

**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

Introduced by Senator Booher

ENROLLED SENATE BILL No. 908

AN ACT to amend 2009 PA 75, entitled "An act to provide for the licensing of mortgage loan originators; to regulate the business practices of mortgage loan originators; to establish certain obligations of employees and principals of mortgage loan originators; to prescribe the powers and duties of certain state agencies and officials; and to provide remedies and prescribe penalties," by amending sections 3, 5, 9, 15, and 29 (MCL 493.133, 493.135, 493.139, 493.145, and 493.159), sections 3 and 29 as amended by 2010 PA 356.

The People of the State of Michigan enact:

Sec. 3. As used in this act:

(a) "Commissioner" means the commissioner of the office of financial and insurance regulation in the department of licensing and regulatory affairs.

(b) "Depository institution" means that term as defined in section 3 of the federal deposit insurance act, 12 USC 1813, or a credit union.

(c) "Dwelling" means that term as defined in section 103(v) of the truth in lending act, 15 USC 1602.

(d) "Employee" means an individual who meets both of the following:

(i) Has an employment relationship acknowledged by that individual and the person that engages that individual to originate mortgage loans.

(ii) Is treated as an employee by the person that engages that individual to originate mortgage loans for compliance with federal income tax laws.

(e) "Exempt company" means a person that meets all of the following:

(i) Is not required to obtain a license or registration, or is exempt from licensing or registration, under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684; the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81; or the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072.

(ii) Has a unique identifier in the nationwide mortgage licensing system and registry.

(iii) Has been approved by the commissioner in the nationwide mortgage licensing system and registry as an exempt company.

(f) "Federal banking agencies" means the board of governors of the federal reserve system, the comptroller of the currency, the director of the office of thrift supervision, the national credit union administration, and the federal deposit insurance corporation.

(g) "Financial licensing acts" means that term as defined in section 2 of the consumer financial services act, 1988 PA 161, MCL 487.2052.

(h) “Immediate family member” means a spouse, child, sibling, parent, grandparent, or grandchild. The term includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

(i) “Individual” means a natural person.

(j) “Licensed mortgage loan originator” means a mortgage loan originator who holds a valid license issued by the commissioner under this act.

(k) “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 designated as exempt from licensing under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684; the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81; or the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072. For purposes of this subdivision, “clerical or support duties” may include any of the following after an application is received:

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

(ii) Communicating 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 residential mortgage loan rates or terms.

(l) “Mortgage loan originator” means an individual who originates residential mortgage loans and meets all of the following:

(i) Is not an individual engaged solely as a loan processor or underwriter except as otherwise provided in section 5(3).

(ii) Is not a person who only performs real estate brokerage activities and is licensed or registered under the laws of this state, unless the person is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of a lender, mortgage broker, or other mortgage loan originator.

(iii) Is not a person solely involved in extensions of credit relating to timeshare plans, as that term is defined in 11 USC 101(53D).

(m) “Originate” means do any of the following for compensation or gain, or in the expectation of compensation or gain, in connection with a residential mortgage loan:

(i) Take a residential mortgage loan application.

(ii) Offer or negotiate terms of a residential mortgage loan.

(n) “Mortgage servicer” means a person who directly or indirectly services or offers to service residential mortgage loans.

(o) “Nationwide mortgage licensing system and registry” 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 licensed mortgage loan originators.

(p) “Nontraditional mortgage product” means any mortgage product other than a 30-year fixed rate mortgage.

(q) “Person” means an individual, corporation, limited liability company, partnership, association, or other legal entity.

(r) “Real estate brokerage activity” means any activity that involves offering or providing real estate brokerage services to the public, including, but not limited to, any of the following:

(i) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property.

(ii) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property.

(iii) On behalf of any party, negotiating any portion 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 that contract.

(iv) 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.

(v) Offering to engage in any activity, or act in any capacity, described in subparagraph (i), (ii), (iii), or (iv).

(s) “Registered mortgage loan originator” means an individual who meets all of the following:

(i) Is a mortgage loan originator and is an employee of any of the following:

(A) A depository institution.

(B) A subsidiary of a depository institution that is owned and controlled by that depository institution and is regulated by a federal banking agency.

(C) An institution regulated by the farm credit administration.

(ii) Is registered with, and maintains a unique identifier through, the nationwide mortgage licensing system and registry.

(t) “Residential mortgage loan” means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or residential real estate on which a person has constructed or intends to construct a dwelling.

(u) “Residential real estate” means any real property located in this state on which a person has constructed or intends to construct a dwelling.

(v) “SAFE act” means the secure and fair enforcement for mortgage licensing act of 2008, Public Law 110-289, 12 USC 5101 to 5116.

(w) “Service” means the collection or remittance for a lender, noteowner, or noteholder or a person’s own account of 4 or more installment payments of the principal of, interest of, or an amount placed in escrow under a residential mortgage loan, mortgage servicing agreement, or an agreement with a mortgagor.

(x) “Sponsor” means a person that meets all of the following:

(i) Has a unique identifier in the nationwide mortgage licensing system and registry.

(ii) Is approved by the commissioner in the nationwide mortgage licensing system and registry as an exempt company or as a person licensed or registered under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, or the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072.

(iii) Has indicated in the nationwide mortgage licensing system and registry that an individual will act as a mortgage loan originator for that person under that person’s specific license, registration, or status as an exempt company.

(y) “Unique identifier” means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry.

Sec. 5. (1) Unless specifically exempted under subsection (2), beginning July 31, 2010, an individual shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this state without first obtaining and maintaining annually a license under this act. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.

(2) Each of the following is exempt from this act:

(a) A registered mortgage loan originator, when acting for an entity described in section 3(s)(i)(A), (B), or (C).

(b) An individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of that individual.

(c) An individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as his or her residence.

(d) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney’s representation of the client, unless the attorney is compensated by a lender, mortgage broker, or other mortgage loan originator or by any agent of a lender, mortgage broker, or other mortgage loan originator.

(3) A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless that independent contractor loan processor or underwriter obtains and maintains a license under subsection (1). Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.

(4) The commissioner may establish licensing rules and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals, the commissioner may establish expedited review and licensing procedures.

Sec. 9. (1) The commissioner shall not issue a mortgage loan originator license unless the commissioner makes at a minimum the following findings:

(a) The applicant is not subject to a prohibition order issued by the commissioner under section 27 or under any of the financial licensing acts.

(b) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that the commissioner shall not consider a revocation that is formally vacated as a revocation for purposes of this subdivision.

(c) Subject to subsection (2), the applicant has not been convicted of, or pled guilty or no contest to, any of the following in a domestic, foreign, or military court:

(i) Within the 10-year period preceding the date of the license application, a felony other than a felony described in subparagraph (ii).

(ii) At any time preceding the date of the license application, any felony or misdemeanor involving fraud, dishonesty, or a breach of trust, money laundering, embezzlement, forgery, a financial transaction, or securities.

(d) The applicant has demonstrated financial responsibility, character, and general fitness that commands the confidence of the community and warrants a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this act.

(e) The applicant has completed the preclicensing education requirement described in section 11.

(f) The applicant has passed a written test that meets the test requirement described in section 13.

(g) The applicant has met the surety bond requirement described in section 29.

(h) The applicant has a sponsor in the nationwide mortgage licensing system and registry that is approved by the commissioner.

(2) The commissioner shall not consider a conviction for which a pardon was granted a conviction for purposes of subsection (1)(c).

Sec. 15. (1) The commissioner shall annually renew the license of a licensed mortgage loan originator if all of the following are met before his or her current license expires:

(a) The mortgage loan originator continues to meet the requirements for license issuance under section 9(1)(a) to (g).

(b) The mortgage loan originator has satisfied the annual continuing education requirements described in section 17.

(c) The mortgage loan originator has paid the fee required under section 19.

(2) If a mortgage loan originator fails to satisfy the requirements of subsection (1) for renewal of his or her license, the license shall expire. The commissioner may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the nationwide mortgage licensing system and registry.

Sec. 29. (1) Subject to subsection (2), each mortgage loan originator must provide to the commissioner or be covered by a surety bond that meets the requirements of subsection (5). A surety bond provided under this subsection shall provide coverage for the mortgage loan originator in 1 of the following amounts:

(a) If the mortgage loan originator did not originate any mortgage loans in the preceding calendar year, or the sum of the principal amounts of mortgage loans originated by the mortgage loan originator in the preceding calendar year is less than \$12,000,000.00, as determined by the commissioner, \$10,000.00.

(b) If the sum of the principal amounts of mortgage loans originated by the mortgage loan originator in the preceding calendar year is \$12,000,000.00 or more and less than \$24,000,000.00, as determined by the commissioner, \$25,000.00.

(c) If the sum of the principal amounts of mortgage loans originated by the mortgage loan originator in the preceding calendar year is \$24,000,000.00 or more, as determined by the commissioner, \$50,000.00.

(2) If a mortgage loan originator is an employee or exclusive agent of a sponsor and that sponsor provides the commissioner with a surety bond that satisfies the requirements of subsection (5), the commissioner may accept that surety bond in lieu of the mortgage loan originator's surety bond obligation under subsection (1). The principal amount of a surety bond provided under this subsection shall provide coverage for all of the sponsor's mortgage loan originators in 1 of the following amounts:

(a) If the sum of the principal amounts of mortgage loans closed or modified by the sponsor in the preceding calendar year is less than \$12,000,000.00, as determined by the commissioner, \$50,000.00.

(b) If the sum of the principal amounts of mortgage loans closed or modified by the sponsor in the preceding calendar year is \$12,000,000.00 or more and less than \$24,000,000.00, as determined by the commissioner, \$150,000.00.

(c) If the sum of the principal amounts of mortgage loans closed or modified by the sponsor in the preceding calendar year is \$24,000,000.00 or more, as determined by the commissioner, \$250,000.00.

(3) The license of a mortgage loan originator who fails to meet the requirements of section 9(1)(g) or (h) is automatically subject to a condition that he or she may not originate mortgage loans under this act. A mortgage loan originator who is subject to a condition described in this subsection shall immediately cease originating mortgage loans and shall not originate mortgage loans until that condition is removed by the commissioner.

(4) Before the end of a calendar quarter, a sponsor that provides a surety bond under subsection (2) for its employees and exclusive agents shall submit a report to the commissioner that contains all of the following information about the surety bond in effect for the next calendar quarter:

(a) The name and unique identifier of the sponsor.

(b) The name of the surety issuing the bond.

(c) For each mortgage loan originator covered by the bond, his or her legal name, exactly as filed with the nationwide mortgage licensing system and registry, and unique identifier.

(5) All of the following apply to a surety bond provided under subsection (1) or (2):

(a) The bond shall be in a form as prescribed by the commissioner.

(b) The commissioner may promulgate rules with respect to the requirements for surety bonds under this section that the commissioner determines are necessary to accomplish the purposes of this act.

(c) If an action is commenced on a bond described in this section, the commissioner may require the filing of a new bond. If there is a recovery in that action, the mortgage loan originator or sponsor described in subsection (2) shall immediately provide to the commissioner a new surety bond that meets the requirements of this section.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Gay E. Randall

Clerk of the House of Representatives

Approved

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Governor