
TITLE 750 DEPARTMENT OF FINANCIAL INSTITUTIONS

Notice of First Public Comment Period

LSA Document #24-372

MORTGAGE LENDERS AND ORIGINATORS

PURPOSE OF NOTICE

The Department of Financial Institutions (DFI) is soliciting public comment on adding and amending rules at 750 IAC 9 concerning: expanding the current definition of "employee" to permit certain independent contractors to become licensed mortgage loan originators (MLOs), and also adding a new section to promote consumer protection; registration of companies that provide mortgage loan processing and underwriting services, as well as supervision and sponsorship of individuals who perform those services to conform to federal law; and technical corrections. DFI seeks comment on the affected citations listed and any other provisions of Title 750 that may be affected by this rulemaking.

ADDITIONAL DOCUMENTS

Regulatory Analysis: 20240925-IR-750240372RAA

Notice of Public Hearing: 20240925-IR-750240372PHA

CITATIONS AFFECTED: 750 IAC 9-1-1; 750 IAC 9-3-1; 750 IAC 9-3-1.2

AUTHORITY: IC 24-4.4-3-103

OVERVIEW

Basic Purpose and Background

750 IAC 9-1-1(18), as amended, defines "employee" to be consistent with the Indiana Code. The additional proposed amendment to 750 IAC 9-1-1(18) when read in conjunction with newly added 750 IAC 9-3-1.2, amends the definition of "employee" to include independent contractors who meet the criteria newly defined in 750 IAC 9-3-1.2. Under the proposed rule, independent contractors of licensed mortgage loan companies and certain companies exempt from licensing would now be eligible to become licensed MLOs.

750 IAC 9-3 establishes a system for the licensing of MLOs. The current version of 750 IAC 9-3 does not provide a proper avenue for: (1) the registration of companies that provide mortgage loan processing and underwriting services, but do not originate mortgage transactions; (2) the supervision of loan processors and underwriters; and (3) company sponsorship of individuals who perform processing and underwriting. The proposed amendments will bring 750 IAC 9-3 into conformity with the requirements of the federal S.A.F.E. Act and implementing regulations, specifically 12 CFR 1008, Appendix C.

The proposed technical amendments in 750 IAC 9-1-1 and 750 IAC 9-3-1 are being made to update language, definitions, and preferred Legislative Services Agency drafting style.

Institutions regulated by the DFI will be affected.

For purposes of IC 4-22-2-28.1, small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Nicole Buskill
General Counsel
Indiana Department of Financial Institutions
30 South Meridian Street, Suite 200
Indianapolis, IN 46204
nbuskill@dfi.in.gov

For purposes of IC 4-22-2-28.1, the Small Business Ombudsman designated by IC 5-28-17-6 is:

Matthew Jaworowski
Small Business Ombudsman
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 650-0126
majaworowski@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's

duties stated in IC 5-28-17-6, specifically IC 5-28-17-6(9), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

REQUEST FOR PUBLIC COMMENT

DFI is soliciting public comment on the proposed rule. Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:
LSA Document #24-372 Mortgage Lenders and Originators
George Dremonas
General Counsel
Indiana Department of Financial Institutions
30 South Meridian Street, Suite 200
Indianapolis, IN 46204
- (2) By email to gdremonas1@dfi.in.gov. PLEASE NOTE: Email comments will not be considered part of the official written comment period unless they are sent to the address indicated in this notice.
- (3) Attend scheduled public hearing.

COMMENT PERIOD DEADLINE

All comments must be postmarked or time stamped not later than October 25, 2024.

The rule, Regulatory Analysis, appendices referenced in the Regulatory Analysis, and materials incorporated by reference (if applicable) are on file at the Department of Financial Institutions, 30 South Meridian Street, Suite 200, Indianapolis, Indiana and are available for public inspection. Copies of the rule, Regulatory Analysis, and appendices referenced in the Regulatory Analysis are available at the Department of Financial Institutions office.

If DFI does not receive substantive comments during the public comment period or public hearing, the rule may be adopted with text that is the same as or does not substantially differ from the text of the proposed rule published in this notice.

PROPOSED RULE

SECTION 1. 750 IAC 9-1-1 IS AMENDED TO READ AS FOLLOWS:

750 IAC 9-1-1 Definitions

Authority: IC 24-4.4-3-103

Affected: IC 24-4.4-1-202; IC 24-4.4-1-301; IC 24-4.5-1-301.5

Sec. 1. The definitions in this rule **section** 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:~~ **has the meaning set forth in IC 24-4.4-1-301(1).**

~~(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.~~ **has the meaning set forth in IC 24-4.4-1-301(2).**

(3) "Agricultural products" ~~includes:~~ **has the meaning set forth in IC 24-4.4-1-301(3).**

~~(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. **has the meaning set forth in IC 24-4.4-1-301(4).**
- (5) "American Association of Residential Mortgage Regulators" or "AARMR" is means the national association of executives and employees of the various states who are charged with the responsibility for administration and regulation of residential mortgage lending, servicing, and brokering, and dedicated to the goals described at www.aarmr.org.
- (6) "Bona fide nonprofit organization" means an organization determined by the director under criteria and pursuant to processes established by the director that meet the following criteria: **set forth in IC 24-4.4-1-301(37).**
- (A) Maintains tax-exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986.
 - (B) Promotes affordable housing or provides home ownership education, or similar services.
 - (C) Conducts its activities in a manner that serves public or charitable purposes.
 - (D) Receives funding and revenue and charges fees in a manner that does not incentivize the organization or its employees to act other than in the best interests of its clients.
 - (E) Compensates employees in a manner that does not incentivize employees to act other than in the best interests of its clients.
 - (F) Provides to or identifies for the borrower residential mortgage loans with terms that are favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs.
 - (G) Is certified by the Department of Housing and Urban Development (HUD) or is approved as an Indiana Foreclosure Prevention Network agency by the Indiana housing and community development association (IHCDA) or employs one (1) or more housing counselors certified by the IHCDA.
- (7) "Civil court" means any court in Indiana having jurisdiction over civil cases.
- (8) "Conference of State Bank Supervisors" or "CSBS" is the national organization composed of state bank supervisors dedicated to maintaining the state banking system and state regulation of financial services in accordance with the CSBS statement of principles described at www.csbs.org.
- (9) "Consumer credit sale" is means a sale of goods, services, or an interest in land in which: **as described in IC 24-4.4-1-301(5).**
- (A) credit is granted by a person who engages as a seller in credit transactions of the same kind;
 - (B) the buyer is a person other than an organization;
 - (C) the goods, services, or interest in land are purchased primarily for a personal, family, or household purpose;
 - (D) either the debt is payable in installments or a credit service charge is made; and
 - (E) with respect to a sale of goods or services, either the amount financed does not exceed fifty thousand dollars (\$50,000) or the debt is secured by personal property used or expected to be used as the principal dwelling of the buyer.
- (10) "Consumer Financial Protection Bureau" or "CFPB" is the federal agency whose stated central mission is to make markets for consumer financial products and services work for Americans.
- (11) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment. **has the meaning set forth in IC 24-4.4-1-301(6).**
- (12) "Creditor" has the meaning set forth in:
- (A) [IC 24-4.4-1-301](#), which is incorporated by reference, for first lien mortgage transactions; and
 - (B) [IC 24-4.5-1-301.5](#), which is incorporated by reference, for mortgage transactions not secured by a first lien.
- (13) "Department" refers to the department of financial institutions.
- (14) "Depository institution" has the meaning set forth in the Federal Deposit Insurance Act (12 U.S.C. 1813(e)), which is incorporated by reference, and includes any credit union. **IC 24-4.4-1-301(9).**
- (15) "Director" refers to the director of the department of financial institutions or the director's designee. **has the meaning set forth in IC 24-4.4-1-301(10).**
- (16) "Dwelling" means a residential structure that contains one (1) to four (4) units, regardless of whether the structure is attached to real property. The term includes an individual: **has the meaning set forth in IC 24-4.4-1-301(11).**
- (A) condominium unit;
 - (B) cooperative unit;
 - (C) mobile home; or
 - (D) trailer;
- that is used as a residence.
- (17) "Eligible mortgage loan originator applicant" means an individual that **who** has applied for a mortgage loan originator license under this article **and** who is eligible to obtain temporary authority to operate in this state during the pendency of said **the** applicant's application for mortgage lending originator licensure, for up

to one hundred twenty (120) days. ~~In order~~ To be eligible for temporary authority to operate, a mortgage loan originator ~~must~~ **shall**:

- (A) have been:
- (i) licensed as a mortgage loan originator in another state continuously during the past thirty (30) days; or
 - (ii) operating as a registered mortgage loan originator for a depository institution continuously for the past three hundred sixty-five (365) days;
- (B) meet the criminal background check qualifications outlined in 750 IAC 9-3-3; and
- (C) not have been issued a license application denial, had a license revoked or suspended, or been issued a cease and desist order in any state.
- (18) "Employee" means an individual **identified in IC 24-4.4-1-301(12) or who is permitted to be sponsored by a person as set forth in section 3 of this rule.**
- ~~(A) whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person; and~~
- ~~(B) whose compensation is reported on a W-2 form issued by the controlling person.~~
- (19) "Expungement", with respect to a record of criminal conviction entered in this state, means that no one, including law enforcement, can be permitted access to the record even by court order. With respect to criminal convictions entered in another state, that state's definition of expungement will apply.
- (20) "Farm Credit Administration" means the independent federal agency, authorized by the Farm Credit Act of 1971, to examine and regulate the Farm Credit System.
- ~~(21) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.~~ **agencies listed in IC 24-4.4-1-301(13).**
- (22) "Housing finance agency" means ~~any~~ **an** authority that is:
- (A) chartered by a state to help meet the affordable housing needs of the residents of the state;
 - (B) supervised directly or indirectly by the state government; and
 - (C) subject to audit and review by the state in which it operates.
- (23) "Immediate family member" means **an individual listed in IC 24-4.4-1-301(15).**
- ~~(A) spouse;~~
 - ~~(B) child;~~
 - ~~(C) sibling;~~
 - ~~(D) parent;~~
 - ~~(E) grandparent;~~
 - ~~(F) grandchild;~~
 - ~~(G) stepparents;~~
 - ~~(H) stepchildren;~~
 - ~~(I) stepsiblings; and~~
 - ~~(J) adoptive relationships.~~
- (24) "Independent contractor" means an individual who performs ~~his or her~~ **their** duties other than at the direction of and subject to the supervision and instruction of a person licensed as a mortgage loan originator under this article.
- ~~(25) "Individual" means a natural person.~~ **has the meaning set forth in IC 24-4.4-1-301(16).**
- (26) "Land contract" means a contract for the sale of real estate in which the seller of the real estate retains legal title to the real estate until the total contract price is paid by the buyer.
- (27) "Licensee", **for purposes of this article**, means a person licensed as a mortgage loan originator under this article.
- (28) "Loan" includes **the items listed in IC 24-4.4-1-301(18).**
- ~~(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.~~
- ~~(29) "Loan brokerage business" means activities by which any person, in return for any consideration from any source, procures, attempts to procure, or assists in procuring a mortgage transaction from a third party or any other person, whether or not the person seeking the loan actually obtains the loan.~~ **has the meaning set forth in IC 24-4.4-1-301(19).**
- (30) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of, and subject to the supervision and instruction of, a person licensed or exempt from licensing under IC 24-4.4 or IC 24-4.5. For purposes of this subdivision, "clerical or support duties": **has**

the meaning set forth in IC 24-4.4-1-301(20). For purposes of clarification:

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

- (i) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a mortgage transaction; and
- (ii) the communication with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that the communication does not include offering or negotiating loan rates or terms or counseling consumers about mortgage transaction rates or terms; and

(B) does not include:

- (i) taking a residential mortgage loan application; or
- (ii) offering or negotiating terms of a mortgage transaction.

(A) the phrase "exempt from licensing", as used in IC 24-4.4-1-301(20), means exempt from mortgage licensing under IC 24-4.4 or IC 24-4.5; and

(B) "clerical and support duties" does not include taking a residential mortgage application.

(31) "Mortgage loan originator", **for purposes of this article**, means an individual who, for compensation or gain, or in the expectation of compensation or gain, engages in taking a mortgage transaction application or in offering or negotiating the terms of a mortgage transaction that is made either under IC 24-4.4 or IC 24-4.5 or is made by an employee of a person licensed to engage in mortgage transactions, or by an employee of a person that is exempt from licensing under IC 24-4.4 or IC 24-4.5 while the employee is engaging in the loan brokerage business or representing to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such the individual can or will perform the activities described in this subdivision. The term does not include the following:

(A) An individual engaged solely as a loan processor or an underwriter as long as the individual works exclusively as an employee of a person licensed to engage in mortgage transactions or as an employee of a person exempt from licensing under IC 24-4.4 or IC 24-4.5, **except an exempt person permitted to voluntarily register under IC 24-4.4-1-202(b)(8).**

(B) Unless the person or entity is compensated by:

- (i) a creditor;
- (ii) a loan broker;
- (iii) another mortgage loan originator; or
- (iv) any an agent of the creditor, loan broker, or other mortgage loan originator described in items (i) through (iii);

a person that performs only real estate brokerage activities and is licensed or registered in accordance with applicable state law.

(C) A person solely involved in extensions of credit relating to timeshare plans (as defined in 11 U.S.C. 101(53D), which is incorporated by reference).

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

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

(32) "Mortgage transaction" means a: **has the meaning set forth in IC 24-4.4-1-301(23).**

~~(A) consumer loan; or~~

~~(B) consumer credit sale;~~

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

~~(33) "Nationwide Multistate Licensing System and Registry" or "NMLSR" means a multistate licensing system developed and maintained by CSBS and AARMR and owned and operated by the State Regulatory Registry, LLC, or any successor or affiliated entity, for the licensing and registration of creditors and mortgage loan originators and other persons in the mortgage and financial services industries. The term includes any other name or acronym that may be assigned to the system by the State Regulatory Registry, LLC, or by any successor or affiliated entity. **has the meaning set forth in IC 24-4.4-1-301(24).**~~

~~(34) "Nontraditional mortgage product" means any mortgage product other than a thirty (30) year fixed rate mortgage. **has the meaning set forth in IC 24-4.4-1-301(25).**~~

~~(35) "Organization" means a corporation, a government or government subdivision, an agency, a trust, an estate, a partnership, a limited liability company, a cooperative, an association, a joint venture, an unincorporated organization, or any other entity, however organized. **has the meaning set forth in IC 24-4.4-1-301(26).**~~

~~(36) "Payable in installments" with respect to a debt or an obligation, means that payment is required or permitted by written agreement to be made in more than four (4) installments not including a down payment.~~

has the meaning set forth in IC 24-4.4-1-301(27).

~~(37) "Person" includes an individual or an organization.~~ **has the meaning set forth in IC 24-4.4-1-301(28).**

~~(38) "Principal" of a mortgage transaction means the total of:~~ **has the meaning set forth in IC 24-4.4-1-301(29).**

- ~~(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).~~

~~(39) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including the following:~~ **has the meaning set forth in IC 24-4.4-1-301(30).**

- ~~(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.~~

~~(40) "Registered mortgage loan originator" means any individual who:~~ **has the meaning set forth in IC 24-4.4-1-301(31).**

- ~~(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.~~

~~(41) "Regularly engaged", for purposes of this article, means a person who a mortgage loan originator that:~~

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

~~(42) "Residential real estate" means any real property, located in Indiana, upon which is constructed or intended to be constructed a dwelling.~~ **has the meaning set forth in IC 24-4.4-1-301(32).**

~~(43) "Revolving mortgage transaction", for purposes of this article, 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.~~

~~(44) "State" means any of the following:~~

- ~~(A) any A state of the United States.~~
- ~~(B) The District of Columbia.~~
- ~~(C) any A territory of the United States.~~
- ~~(D) Puerto Rico.~~
- ~~(E) Guam.~~
- ~~(F) American Samoa.~~
- ~~(G) The Virgin Islands. and~~
- ~~(H) The Commonwealth of the Northern Mariana Islands.~~

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

~~(46) "Unique identifier" means a number or other identifier that:~~

- ~~(A) permanently identifies a loan originator;~~
- ~~(B) is assigned by protocols established by the NMLSR and the federal banking agencies to facilitate electronic tracking of loan originators and uniform identification of, and public access to, the employment~~

history of and the publicly adjudicated disciplinary and enforcement actions against loan originators; and (C) shall not be used for purposes other than those set forth under the **federal S.A.F.E. Act**.

(Department of Financial Institutions; 750 IAC 9-1-1; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729-IR-750090577ERA; emergency rule filed Nov 16, 2009, 2:13 p.m.: 20091125-IR-750090917ERA; emergency rule filed Feb 11, 2010, 2:49 p.m.: 20100217-IR-750100102ERA; emergency rule filed Jun 24, 2010, 2:45 p.m.: 20100707-IR-750100423ERA; emergency rule filed Jan 13, 2011, 2:44 p.m.: 20110119-IR-750110043ERA; emergency rule filed Dec 15, 2011, 2:54 p.m.: 20111221-IR-750110778ERA; readopted filed Dec 1, 2015, 9:28 a.m.: 20151230-IR-750150336RFA; emergency rule filed Mar 1, 2016, 11:43 a.m.: 20160309-IR-750160090ERA; emergency rule filed Aug 20, 2019, 8:47 a.m.: 20190828-IR-750190416ERA, eff Nov 24, 2019)

SECTION 2. 750 IAC 9-3-1 IS AMENDED TO READ AS FOLLOWS:

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

Authority: IC 24-4.4-3-103

Affected: IC 24-4.4-1-202; IC 24-4.5-1-202

Sec. 1. (a) Except as provided in 750 IAC 9-2-5(5) and subsections (b), (h), ~~and (i)~~, **and (j)**, after June 30, 2010, an individual may not regularly engage in the business of a mortgage loan originator and shall not engage in the origination of mortgage transactions on behalf of ~~any~~ a person ~~who~~ **that** regularly engages in serving as the prospective source of financing with respect to ~~any~~ a dwelling located in this state without first obtaining temporary authority to operate by the department or obtaining a mortgage loan originator license issued by the department under this article and annually maintaining the license.

(b) Notwithstanding the licensing requirements under this section, an individual acting exclusively as a servicer engaging in loss mitigation efforts with respect to an existing mortgage transaction is not required to meet the education, testing, background, and licensing standards of this article unless this exclusion is denied by any guideline, rule, regulation, or interpretive letter issued by the CFPB.

(c) Each licensed mortgage loan originator ~~must~~ **shall** register with and maintain a valid unique identifier issued by the NMLSR. ~~Notwithstanding subsection (h), each~~ **Each** licensed mortgage loan originator ~~must~~ **shall** be employed by **an employee, as defined by 750 IAC 9-1-1(18)**, of either a licensed creditor or an entity exempt from licensing under IC 24-4.4 or IC 24-4.5, ~~that~~ **which** is registered with the NMLSR ~~in order~~ to originate loans **or sponsor individuals who are engaged solely as a third party loan processor or an underwriter**.

(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~~ **purposes** 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 **an** underwriter who is not an employee, **as defined in 750 IAC 9-1-1(18)**, of a person licensed or exempt from licensing under IC 24-4.4 or IC 24-4.5, **except an exempt person permitted to voluntarily register under IC 24-4.4-1-202(b)(8)**, may not engage in residential mortgage loan originator activities as a loan processor or **an** underwriter unless ~~such~~ **the** person:

- (1) obtains and maintains both a license under this section and a valid unique identifier issued by the NMLSR;

or

(2) performs only clerical or support duties and does so at the direction of, and subject to the supervision and instruction of, an individual who is:

(A) licensed as a mortgage loan originator under this article; or

(B) an employee of a covered financial institution, as defined in 12 CFR Part 1007, and registered as a mortgage loan originator.

A loan processor or an underwriter who is not an employee, as defined in 750 IAC 9-1-1(18), of a person licensed or exempt from licensing under IC 24-4.4 or IC 24-4.5, except an exempt person permitted to voluntarily register under IC 24-4.4-1-202(b)(8), may be sponsored by a person that voluntarily registers under IC 24-4.4-1-202(b)(8).

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

(1) employed by a bona fide nonprofit organization that does not operate in a commercial context, as determined by the director, and that is certified by the CFPB; or

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

is not required to meet the education, testing, background, and licensing standards of this article unless this exclusion is denied by any guidance, rule, regulation, or interpretive letter issued by the CFPB.

(i) Notwithstanding the licensing requirements under this section, an individual who exclusively originates zero-interest loans as an employee of a bona fide nonprofit organization exempt from licensing under ~~IC 24-4.4-1-202(b)(14)~~ **IC 24-4.4-1-202(b)(15)** or IC 24-4.5-1-202(b)(14) is not required to meet the education, testing, background, and licensing standards of this article unless this exclusion is denied by any guidance, rule, regulation, or interpretive letter issued by the CFPB.

(j) Notwithstanding the licensing requirements under this section, an individual who exclusively originates mortgage transactions as an employee of a bona fide nonprofit organization exempt from licensing under ~~IC 24-4.4-1-202(b)(15)~~ **IC 24-4.4-1-202(b)(16)** or IC 24-4.5-1-202(b)(15) is not required to meet the education, testing, background, and licensing standards and requirements of this article unless this exclusion is denied by any guidance, rule, regulation, or interpretive letter issued by the CFPB.

(Department of Financial Institutions; 750 IAC 9-3-1; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729-IR-750090577ERA; emergency rule filed Nov 16, 2009, 2:13 p.m.: 20091125-IR-750090917ERA; emergency rule filed Feb 11, 2010, 2:49 p.m.: 20100217-IR-750100102ERA; emergency rule filed Jun 24, 2010, 2:45 p.m.: 20100707-IR-750100423ERA; emergency rule filed Mar 17, 2011, 1:54 p.m.: 20110323-IR-750110156ERA; emergency rule filed Dec 15, 2011, 2:54 p.m.: 20111221-IR-750110778ERA; readopted filed Dec 1, 2015, 9:28 a.m.: 20151230-IR-750150336RFA; emergency rule filed Aug 20, 2019, 8:47 a.m.: 20190828-IR-750190416ERA, eff Nov 24, 2019)

SECTION 3. 750 IAC 9-3-1.2 IS ADDED TO READ AS FOLLOWS:

750 IAC 9-3-1.2 Sponsoring certain mortgage loan originators

Authority: IC 24-4.4-3-103

Affected: IC 24-4.4-1-202; IC 24-4.5; IC 27-1-15.6

Sec. 1.2. A person licensed under IC 24-4.4 or IC 24-4.5, or exempt from licensing under IC 24-4.4 or IC 24-4.5, except for a person voluntarily registered under IC 24-4.4-1-202(b)(8), may sponsor mortgage loan originators of the sponsoring person who are not employees, as defined by 750 IAC 9-1-1(18), to perform mortgage loan originator activities if the person does the following:

(1) Requires, by written agreement, each sponsored mortgage loan originator to perform mortgage loan originator activities exclusively for the sponsoring person.

(2) Assumes responsibility for and reasonably supervises the activities of all licensed mortgage loan originators sponsored by the person.

(3) Maintains a bond under 750 IAC 9-3-7 that provides coverage for sponsored mortgage loan originators.

(4) Ensures each sponsored mortgage loan originator holds a current, valid insurance producer license under IC 27-1-15.6.

(Department of Financial Institutions; 750 IAC 9-3-1.2)

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