

## **MORTGAGE LOAN ORIGINATOR LICENSING ACT**

### **Act 75 of 2009**

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.

**History:** 2009, Act 75, Eff. July 31, 2009.

*The People of the State of Michigan enact:*

#### **493.131 Short title.**

Sec. 1. This act shall be known and may be cited as the "mortgage loan originator licensing act".

**History:** 2009, Act 75, Eff. July 31, 2009.

#### **493.133 Definitions.**

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.

**History:** 2009, Act 75, Eff. July 31, 2009;—Am. 2010, Act 356, Imd. Eff. Dec. 22, 2010;—Am. 2012, Act 150, Imd. Eff. May 30, 2012.

**Compiler's note:** For references to office of financial and insurance regulation to be deemed as department of insurance and financial services, and abolishment of office of financial and insurance regulation, see E.R.O. No. 2013-1, compiled at MCL 550.991.

For references to commissioner of office of financial and insurance regulation to be deemed as references to director of department of insurance and financial services, and abolishment of office of commissioner of office of financial and insurance regulation, see E.R.O. No. 2013-1, compiled at MCL 550.991.

#### **493.135 Engaging in business of mortgage loan originator; license required; exemptions; independent contractor loan processor or underwriter; establishment of licensing rules and interim procedures.**

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.

(e) An individual who acts as a mortgage servicer, or who is an employee of a mortgage servicer, who offers or negotiates the terms of residential mortgage loans for the purpose of renegotiating, modifying, replacing, or subordinating the principal of existing residential mortgage loans of which the borrowers are behind in making their payments, are in default, or have a reasonable likelihood of falling behind in making payments or defaulting. However, the exemption from this act under this subdivision does not apply to an individual who acts as a mortgage servicer, or is an employee of a mortgage servicer, who offers or negotiates the terms of a residential mortgage loan transaction that constitutes a refinancing under 12 CFR 1026.20(a) or that obligates a different consumer to pay the existing residential mortgage loan.

(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.

**History:** 2009, Act 75, Eff. July 31, 2009;—Am. 2012, Act 150, Imd. Eff. May 30, 2012;—Am. 2014, Act 421, Imd. Eff. Dec. 30, 2014.

#### **493.137 Application; form; fee; criminal history check; relationships or contracts with nationwide mortgage licensing system and registry; furnishing certain information; use.**

Sec. 7. (1) An applicant for a license under this act shall apply in a form as prescribed by the commissioner. The applicant shall include with the application the fee required under section 19 and the criminal history check required under subsection (2). Each application form shall contain the content established by rule, instruction, or procedure of the commissioner. The commissioner may change or update the application form and its contents as necessary by the commissioner in order to carry out the purposes of this act.

(2) A person that employs or offers to employ, or engages or offers to engage as an agent, an individual as a mortgage loan originator, to originate mortgage loans on or after July 31, 2010, shall conduct a criminal history check of that individual and the applicant shall submit the results of that criminal history check with

his or her application for license. All of the following apply to the criminal history check of an individual required under this subsection:

(a) The federal bureau of investigation shall perform the criminal history check.

(b) The individual who is the subject of the criminal history check shall have his or her fingerprints taken by a law enforcement agency or by another person that the commissioner determines is qualified to take fingerprints; shall pay the agency or person the fees as required by the federal bureau of investigation for processing fingerprints and completing a criminal history check; and shall request that the agency or person forward the fingerprints and appropriate fee to the federal bureau of investigation for a national criminal history check.

(c) After receiving a proper request and the required fees under this subsection, the federal bureau of investigation shall conduct the criminal history check and provide the commissioner and the applicant with the results of the criminal history check. The results shall contain any criminal history record information concerning the individual maintained by the federal bureau of investigation's criminal history check.

(d) A criminal history check required under this subsection may be conducted, requested of and performed by the federal bureau of investigation, and submitted to the commissioner at any time on or after July 31, 2009.

(3) The commissioner is authorized to establish relationships or contracts with the nationwide mortgage licensing system and registry or other entities designated by the nationwide mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensed mortgage loan originators or other persons subject to this act.

(4) In connection with an application for licensing as a mortgage loan originator, an applicant shall at a minimum furnish to the nationwide mortgage licensing system and registry information concerning the applicant's identity, including, but not limited to, all of the following:

(a) The results of the criminal history check conducted under subsection (2).

(b) The applicant's personal history and experience in a form prescribed by the nationwide mortgage licensing system and registry, including the submission of authorization for the nationwide mortgage licensing system and registry and the commissioner to obtain all of the following concerning the applicant:

(i) An independent credit report obtained from a consumer reporting agency, as defined in section 603 of the fair credit reporting act, 15 USC 1681a.

(ii) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(5) For the purposes of this section, the commissioner may use the nationwide mortgage licensing system and registry for any of the following:

(a) Requesting information from and distributing information to the department of justice or any governmental agency.

(b) Requesting and distributing information to and from any source as directed by the commissioner.

**History:** 2009, Act 75, Eff. July 31, 2009.

#### **493.139 Issuance of mortgage loan originator license; findings; conviction.**

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).

**History:** 2009, Act 75, Eff. July 31, 2009;—Am. 2012, Act 150, Imd. Eff. May 30, 2012.

#### **493.141 Prelicensing education requirements.**

Sec. 11. (1) To meet the prelicensing education requirement under section 9(1)(e), except as provided in subsection (6), the applicant shall complete at least 20 hours of education approved under subsection (2), including at least all of the following:

(a) Three hours of federal law and regulations.

(b) Three hours of ethics, including instruction on fraud, consumer protection, and fair lending issues.

(c) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(2) Only prelicensing education courses reviewed and approved by the nationwide mortgage licensing system and registry may be used to satisfy the requirements of subsection (1). Review and approval of a prelicensing education course shall include review and approval of the course provider.

(3) If approved by the nationwide mortgage licensing system and registry, a prelicensing education course may be provided by the employer of the applicant, an entity that is affiliated with the applicant by an agency contract, or a subsidiary or affiliate of that employer or entity.

(4) Prelicensing education may be offered in a classroom, online, or by any other means approved by the nationwide mortgage licensing system and registry.

(5) If a person completes any prelicensing education requirements described in subsection (1)(a), (b), or (c) that are approved by the nationwide mortgage licensing system and registry for any state, the commissioner shall accept those hours of education as credit toward completion of the prelicensing education requirements under this section.

(6) For an application for a mortgage loan originator license submitted before July 31, 2010, completion of the classroom instruction requirement described in section 2a(4)(d) of the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1652a, or section 2a(4)(d) of the secondary mortgage loan act, 1981 PA 125, MCL 493.52a, satisfies the prelicensing education requirement described in subsection (1). An applicant described in this subsection shall provide proof in the form of a certificate of completion or other evidence acceptable to the commissioner.

(7) If an unlicensed individual who formerly held a license issued under this act applies for a new license under this act, he or she must prove that he or she completed all of the continuing education requirements of section 17 for the year in which the previous license was last held to be eligible for a new or renewed license.

**History:** 2009, Act 75, Eff. July 31, 2009.

#### **493.143 Qualified written test.**

Sec. 13. (1) To meet the written test requirement under section 9(1)(f), except as provided in subsection (5), an individual shall pass a qualified written test developed by the nationwide mortgage licensing system and registry and administered by a test provider approved by the nationwide mortgage licensing system and registry based on reasonable standards.

(2) A written test is not considered a qualified written test for purposes of subsection (1) unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including all of the following:

(a) Ethics.

(b) Federal law and regulation pertaining to mortgage origination and to mortgage lending, including, but not limited to, fraud, consumer protection, and fair lending issues and the nontraditional mortgage marketplace.

(c) State law and regulation pertaining to mortgage origination and to mortgage lending, including, but not limited to, fraud, consumer protection, and fair lending issues and the nontraditional mortgage marketplace.

(3) If the test provider is approved by the nationwide mortgage licensing system and registry, the test provider may provide a test at the location of the employer of the applicant, the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(4) All of the following apply to a test under this section:

(a) An individual is not considered to have passed a qualified written test unless the individual achieves a test score of 75% or more correct answers to questions.

(b) An individual may retake a test 3 consecutive times, if each consecutive retaking occurs at least 30

days after the preceding test.

(c) If an individual fails 3 consecutive tests, the individual must wait at least 6 months before taking the test again.

(d) If an unlicensed individual who formerly held a license issued under this act applies for a new license under this act, he or she must retake the test if it has been at least 5 years since he or she last held a valid license under this act.

(5) If an applicant for a mortgage loan originator license has met the testing requirement described in section 2a(4)(e) of the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1652a, or section 2a(4)(e) of the secondary mortgage loan act, 1981 PA 125, MCL 493.52a, in the 5-year period preceding the date of the application, and provides evidence acceptable to the commissioner that he or she met that testing requirement, the applicant is considered to have met that part of the written test requirement under section 9(1)(f) applicable to the state law and regulation described in subsection (2)(c).

**History:** 2009, Act 75, Eff. July 31, 2009.

#### **493.145 Annual renewal; expiration; reinstatement.**

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.

**History:** 2009, Act 75, Eff. July 31, 2009;—Am. 2012, Act 150, Imd. Eff. May 30, 2012.

#### **493.147 Continuing education requirements.**

Sec. 17. (1) To meet the annual continuing education requirements described in section 15(1)(b), a licensed mortgage loan originator shall complete at least 8 hours of education approved under subsection (2), including at least all of the following:

(a) Three hours of federal law and regulations.

(b) Two hours of ethics, including instruction on fraud, consumer protection, and fair lending issues.

(c) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(2) Only continuing education courses reviewed and approved by the nationwide mortgage licensing system and registry, based on reasonable standards, may be used to satisfy the requirements of subsection (1). Review and approval of a continuing education course shall include review and approval of the course provider.

(3) If approved by the nationwide mortgage licensing system and registry, a continuing education course may be provided by the employer of the mortgage loan originator, an entity that is affiliated with the mortgage loan originator by an agency contract, or a subsidiary or affiliate of that employer or entity.

(4) Continuing education may be offered in a classroom, online, or by any other means approved by the nationwide mortgage licensing system and registry.

(5) Both of the following apply to the continuing education requirements of a licensed mortgage loan originator:

(a) Except for section 15(2) and subsection (9), he or she may only receive credit for a continuing education course in the year in which the course is taken.

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

(6) A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of 2 hours credit for every 1 hour taught.

(7) If a person successfully completes any continuing education requirements described in subsection (1)(a), (b), or (c) that are approved by the nationwide mortgage licensing system and registry for any state, the commissioner shall accept those hours of education as credit toward completion of the continuing education requirements under this section.

(8) If an unlicensed individual who formerly held a license issued under this act applies for a new license under this act, he or she must complete the continuing education requirements for the last year in which the

license was held to be eligible for a new or renewed license.

(9) The commissioner by rule may establish a procedure by which an individual who meets the requirements of section 15(1)(a) and (c) may make up any deficiency in continuing education.

**History:** 2009, Act 75, Eff. July 31, 2009.

#### **493.149 Fees; reports; penalties; deposit of money in MBLSLA fund; limitation on fee levels.**

Sec. 19. (1) At the time of making an initial application for a mortgage loan originator license under this act, the applicant shall pay to the commissioner the annual operating fee established by the commissioner under subsection (2).

(2) The commissioner shall annually establish a schedule of fees that are sufficient to pay, but not to exceed, the reasonably anticipated costs of the office of financial and insurance regulation for administering and enforcing this act. The fee schedule shall include all of the following:

(a) An annual fee for each licensed mortgage loan originator in an amount established by the commissioner. For purposes of this subdivision, the commissioner shall establish an amount for the annual fee that is sufficient to defray the estimated cost of administering and enforcing the provisions of this act.

(b) For amending or reissuing a mortgage loan originator license, a fee of not less than \$15.00 or more than \$200.00.

(c) A licensed mortgage loan originator shall pay the actual travel, lodging, and meal expenses incurred by employees of the office of financial and insurance regulation who travel out of state to conduct an examination or investigation of a licensed mortgage loan originator and the cost of independent investigators employed under section 33(6)(a).

(3) Fees received under this act are not refundable.

(4) If any fees or penalties provided for in this act are not paid when required, the attorney general may maintain an action against the delinquent licensed mortgage loan originator for the recovery of the fees and penalties together with interest and costs.

(5) A licensed mortgage loan originator who fails to submit to the commissioner the reports required under section 33(3) is subject to a penalty of \$25.00 for each day a required report is delinquent or \$1,000.00, whichever is less.

(6) A mortgage loan originator license renewal fee that is not received on or before December 31 is subject to a penalty of \$25.00 for each day the fee is delinquent or \$1,000.00, whichever is less.

(7) Money received from the fees described in this section shall be deposited in the MBLSLA fund. As used in this subsection, "MBLSLA fund" means the restricted account created under section 8(8) of the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1658.

(8) The annual operating fees set by the commissioner shall not exceed the levels needed to cover the estimated cost of enforcement of this act.

**History:** 2009, Act 75, Eff. July 31, 2009.

#### **493.151 Mortgage loan originators; license and registration through nationwide mortgage licensing system and registry; rules.**

Sec. 21. In addition to any other duties imposed on the commissioner under this act, the commissioner shall require mortgage loan originators to be licensed and registered through the nationwide mortgage licensing system and registry. To carry out this requirement, the commissioner is authorized to participate in the nationwide mortgage licensing system and registry and may by rule establish other requirements that he or she considers necessary, including, but not limited to, any of the following:

(a) Background checks for any of the following:

(i) The criminal history of a licensed mortgage loan originator or license applicant through fingerprint or other databases.

(ii) Information about a licensed mortgage loan originator or license applicant in civil or administrative records.

(iii) A licensed mortgage loan originator's or license applicant's credit history.

(iv) Any other information about a licensed mortgage loan originator or license applicant considered necessary by the nationwide mortgage licensing system and registry.

(b) The payment of fees to apply for or renew licenses through the nationwide mortgage licensing system and registry.

(c) The setting or resetting as necessary of renewal or reporting dates.

(d) Requirements for amending or surrendering a license or any other activities that the commissioner considers necessary for participation in the nationwide mortgage licensing system and registry.

**History:** 2009, Act 75, Eff. July 31, 2009.

#### **493.153 Process for challenging information entered.**

Sec. 23. The commissioner shall establish a process through which mortgage loan originators may challenge information entered into the nationwide mortgage licensing system and registry by the commissioner.

**History:** 2009, Act 75, Eff. July 31, 2009.

#### **493.155 Powers of commissioner; finding of violation or noncompliance; fine.**

Sec. 25. (1) To ensure the effective supervision and enforcement of this act, the commissioner may do any of the following, in a manner consistent with the requirements of the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328:

(a) Deny, suspend, revoke, condition, or decline to renew a license for a violation of this act, rules issued under this act, or an order or directive entered under this act.

(b) Deny, suspend, revoke, condition, or decline to renew a license if a licensed mortgage loan originator or license applicant fails at any time to meet the requirements of section 9 or 15 or withholds information or makes a material misstatement in an application for a license or renewal of a license.

(c) Order restitution against a person that is subject to this act for a violation of this act.

(d) Subject to subsections (2), (3), and (4), impose a civil fine on a person that is subject to this act.

(e) Issue any of the following orders or directives under this act:

(i) Order or direct a person that is subject to this act to cease and desist from conducting business, including an immediate temporary order to cease and desist.

(ii) Order or direct a person that is subject to this act to cease any harmful activities or violations of this act, including an immediate temporary order to cease and desist.

(iii) Enter an immediate temporary order to cease business under a license or interim license issued pursuant to the authority granted under section 5(4), if the commissioner determines that the license or interim license was erroneously granted or the licensed mortgage loan originator is currently in violation of this act.

(iv) Issue an order under section 27.

(v) Order or direct any other affirmative action that the commissioner considers necessary.

(2) The commissioner may impose a civil fine on a mortgage loan originator or other person subject to this act, if the commissioner finds, on the record after notice and opportunity for hearing, that the mortgage loan originator or other person has violated or failed to comply with a requirement of this act, a rule promulgated by the commissioner under this act, or an order issued under the authority of this act.

(3) The maximum fine for each violation or failure to comply described in subsection (2) is \$25,000.00.

(4) Each violation or failure to comply described in subsection (2) is a separate and distinct violation or failure.

**History:** 2009, Act 75, Eff. July 31, 2009.

#### **493.157 Fraud; notice of intent to prohibit licensure; contents; hearing; order; service; application to terminate order; imminent threat of financial loss to customers; conviction of felony; mailing of notice or issued to employer or principal; decision; judicial review; enforcement; violation of final order; "fraud" defined.**

Sec. 27. (1) If in the opinion of the commissioner an individual has engaged in fraud, the commissioner may serve on that person a written notice of intention to prohibit that individual from being licensed under this act, licensed or registered under any of the financial licensing acts, or employed by, an agent of, or a control person of a licensee or registrant under any of the financial licensing acts.

(2) A notice issued under subsection (1) shall contain a statement of the facts supporting the prohibition and, except as provided under subsection (7), shall set a hearing on a date within 60 days after the date of the notice. If the individual does not appear at the hearing, he or she is considered to have consented to the issuance of an order in accordance with the notice.

(3) If after a hearing held under subsection (2) the commissioner finds that any of the grounds specified in the notice have been established, the commissioner may issue an order of suspension or prohibition from being licensed under this act, licensed or registered under any of the financial licensing acts, or employed by, an agent of, or a control person of a licensee or registrant under any of the financial licensing acts.

(4) An order issued under subsection (2) or (3) is effective when served on an individual. The commissioner shall also serve a copy of the order upon the licensee of which the individual is an employee or agent. The order remains in effect until it is stayed, modified, terminated, or set aside by the commissioner or a reviewing court.

(5) After 5 years from the date of an order issued under subsection (2) or (3), the individual subject to the



order may apply to the commissioner to terminate the order.

(6) If the commissioner considers that an individual served a notice under subsection (1) poses an imminent threat of financial loss to customers, the commissioner may serve on that individual an order of suspension from being employed by, an agent of, or a control person of a licensee or registrant under any of the financial licensing acts. The suspension is effective on the date the order is issued and, unless stayed by a court, remains in effect until the commissioner completes the review required under this section and the commissioner has dismissed the charges specified in the order.

(7) Unless otherwise agreed to by the commissioner and the individual served with an order issued under subsection (6), the commissioner shall hold the hearing required under subsection (2) to review the suspension not earlier than 5 days or later than 20 days after the date of the notice.

(8) If an individual is convicted of a felony involving fraud, dishonesty, or breach of trust, the commissioner may issue an order suspending or prohibiting him or her from being licensed under this act, licensed or registered under any of the financial licensing acts, or employed by, an agent of, or a control person of a licensee or registrant under any of the financial licensing acts. After 5 years from the date of the order, the individual subject to the order may apply to the commissioner to terminate the order.

(9) The commissioner shall mail a copy of any notice or order issued under this section to the employer or principal of the individual subject to the notice or order.

(10) Within 30 days after the commissioner has notified the parties that the case has been submitted to him or her for final decision, the commissioner shall render a decision that includes findings of fact supporting the decision and serve on each party to the proceeding a copy of the decision and an order consistent with the decision.

(11) Except for a consent order, a party to the proceeding or a person affected by an order issued under this section may obtain a judicial review of the order. A consent order may be reviewed as provided under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Except for an order under judicial review, the commissioner may terminate or set aside any order. The commissioner may terminate or set aside an order under judicial review with the permission of the court.

(12) Unless ordered by the court, the commencement of proceedings for judicial review under subsection (11) does not stay the commissioner's order.

(13) The commissioner may apply to the circuit court of Ingham county for the enforcement of any outstanding order issued under this section.

(14) Any individual who violates a final order issued under this section is guilty of a misdemeanor punishable by a fine of not more than \$5,000.00 or imprisonment for not more than 1 year, or both.

(15) As used in this section, "fraud" includes actionable fraud, actual or constructive fraud, criminal fraud, extrinsic or intrinsic fraud, fraud in the execution, in the inducement, in fact, or in law, or any other form of fraud.

**History:** 2009, Act 75, Eff. July 31, 2009.

#### **493.159 Surety bond.**

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.

**History:** 2009, Act 75, Eff. July 31, 2009;—Am. 2010, Act 356, Imd. Eff. Dec. 22, 2010;—Am. 2012, Act 150, Imd. Eff. May 30, 2012.

#### **493.161 Privacy or confidentiality of information or material.**

Sec. 31. (1) Except as otherwise provided in section 1512 of the SAFE act, 12 USC 1511, the requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, or any federal law concerning the privacy or confidentiality of any information or material provided to the nationwide mortgage licensing system and registry, and any privilege arising under federal or state law or the rules of any federal or state court concerning that information or material shall continue to apply to that information or material after the information or material is disclosed to the nationwide mortgage licensing system and registry. Any information or material described in this section may be shared with any state and federal regulatory official with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(2) For purposes of this section, the commissioner may enter into 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 rule or order of the commissioner.

(3) Any information or material that is subject to a privilege or confidentiality under subsection (1) shall not be subject to any of the following:

(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.

(b) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the nationwide mortgage licensing system and registry with respect to the information or material, the person to which the information or material pertains waives, in whole or in part, in that person's discretion, that privilege.

(4) This section does not apply to any information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, a mortgage loan originator that is included in the nationwide mortgage licensing system and registry for access by the public.

**History:** 2009, Act 75, Eff. July 31, 2009.

#### **493.163 Investigations and examinations; access to books and records; reports; control of access to documents or records; duties and authority of commissioner; prohibited conduct by licensed mortgage loan originator or person subject to investigation.**

Sec. 33. (1) In addition to any authority provided under this act, the commissioner may conduct any of the following investigations and examinations:

(a) For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation to determine compliance with this act, the commissioner may access, receive, and use any books, accounts, records, files, documents, information, or evidence, including, but not limited to, any of the following:

(i) Criminal, civil, and administrative history information.

(ii) Personal history and experience information, including independent credit reports obtained from a consumer reporting agency, as defined in section 603 of the fair credit reporting act, 15 USC 1681a.

(iii) Any other documents, information, or evidence the commissioner considers relevant to the inquiry or investigation, regardless of the location, possession, control, or custody of those documents, information, or evidence.

(b) For purposes of investigating violations or complaints arising under this act, or for the purposes of examination, the commissioner may review, investigate, or examine any licensed mortgage loan originator or other person subject to this act as often as necessary in order to carry out the purposes of this act. The commissioner may direct, subpoena, or order the attendance of and examine under oath any person whose testimony may be required about the loans or the business or subject matter of that examination or investigation and may direct, subpoena, or order that person to produce books, accounts, records, files, and any other documents that the commissioner considers relevant to the inquiry.

(2) Each licensed mortgage loan originator or other person subject to this act shall make available to the commissioner on request the books and records relating to the operations of that licensed mortgage loan originator or other person. The commissioner shall have access to those books and records and may interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensed mortgage loan originator or other person concerning the business of the licensed mortgage loan originator or other person.

(3) Each licensed mortgage loan originator or other person subject to this act shall make or compile reports or prepare other information requested by the commissioner in order to carry out the purposes of this section, including, but not limited to, any of the following:

(a) Accounting compilations.

(b) Information lists and data concerning loan transactions, in a format prescribed by the commissioner.

(c) Any other information the commissioner considers necessary to carry out the purposes of this section.

(4) In making any examination or investigation authorized by this act, the commissioner may control access to any documents and records of the licensed mortgage loan originator or other person under examination or investigation. The commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept.

(5) If the commissioner is controlling access to documents or records under subsection (4), a person shall not remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the commissioner. Unless the commissioner has reasonable grounds to believe that the documents or records of the licensed mortgage loan originator or other person have been or are at risk of being altered or destroyed for purposes of concealing a violation of this act, the licensed mortgage loan originator or other person or the owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

(6) For purposes of this section, the commissioner may do any of the following:

(a) Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations.

(b) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section.

(c) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate a licensed mortgage loan originator or other person subject to this act.

(d) Accept and rely on examination or investigation reports made by other state or federal government officials.

(e) Accept audit reports prepared by an independent certified public accountant for the licensed mortgage loan originator or other person subject to this act in the course of that part of the examination covering the same general subject matter as the audit and incorporate the audit report in the report of the examination, report of investigation, or other writing of the commissioner.

(7) The commissioner's authority under this section remains in effect whether a licensed mortgage loan originator or other person subject to this act acts or claims to act under any licensing or registration law of this state or claims to act without that authority.

(8) A licensed mortgage loan originator or other person subject to investigation or examination under this

section shall not knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information from the commissioner.

**History:** 2009, Act 75, Eff. July 31, 2009.

#### **493.165 Licensed mortgage loan originator; prohibited conduct.**

Sec. 35. A licensed mortgage loan originator shall not do any of the following:

(a) Engage in fraud, deceit, or material misrepresentation in connection with any transaction governed by this act.

(b) Intentionally, or due to gross or wanton negligence, repeatedly fail to provide borrowers with any material disclosures of information required by law.

(c) Directly or indirectly make a false, misleading, or deceptive advertisement regarding mortgage loans or the availability of mortgage loans.

(d) Suppress or withhold from the commissioner any information that he or she possesses and that, if submitted, would have made him or her ineligible for licensure or license renewal under this act at the time of application and would have allowed the commissioner to refuse to license him or her.

(e) Be convicted of, or plead no contest to, any of the following:

(i) A misdemeanor involving fraud, dishonesty, or a breach of trust, money laundering, embezzlement, forgery, a financial transaction, or securities.

(ii) A felony.

(f) Refuse or fail to furnish any information or make any report required by the commissioner to issue or renew a license under this act, or otherwise required by the commissioner, within a reasonable period of time, as determined by the commissioner, after requested by the commissioner.

**History:** 2009, Act 75, Eff. July 31, 2009.

#### **493.167 Reports of condition.**

Sec. 37. A licensed mortgage loan originator, or employer or principal of a licensed mortgage loan originator on his or her behalf, shall submit to the nationwide mortgage licensing system and registry reports of condition. The reports of condition shall be in the form and shall contain the information required by the nationwide mortgage licensing system and registry.

**History:** 2009, Act 75, Eff. July 31, 2009.

#### **493.169 Report of violations; rules.**

Sec. 39. (1) Subject to section 31, the commissioner shall regularly report violations of this act, and enforcement actions and other relevant information, to the nationwide mortgage licensing system and registry.

(2) The commissioner shall comply with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, in promulgating any rules under this act.

**History:** 2009, Act 75, Eff. July 31, 2009.

#### **493.171 Unique identifier of originator of residential mortgage loan.**

Sec. 41. The unique identifier of any person originating a residential mortgage loan in this state shall be clearly shown on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or websites, and any other documents, as established by rule or order of the commissioner.

**History:** 2009, Act 75, Eff. July 31, 2009.