

## ARTICLE 9. MORTGAGE LENDERS AND ORIGINATORS

### Rule 1. Definitions

#### 750 IAC 9-1-1 Definitions

Authority: IC 24-4.4-1-101

Affected: IC 24-4.4-1-301

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

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

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

the person subject to this article.

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

(3) "Agricultural products" includes:

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

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

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

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

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

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

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

- (A) IC 24-4.4-1-301, which is incorporated by reference, for first lien mortgage transactions; and
- (B) IC 24-4.5-1-301 [*IC 24-4.5-1-301 was repealed by P.L.35-2010, SECTION 209, effective July 1, 2010.*], which is incorporated by reference, for mortgage transactions not secured by a first lien.

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

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

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

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

- (A) condominium unit;

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

that is used as a residence.

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

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

(15) "Immediate family member" means:

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

(16) "Individual" means a natural person.

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

(18) "Loan" includes:

(A) the creation of debt by:

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

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

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

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

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

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

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

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

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

(21) "Mortgage loan originator" means an individual who for compensation or gain, or in the expectation of compensation or gain, engages in taking a mortgage transaction application or offering or negotiating terms of a mortgage transaction that is made either under IC 24-4.4 or IC 24-4.5 or by an employee of a person licensed or exempt from licensing under IC 24-4.4

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or IC 24-4.5 while engaging in the loan brokerage business. The term does not include the following:

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

(C) the debtor has the privilege of paying the balances in installments.

(33) "Unique identifier" means a number or other identifier assigned by protocols established by the NMLSR.

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

## **Rule 2. General Provisions**

### **750 IAC 9-2-1 General provisions**

Authority: IC 24-4.4-1-101

Affected: IC 24-4.4; IC 24-4.5

Sec. 1. This article shall be known and may be cited as the Mortgage Lenders and Originators Regulation. *(Department of Financial Institutions; 750 IAC 9-2-1; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729-IR-750090577ERA)*

### **750 IAC 9-2-2 Construction**

Authority: IC 24-4.4-1-101

Affected: IC 24-4.4; IC 24-4.5

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

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

(1) to permit and encourage the development of fair and economically sound mortgage lending practices; and

(2) to conform the regulation of mortgage lending practices to applicable state and federal laws, rules, and regulations.

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

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

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

### **750 IAC 9-2-3 Unified coverage**

Authority: IC 24-4.4-1-101

Affected: IC 24-4.4; IC 24-4.5

Sec. 3. This article is a general regulation intended as a unified coverage of its subject matter. *(Department of Financial Institutions; 750 IAC 9-2-3; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729-IR-750090577ERA)*

### **750 IAC 9-2-4 Application**

Authority: IC 24-4.4-1-101

Affected: IC 24-4.4; IC 24-4.5

Sec. 4. (a) Except as provided in subsection (b), this article applies to a mortgage transaction:

(1) that is secured by a dwelling in Indiana; and

(2) the closing for which takes place after June 30, 2010.

(b) This article does not apply to a mortgage transaction if:

(1) the debtor is not a resident of Indiana at the time the transaction is entered into; and

(2) the laws and regulations of the debtor's state of residence require that the transaction be made under the laws and regulations of the state of the debtor's residence.

*(Department of Financial Institutions; 750 IAC 9-2-4; 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)*

**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 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.

*(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)*

**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, through guidelines, 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)*

**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 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*)

**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. (*Department of Financial Institutions; 750 IAC 9-2-8; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729-IR-750090577ERA*)

**Rule 3. Licensing of Mortgage Loan Originators**

**750 IAC 9-3-1 Licensing of mortgage loan originators**

Authority: IC 24-4.4-1-101

Affected: IC 24-4.4; IC 24-4.5

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

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

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

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

(1) must contain content as set forth by rule, instruction, or procedure of the director; and

(2) may be changed or updated as necessary by the director in order to carry out the purposes of this article.

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

(1) collect and maintain records; and

(2) process transaction fees or other fees related to licensees or other persons subject to this article.

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

(1) waive or modify, in whole or in part, by order, policy, or guidance, any or all of the requirements of this article; and

(2) establish new requirements as reasonably necessary to participate in the NMLSR.

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

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

(1) employed by a bona fide not for profit entity that does not operate in a commercial context, as determined by the director,

and that is certified by the United States Department of Housing and Urban Development; or

(2) a housing counselor certified by the Indiana housing and community development authority, or a housing counselor who is employed by an entity approved as an Indiana Foreclosure Prevention Network Agency by the Indiana housing and community development authority that is deemed by the director to be a bona fide not for profit entity that does not operate in a commercial context;

is not required to meet the education, testing, background, and licensing standards of this article unless this exclusion is denied by any guideline, rule, regulation, or interpretive letter issued by the United States Department of Housing and Urban Development.

(i) Notwithstanding the licensing requirements under this section, an individual who exclusively originates zero-interest loans and is employed by a bona fide not for profit entity that does not operate in a commercial context, as determined by the director, is not required to meet the education, testing, background, and licensing standards of this article unless this exclusion is denied by any guideline, rule, regulation, or interpretive letter issued by the United States Department of Housing and Urban Development. (*Department of Financial Institutions; 750 IAC 9-3-1; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729-IR-750090577ERA; emergency rule filed Nov 16, 2009, 2:13 p.m.: 20091125-IR-750090917ERA; emergency rule filed Feb 11, 2010, 2:49 p.m.: 20100217-IR-750100102ERA; emergency rule filed Jun 24, 2010, 2:45 p.m.: 20100707-IR-750100423ERA*)

### **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. (*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*)

**750 IAC 9-3-3 Criminal background checks**

Authority: IC 24-4.4-1-101

Affected: IC 24-4.4; IC 24-4.5

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

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

(c) If an individual:

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

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

the individual may not be approved for licensing as a mortgage loan originator under this article; provided that any pardon of a conviction shall not be a conviction for purposes of this subsection. (*Department of Financial Institutions; 750 IAC 9-3-3; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729-IR-750090577ERA*)

**750 IAC 9-3-4 Credit checks**

Authority: IC 24-4.4-1-101

Affected: IC 24-4.4; IC 24-4.5

Sec. 4. (a) If the director requests a credit report under section 2(d)(2) of this rule, the individual to whom the request is made shall pay any fees or costs associated with procuring the report.

(b) An individual shall submit personal history and experience information in a form prescribed by the NMLSR, including the submission of authorization for the NMLSR or the director to obtain an independent credit report obtained from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act (15 U.S.C. 1681a(p), which is incorporated by reference).

(c) The director may consider one (1) or more of the following when determining if an individual has demonstrated financial responsibility:

(1) Bankruptcies filed within the last ten (10) years.

(2) Current outstanding judgments, except judgments solely as a result of medical expenses.

(3) Current outstanding tax liens or other government liens or filings.

(4) Foreclosures within the past three (3) years.

(5) A pattern of serious delinquent accounts within the past three (3) years.

(*Department of Financial Institutions; 750 IAC 9-3-4; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729-IR-750090577ERA*)

**750 IAC 9-3-5 Prelicensing education requirements**

Authority: IC 24-4.4-1-101

Affected: IC 24-4.4; IC 24-4.5



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Sec. 5. (a) To meet the preclicensing 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.
- (4) Two (2) hours of state law and rules concerning residential mortgage lending.

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

(c) The NMLSR may approve a preclicensing 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) Preclicensing education may be offered in a classroom, online, or by any other means approved by the NMLSR.

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

**750 IAC 9-3-6 Preclicensing 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) 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*)

**750 IAC 9-3-7 Surety bond**

Authority: IC 24-4.4-1-101

Affected: IC 24-4.4; IC 24-4.5

Sec. 7. (a) Each creditor and mortgage loan originator must be covered by a surety bond in accordance with this section. 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 surety bond of 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 surety bond requirement under this section.

(b) A surety bond:

- (1) must provide coverage for each mortgage loan originator in an amount prescribed in subsection (d); and
- (2) must be in a form prescribed by the director.

(c) The director may adopt guidance with respect to the requirements for a surety bond as are necessary to accomplish the purposes of this article.

(d) The penal sum of the surety bond shall be maintained in an amount that reflects the dollar amount of mortgage transactions originated as determined by the director.

(e) If an action is commenced on the surety bond of a:

- (1) licensee; or
- (2) person subject to or an entity exempt from licensing under IC 24-4.4 or IC 24-4.5 as described under subsection (a);

the director may require the filing of a new bond.

(f) A:

- (1) licensee; or
- (2) person subject to or an entity exempt from licensing under IC 24-4.4 or IC 24-4.5 as described under subsection (a);

shall file a new surety bond immediately upon recovery of any action on the surety bond required under this section. (*Department of Financial Institutions; 750 IAC 9-3-7; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729-IR-750090577ERA*)

**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) [subdivision (6)] is not subject to:

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

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

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

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

- (A) require review of; and

(B) make available;

the audited financial statements of the NMLSR.

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

**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 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.

(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)*

**750 IAC 9-3-10 Continuing education**

Authority: IC 24-4.4-1-101

Affected: IC 24-4.4; IC 24-4.5

Sec. 10. (a) To meet the annual continuing education requirements referred to in section 9 of this rule, a licensed mortgage loan originator shall complete at least eight (8) 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) Two (2) 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), continuing education courses shall be reviewed and approved by the NMLSR based upon reasonable standards. Review and approval of a continuing education course must include review and approval of the course provider.

(c) The NMLSR may approve an education course that is provided by:

(1) a creditor;

(2) an employer of the mortgage loan originator;

(3) an entity that is affiliated with the creditor or employer of the mortgage loan originator by an agency contract; or

(4) any subsidiary or affiliate of an employer or entity described in subsection [subdivision] (2) or (3).

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

(e) An individual subject to the continuing education requirements under this section:

(1) except as provided in section 9(c) of this rule and subsection (i), may receive credit for a continuing education course only in the year in which the course is taken; and

(2) may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(f) An individual subject to the continuing education requirements under this section who is an approved instructor of approved continuing education courses may receive credit for the individual's own annual continuing education requirement at the rate of two (2) hours credit for every one (1) hour taught.

(g) A person who has successfully completed the education requirements approved by the NMLSR in subsection (a) for any state shall be accepted as completion of the continuing education requirements in this state.

(h) A licensed mortgage loan originator who becomes unlicensed must complete the continuing education requirements for the last year in which the license was held before issuance of a new or renewed license.

(i) A person meeting the requirements of section 9(b)(1) and 9(b)(3) of this rule may make up any deficiency in continuing education as established by policy of the director. (*Department of Financial Institutions; 750 IAC 9-3-10; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729-IR-750090577ERA*)

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

Authority: IC 24-4.4-1-101

Affected: IC 4-21.5-3-6; IC 24-4.4; IC 24-4.5

Sec. 11. (a) The department may issue to a person licensed 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. The order must state the place and time for a meeting with the department that is not less than ten (10) days after the date of the order. After the meeting, the department shall 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) 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. 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).

(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) 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 with the revocation of the license under IC 4-21.5-3-6, 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*)

**Rule 4. Records; Miscellaneous**

**750 IAC 9-4-1 Record keeping and notification requirements**

Authority: IC 24-4.4-1-101

Affected: IC 24-4.4; IC 24-4.5; IC 28-1-2-30

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MORTGAGE LENDERS AND ORIGINATORS

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

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

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

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

(1) files for bankruptcy or is served in a foreclosure action; or

(2) is subject to revocation or suspension proceedings by a state government authority with regard to the mortgage loan originator's activities;

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

(e) A licensee shall file notification with the department if the licensee has been convicted of or pleaded guilty or nolo contendere to a felony under the laws of Indiana or any other jurisdiction not later than thirty (30) days after the date of the event described in this subsection, provided that any pardon of a conviction shall not be a conviction for purposes of this subsection. *(Department of Financial Institutions; 750 IAC 9-4-1; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729-IR-750090577ERA)*

**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.

(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)*

**750 IAC 9-4-3 Closing documents**

Authority: IC 24-4.4-1-101

Affected: IC 6-1.1-12-43; IC 24-4.4; IC 24-4.5

Sec. 3. A mortgage loan originator shall comply with IC 6-1.1-12-43, which is incorporated by reference, to the extent applicable. *(Department of Financial Institutions; 750 IAC 9-4-3; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729-IR-750090577ERA)*

**750 IAC 9-4-4 Right of rescission**

Authority: IC 24-4.4-1-101

Affected: IC 24-4.4; IC 24-4.5

Sec. 4. A violation by a mortgage loan originator in a mortgage transaction of Section 125 of the Federal Consumer Protection Act (15 U.S.C. 1635), which is incorporated by reference, concerning a debtor's right to rescind a transaction constitutes a violation of this article. (*Department of Financial Institutions; 750 IAC 9-4-4; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729-IR-750090577ERA*)

**Rule 5. Compliance; Enforcement**

**750 IAC 9-5-1 Applicability**

Authority: IC 24-4.4-1-101

Affected: IC 24-4.4; IC 24-4.5

Sec. 1. This article applies to a person that engages as a mortgage loan originator in a mortgage transaction in Indiana. The authority of this article remains in effect whether a licensee acts or claims to act under any licensing or registration law of this state or claims to act without such authority. (*Department of Financial Institutions; 750 IAC 9-5-1; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729-IR-750090577ERA*)

**750 IAC 9-5-2 Department authority**

Authority: IC 24-4.4-1-101

Affected: IC 24-4.4; IC 24-4.5

Sec. 2. (a) In addition to other powers granted by this article, the department, within the limitations provided by law, may:

- (1) receive and act on complaints, take action designed to obtain voluntary compliance with this article, or commence proceedings on the department's own initiative;
- (2) counsel persons and groups on their rights and duties under this article;
- (3) adopt, amend, and repeal orders, policies, guidance, and forms to carry out this article;
- (4) appoint any necessary attorneys, hearing examiners, clerks, and other employees and agents and fix their compensation, and authorize attorneys appointed under this section to appear for and represent the department in court.

(b) Liability may not be imposed under this article for an act done or omitted in conformity with a written notice, written opinion, written interpretation, or written directive of the department notwithstanding the fact that after the act is done or omitted the written notice, written opinion, written interpretation, or written directive is for any reason:

- (1) amended or repealed; or
- (2) determined by judicial or other authority to be invalid.

(*Department of Financial Institutions; 750 IAC 9-5-2; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729-IR-750090577ERA*)

**750 IAC 9-5-3 Licensee record keeping**

Authority: IC 24-4.4-1-101

Affected: IC 24-4.4; IC 24-4.5

Sec. 3. (a) In administering this article and in order to determine whether this article is being complied with by persons engaging in acts subject to this article, the department may examine the records of persons and may make investigations of persons as necessary to determine compliance. Records subject to examination under this section include the following:

- (1) Training, operating, and policy manuals.
- (2) Minutes of:
  - (A) management meetings; and
  - (B) other meetings.
- (3) Financial records, credit files, and databases.
- (4) Other records that the department determines are necessary to perform its investigation or examination.

(b) The department may:

- (1) administer oaths or affirmations, subpoena witnesses, and compel the attendance of witnesses; and
- (2) adduce evidence and require the production of any matter that is relevant to an investigation.

The department shall determine the sufficiency of the records maintained and whether the person has made the required information reasonably available. The records concerning any transaction subject to this article shall be retained for two (2) years after the making of the final entry relating to the mortgage transaction, but, in the case of a revolving mortgage transaction, the two (2) year period is measured from the date of each entry.

(c) The department's examination and investigatory authority under this article includes the authority to investigate complaints filed with the department by debtors.

(d) The department shall be given free access to the records wherever the records are located. In making any examination or investigation authorized by this article, the director may control access to any documents and records of a licensee. The director may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where the documents are usually kept. During the period of control, a licensee may not remove or attempt to remove any of the documents and records except under a court order or with the consent of the director. Unless the director has reasonable grounds to believe the documents or records of the licensee have been, or are, at risk of being altered or destroyed for purposes of concealing a violation of this article, the licensee shall have access to the documents or records as necessary to conduct the licensee's ordinary business affairs. If the licensee's records are located outside Indiana, the records shall be made available to the department at a convenient location within Indiana, or the licensee shall pay the reasonable and necessary expenses for the department or the department's representative to examine the records where they are maintained. The department may designate comparable officials of the state in which the records are located to inspect the records on behalf of the department.

(e) Upon a licensee's failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice by the department to all affected persons, the department may apply to any civil court with jurisdiction for an order compelling compliance.

(f) The department shall not make public:

- (1) the name or identity of a person whose acts or conduct the department investigates under this section; or
- (2) the facts discovered in the investigation.

However, this subsection does not apply to civil actions or enforcement proceedings under this article. (*Department of Financial Institutions; 750 IAC 9-5-3; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729-IR-750090577ERA*)

**750 IAC 9-5-4 Director authority**

Authority: IC 24-4.4-1-101

Affected: IC 24-4.4; IC 24-4.5

Sec. 4. To carry out the purposes of this article, the director may:

- (1) retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;
- (2) enter into agreements or relationships with other government officials or regulatory associations to improve efficiencies and reduce regulatory burden by sharing:
  - (A) resources;
  - (B) standardized or uniform methods or procedures; and
  - (C) documents, records, information, or evidence obtained under this section;
- (3) use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate a licensee; and
- (4) accept and rely on examination or investigation reports made by other government officials within or outside Indiana.

(*Department of Financial Institutions; 750 IAC 9-5-4; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729-IR-750090577ERA*)

**750 IAC 9-5-5 Prohibited acts**

Authority: IC 24-4.4-1-101

Affected: IC 24-4.4; IC 24-4.5

Sec. 5. It is a violation of this article for a licensee to:

- (1) directly or indirectly, employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any



person;

- (2) engage in any unfair or deceptive practice toward any person;
- (3) obtain property by fraud or misrepresentation;
- (4) solicit or enter into a contract with a borrower that provides in substance that the licensee may earn a fee or commission through "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;
- (5) solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;
- (6) conduct any business covered by this article without holding a valid license as required under this article, or assist or aid and abet any person in the conduct of business under this article without a valid license as required under this article;
- (7) fail to make disclosures as required by this article or regulation adopted under this article and any other applicable state or federal law or regulation;
- (8) fail to comply with this article or guidance adopted under this article, or fail to comply with any other state or federal law, rule, or regulation, applicable to any business authorized or conducted under this article;
- (9) make, in any manner, a false or deceptive statement or representation, with regard to the rates, points, or other financing terms or conditions for a mortgage transaction, or engage in bait and switch advertising;
- (10) negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the NMLSR or in connection with any investigation conducted by the director or another governmental agency;
- (11) make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a mortgage transaction, or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;
- (12) collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this article;
- (13) cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;
- (14) fail to account truthfully for money belonging to a party to a mortgage transaction; or
- (15) knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information subject to examination under this article.

*(Department of Financial Institutions; 750 IAC 9-5-5; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729-IR-750090577ERA)*

**750 IAC 9-5-6 Administrative review**

Authority: IC 24-4.4-1-101

Affected: IC 4-21.5-3; IC 4-21.5-5; IC 24-4.4; IC 24-4.5

Sec. 6. Except as otherwise provided, IC 4-21.5-3, which is incorporated by reference, governs any action taken by the department under this article. All proceedings for administrative review under IC 4-21.5-3 or judicial review under IC 4-21.5-5, which is incorporated by reference, shall be held in Marion County, Indiana. *(Department of Financial Institutions; 750 IAC 9-5-6; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729-IR-750090577ERA)*

**750 IAC 9-5-7 Cease and desist order**

Authority: IC 24-4.4-1-101

Affected: IC 24-4.4; IC 24-4.5

Sec. 7. (a) After notice and hearing, the department may order a mortgage loan originator or a person acting on behalf of the mortgage loan originator to cease and desist from engaging in violations of this article. In any civil court with jurisdiction:

- (1) a respondent aggrieved by an order of the department may obtain judicial review of the order; and
- (2) the department may obtain an order of the court for the enforcement of the department's order.

A proceeding for review or enforcement under this subsection must be initiated by the filing of a petition in the court. Copies of the petition shall be served upon all parties of record.

- (b) Not later than thirty (30) days after service of a petition for review upon the department under subsection (a), or within such

further time as the court allows, the department shall transmit to the court the original or a certified copy of the entire record upon which the order that is the subject of the review is based, including any transcript of testimony, which need not be printed. By stipulation of all parties to the review proceeding, the record may be shortened. After conducting a hearing on the matter, the court may:

- (1) reverse or modify the order if the findings of fact of the department are clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record;
- (2) grant any temporary relief or restraining order the court considers just and enter an order:
  - (A) enforcing;
  - (B) modifying;
  - (C) enforcing as modified; or
  - (D) setting aside;

in whole or in part, the order of the department; or

- (3) enter an order remanding the case to the department for further proceedings.

(c) An objection not urged at the hearing shall not be considered by the court unless the failure to urge the objection is excused for good cause shown. A party may move the court to remand the case to the department in the interest of justice for the purpose of:

- (1) adducing additional specified and material evidence; and
- (2) seeking a finding upon the evidence;

upon good cause shown for the failure to previously adduce the evidence before the department.

(d) The jurisdiction of the court is exclusive and the court's final judgment or decree is subject to review on appeal in the same manner and form and with the same effect as in appeals from a final judgment or decree. The department's copy of the testimony shall be available at reasonable times to all parties for examination without cost.

(e) A proceeding for review under this section must be initiated not later than thirty (30) days after a copy of the order of the department is received. If a proceeding is not initiated within the time set forth in this subsection, the department may obtain a decree of a civil court with jurisdiction for enforcement of the department's order upon a showing that:

- (1) the order was issued in compliance with this section;
- (2) a proceeding for review was not initiated within the thirty (30) day period prescribed by this subsection; and
- (3) the respondent is subject to the jurisdiction of the court.

(f) With respect to an unconscionable agreement or fraudulent or unconscionable conduct by a respondent, the department may not issue an order under this section but may bring a civil action for an injunction under section 9 of this rule. (*Department of Financial Institutions; 750 IAC 9-5-7; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729-IR-750090577ERA*)

#### **750 IAC 9-5-8 Assurance of discontinuance**

Authority: IC 24-4.4-1-101

Affected: IC 24-4.4; IC 24-4.5

Sec. 8. If it is claimed that a person has engaged in conduct subject to an order by:

- (1) the department under section 7(a) of this rule; or
- (2) a court under sections 9 through 11 of this rule;

the department may accept an assurance in writing that the person will not engage in the conduct in the future. If a person giving an assurance of discontinuance fails to comply with the terms of the assurance, the assurance is evidence that before the assurance was issued the person engaged in the conduct described in the assurance. (*Department of Financial Institutions; 750 IAC 9-5-8; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729-IR-750090577ERA*)

#### **750 IAC 9-5-9 Civil action**

Authority: IC 24-4.4-1-101

Affected: IC 24-4.4; IC 24-4.5

Sec. 9. The department may bring a civil action to restrain a person from violating this article or other state or federal law, rule, or regulation and for other appropriate relief. (*Department of Financial Institutions; 750 IAC 9-5-9; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729-IR-750090577ERA*)

**750 IAC 9-5-10 Deceptive acts**

Authority: IC 24-4.4-1-101

Affected: IC 24-4.4; IC 24-4.5

Sec. 10. (a) As used in this section, "deceptive act" means an act or a practice in which a person knowingly or intentionally:  
(1) makes a material misrepresentation concerning; or  
(2) conceals material information regarding the terms or conditions of;

a mortgage transaction.

(b) For purposes of this section, "knowingly" means having actual knowledge at the time of the transaction.

(c) The department may bring a civil action to enjoin a deceptive act performed in connection with a mortgage transaction.

*(Department of Financial Institutions; 750 IAC 9-5-10; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729-IR-750090577ERA)*

**750 IAC 9-5-11 Temporary relief**

Authority: IC 24-4.4-1-101

Affected: IC 24-4.4; IC 24-4.5

Sec. 11. With respect to an action brought under:

(1) section 9 of this rule to enjoin a violation of this article; or

(2) section 10 of this rule to enjoin a deceptive act;

the department may apply to the court for appropriate temporary relief against a respondent, pending final determination of the proceedings. If the court finds after a hearing held upon notice to the respondent that there is reasonable cause to believe that the respondent is engaging in or is likely to engage in the conduct sought to be restrained, the court may grant any temporary relief or restraining order the court considers appropriate. *(Department of Financial Institutions; 750 IAC 9-5-11; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729-IR-750090577ERA)*

**750 IAC 9-5-12 Civil penalties**

Authority: IC 24-4.4-1-101

Affected: IC 24-4.4; IC 24-4.5

Sec. 12. (a) The department may bring a civil action to recover a civil penalty against a mortgage loan originator who willfully violates this article. If the court finds that the mortgage loan originator engaged in a course of repeated and willful violations of this article, the court may assess a civil penalty of not more than five thousand dollars (\$5,000). A civil penalty may not be imposed under this subsection:

(1) for a violation of this article occurring more than two (2) years before the action is brought; or

(2) for making an unconscionable agreement or engaging in a course of fraudulent or unconscionable conduct.

(b) If the department determines, after notice and an opportunity to be heard, that a person has willfully violated this article, the department may, in addition to or instead of all other remedies available under this section, impose upon the person a civil penalty not greater than ten thousand dollars (\$10,000) for each violation.

(c) If the department determines, after notice and opportunity to be heard, that a person has violated this article, the department may, in addition to or instead of all other remedies available under this section, order restitution against the person subject to this article for a violation of this article. *(Department of Financial Institutions; 750 IAC 9-5-12; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729-IR-750090577ERA)*

**750 IAC 9-5-13 Other remedies**

Authority: IC 24-4.4-1-101

Affected: IC 24-4.4; IC 24-4.5

Sec. 13. The grant of powers to the department under this article does not affect remedies available to debtors under this article or under other principles of law or equity. *(Department of Financial Institutions; 750 IAC 9-5-13; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729-IR-750090577ERA)*

**750 IAC 9-5-14 Venue**

Authority: IC 24-4.4-1-101

Affected: IC 24-4.4; IC 24-4.5

Sec. 14. The department may bring an action or a proceeding in a court in a county:

- (1) in which an act on which the action or proceeding is based occurred;
- (2) in which the respondent resides or transacts business;
- (3) in which the action or proceeding is otherwise authorized by rule or venue laws; or
- (4) in Marion County.

*(Department of Financial Institutions; 750 IAC 9-5-14; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729-IR-750090577ERA)*

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