLSR.

(e) The prelicensing education requirements, approved by the NMLSR in subsection (a) for any state, shall be accepted as completion of prelicensing education requirements in this state.

(f) A person formerly licensed under this article, applying to be licensed again, shall prove that the person has completed all the continuing education requirements for the year in which the license was last held.

(g) A person who:

(1) fails to obtain:

- (A) a mortgage loan origination ~~originator~~ **originator** license issued by the department; or
- (B) a federal mortgage loan registration;

within three (3) years from the date of initial completion of any approved prelicensing education course; or

(2) obtained:

- (A) a mortgage loan origination ~~originator~~ **originator** license issued by the department; or
- (B) a mortgage loan originator license issued by a state government agency; or**
- ~~(B)~~ **(C)** a federal mortgage loan registration;

but did not renew the license or federal registration for at least three (3) years;

must complete at least twenty (20) hours of education in order to obtain a mortgage loan origination license issued by the department.

(Department of Financial Institutions; [750 IAC 9-3-5](#); 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 Apr 21, 2014, 10:35 a.m.: [20140423-IR-750140133ERA](#); readopted filed Dec 1, 2015, 9:28 a.m.: [20151230-IR-750150336RFA](#); emergency rule filed Mar 1, 2016, 11:43 a.m.: [20160309-IR-750160090ERA](#); emergency rule filed Aug 20, 2019, 8:47 a.m.: [20190828-IR-750190416ERA](#), eff Nov 24, 2019)

SECTION 8. [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 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 **Required** - 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](#); readopted filed Dec 1, 2015, 9:28 a.m.: [20151230-IR-750150336RFA](#); emergency rule filed Aug 20, 2019, 8:47 a.m.: [20190828-IR-750190416ERA](#), eff Nov 24, 2019)

SECTION 9. [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, **determining eligibility for temporary authority to operate**, 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 (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 (6) that is inconsistent with 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.

(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](#); readopted filed Dec 1, 2015, 9:28 a.m.: [20151230-IR-750150336RFA](#); emergency rule filed Aug 20, 2019, 8:47 a.m.: [20190828-IR-750190416ERA](#), eff Nov 24, 2019)

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