

TITLE 750 DEPARTMENT OF FINANCIAL INSTITUTIONS

Emergency Rule
LSA Document #16-~~91~~(ER)

DIGEST

Amends 750 IAC 9-1-1 concerning the term "Nationwide Multistate Licensing System and Registry". Amends 750 IAC 9-2-2 concerning date of applicable federal law. Amends 750 IAC 9-3-5 concerning to preclicensing education requirements. Effective March 2016. 1:49pm

750 IAC 9-1-1; 750 IAC 9-2-2; 750 IAC 9-3-8

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

750 IAC 9-1-1 Definitions

Authority: IC 24-4.4-1-101

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

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

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

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

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

the person subject to this article.

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

(3) "Agricultural products" includes:

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

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

(5) "American Association of Residential Mortgage Regulators" or "AARMR" is the national association of executives and employees of the various states who are charged with the responsibility for administration and regulation of residential mortgage lending, servicing, and brokering, and dedicated to the goals described at www.aarmr.org.

(6) "Bona fide nonprofit organization" means an organization determined by the director under criteria and pursuant to processes established by the director that meet the following criteria:

- (A) Maintains tax-exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986.
- (B) Promotes affordable housing or provides homeownership education, or similar services.
- (C) Conducts its activities in a manner that serves public or charitable purposes.
- (D) Receives funding and revenue and charges fees in a manner that does not incentivize the organization

or its employees to act other than in the best interests of its clients.

(E) Compensates employees in a manner that does not incentivize employees to act other than in the best interests of its clients.

(F) Provides to or identifies for the borrower residential mortgage loans with terms that are favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs.

(G) Is certified by the Department of Housing and Urban Development (HUD) or is approved as an Indiana Foreclosure Prevention Network agency by the Indiana housing and community development association (IHCDA) or employs one (1) or more housing counselors certified by the IHCDA.

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

(8) "Conference of State Bank Supervisors" or "CSBS" is the national organization composed of state bank supervisors dedicated to maintaining the state banking system and state regulation of financial services in accordance with the CSBS statement of principles described at www.csbs.org.

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

(A) credit is granted by a person who engages as a seller in credit transactions of the same kind;

(B) the buyer is a person other than an organization;

(C) the goods, services, or interest in land are purchased primarily for a personal, family, or household purpose;

(D) either the debt is payable in installments or a credit service charge is made; and

(E) with respect to a sale of goods or services, either the amount financed does not exceed fifty thousand dollars (50,000) or the debt is secured by personal property used or expected to be used as the principal dwelling of the buyer.

(10) "Consumer Financial Protection Bureau" or "CFPB" is the federal agency whose stated central mission is to make markets for consumer financial products and services work for Americans.

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

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

(A) IC 24-4.4-1-301, which is incorporated by reference, for first lien mortgage transactions; and

(B) IC 24-4.5-1-301.5, which is incorporated by reference, for mortgage transactions not secured by a first lien.

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

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

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

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

(A) condominium unit;

(B) cooperative unit;

(C) mobile home; or

(D) trailer;

that is used as a residence.

(17) "Employee" means an individual:

(A) whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person; and

(B) whose compensation is reported on a W-2 form issued by the controlling person.

(18) "Expungement" with respect to a record of criminal conviction entered in this state means that no one, including law enforcement, can be permitted access to the record even by court order. With respect to criminal convictions entered in another state that state's definition of expungement will apply.

(19) "Farm Credit Administration" means the independent federal agency, authorized by the Farm Credit Act of 1971, to examine and regulate the Farm Credit System.

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

(21) "Housing finance agency" means any authority that is:

(A) chartered by a state to help meet the affordable housing needs of the residents of the state;

(B) supervised directly or indirectly by the state government; and

- (C) subject to audit and review by the state in which it operates.
- (22) "Immediate family member" means:
- (A) spouse;
 - (B) child;
 - (C) sibling;
 - (D) parent;
 - (E) grandparent;
 - (F) grandchild;
 - (G) stepparents;
 - (H) stepchildren;
 - (I) stepsiblings; and
 - (J) adoptive relationships.
- (23) "Independent contractor" means an individual who performs his or her duties other than at the direction of and subject to the supervision and instruction of a person licensed as a mortgage loan originator under this article.
- (24) "Individual" means a natural person.
- (25) "Land contract" means a contract for the sale of real estate in which the seller of the real estate retains legal title to the real estate until the total contract price is paid by the buyer.
- (26) "Licensee" means a person licensed as a mortgage loan originator under this article.
- (27) "Loan" includes:
- (A) the creation of debt by:
 - (i) the creditor's payment of or agreement to pay money to the debtor or to a third party for the account of the debtor; or
 - (ii) the extension of credit by a person who engages as a seller in credit transactions primarily secured by an interest in land;
 - (B) the creation of debt by a credit to an account with the creditor upon which the debtor is entitled to draw immediately; and
 - (C) the forbearance of debt arising from a loan.
- (28) "Loan brokerage business" means activities by which any person, in return for any consideration from any source, procures, attempts to procure, or assists in procuring a mortgage transaction from a third party or any other person, whether or not the person seeking the loan actually obtains the loan.
- (29) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of, and subject to the supervision and instruction of, a person licensed or exempt from licensing under IC 24-4.4 or IC 24-4.5. For purposes of this subdivision, "clerical or support duties":
- (A) may include, after the receipt of an application:
 - (i) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a mortgage transaction; and
 - (ii) the communication with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that the communication does not include offering or negotiating loan rates or terms or counseling consumers about mortgage transaction rates or terms;
 - (B) does not include:
 - (i) taking a residential mortgage loan application; or
 - (ii) offering or negotiating terms of a mortgage transaction.
- (30) "Mortgage loan originator" means an individual who for compensation or gain, or in the expectation of compensation or gain, engages in a commercial context and habitually or repeatedly:
- (A) in taking a mortgage transaction application or offering or negotiating terms of a mortgage transaction that is made either under IC 24-4.4 or IC 24-4.5 or by an employee of a person licensed or exempt from licensing under IC 24-4.4 or IC 24-4.5 while engaging in the loan brokerage business; or
 - (B) representing to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such individual can or will perform the activities described in clause (A).
- The term does not include the following:
- (A) An individual engaged solely as a loan processor or underwriter as long as the individual works exclusively as an employee of a person licensed or exempt from licensing under IC 24-4.4 or IC 24-4.5.
 - (B) Unless the person or entity is compensated by:
 - (i) a creditor;
 - (ii) a loan broker;

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

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

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

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

(31) "Mortgage transaction" means:

- (A) a consumer loan; or
- (B) consumer credit sale;

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

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

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

(34) "Organization" means a corporation, a government or government subdivision, an agency, a trust, an estate, a partnership, a limited liability company, a cooperative, an association, a joint venture, an unincorporated organization, or any other entity, however organized.

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

(36) "Person" includes an individual or an organization.

(37) "Principal" of a mortgage transaction means the total of:

- (A) the net amount paid to, receivable by, or paid or payable for the account of the debtor; and
- (B) to the extent that payment is deferred, amounts actually paid or to be paid by the creditor for registration, certificate of title, or license fees if not included in clause (A).

(38) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including the following:

- (A) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property.
- (B) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property.
- (C) Negotiating, on behalf of any party, any part of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to the sale, purchase, lease, rental, or exchange of real property).
- (D) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law.
- (E) Offering to engage in any activity, or act in any capacity, described in this section.

(39) "Registered mortgage loan originator" means any individual who:

- (A) meets the definition of mortgage loan originator and is an employee of:
 - (i) a depository institution;
 - (ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or
 - (iii) an institution regulated by the Farm Credit Administration; and
- (B) is registered with, and maintains a unique identifier through, the NMLSR.

(40) "Regularly engaged" means a person who:

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

previous calendar year, or who expects to serve as the prospective source of financing, or perform other phases of originations, on more than five (5) mortgage transactions in the current calendar year.

- (41) "Residential real estate" means any real property, located in Indiana, upon which is constructed or intended to be constructed a dwelling.
- (42) "Revolving mortgage transaction" means an arrangement between a creditor and a debtor in which:
- (A) the creditor permits the debtor to obtain advances from time to time;
 - (B) the unpaid balances of principal, finance charges, and other appropriate charges are debited to an account; and
 - (C) the debtor has the privilege of paying the balances in installments.
- (43) "State" means:
- (A) any state of the United States;
 - (B) the District of Columbia;
 - (C) any territory of the United States;
 - (D) Puerto Rico;
 - (E) Guam;
 - (F) American Samoa;
 - (G) the Virgin Islands; and
 - (H) the Commonwealth of the Northern Mariana Islands.
- (44) "Unique identifier" means a number or other identifier that:
- (A) permanently identifies a loan originator;
 - (B) is assigned by protocols established by the NMLSR and the federal banking agencies to facilitate electronic tracking of loan originators and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against loan originators; and
 - (C) shall not be used for purposes other than those set forth under the SAFE Act.

(Department of Financial Institutions; 750 IAC 9-1-1; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729- Ind. Reg. -750090577ERA; emergency rule filed Nov 16, 2009, 2:13 p.m.: 20091125- Ind. Reg. -750090917ERA; emergency rule filed Feb 11, 2010, 2:49 p.m.: 20100217- Ind. Reg. -750100102ERA; emergency rule filed Jun 24, 2010, 2:45 p.m.: 20100707- Ind. Reg. -750100423ERA; emergency rule filed Jan 13, 2011, 2:44 p.m.: 20110119- Ind. Reg. -750110043ERA; emergency rule filed Dec 15, 2011, 2:54 p.m.: 20111221- Ind. Reg. -750110778ERA; readopted filed Dec 1, 2015, 9:28 a.m.: 20151230- Ind. Reg. -750150336RFA)

SECTION 2. 750 IAC 9-2-2 IS AMENDED TO READ AS FOLLOWS;

Authority: IC 24-4.4-1-101

Affected: IC 24-4.4; IC 24-4.5

750 IAC 9-2-2 Construction

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

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

- (1) to permit and encourage the development of fair and economically sound mortgage lending practices; and
- (2) to conform the regulation of mortgage lending practices to applicable state and federal laws, rules, regulations, policies, and guidance.

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

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

(e) A reference to a federal law in this article is a reference to the law in effect December 31, 20132015.

(Department of Financial Institutions; 750 IAC 9-2-2; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729- Ind. Reg. -750090577ERA; emergency rule filed Feb 11, 2010, 2:49 p.m.: 20100217- Ind. Reg. -750100102ERA; emergency rule filed Jan 13, 2011, 2:44 p.m.: 20110119- Ind. Reg. -750110043ERA; emergency rule filed Dec 15, 2011, 2:54 p.m.: 20111221- Ind. Reg. -750110778ERA; emergency rule filed Jan 2, 2013, 11:29 a.m.: 20130109- Ind. Reg. -750130001ERA; emergency rule filed Apr 21, 2014, 10:35 a.m.: 20140423- Ind. Reg. -750140133ERA; readopted filed Dec 1, 2015, 9:28 a.m.: 20151230- Ind. Reg. -750150336RFA)

SECTION 3. 750 IAC 9-3-5 IS AMENDED TO READ AS FOLLOWS:

750 IAC 9-4-5 Prelicensing Education Requirements

Authority: IC 24-4.4-1-101

Affected: IC 24-4.4; IC 24-4.5

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

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

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

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

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

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

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

(g) A person who:

(1) fails to obtain:

(i) a mortgage loan origination license issued by the department or

(ii) a federal mortgage loan registration;

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

(2) obtained:

(i) a mortgage loan origination license issued by the department or

(ii) a federal mortgage loan registration;

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

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

(Department of Financial Institutions; 750 IAC 9-3-5; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729- Ind. Reg. -750090577ERA; emergency rule filed Feb 11, 2010, 2:49 p.m.: 20100217- Ind. Reg. -750100102ERA; emergency rule filed Apr 21, 2014, 10:35 a.m.: 20140423- Ind. Reg. -750140133ERA; readopted filed Dec 1, 2015, 9:28 a.m.: 20151230- Ind. Reg. -750150336RFA)

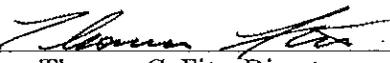
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Rule Signature Page

Rule.#: LSA Document #16-91 (E)
Agency: Indiana Department of Financial Institutions
Subject: Dollar Amounts in the Indiana Uniform Consumer Credit Code, Home
Loan Practices and Bankruptcy Exemptions

ADOPTED:

By:  Date: 2-23-16
Thomas C. Fite, Director
Indiana Department of Financial Institutions

ACCEPTED FOR FILING:

By: TITLE 750 DEPARTMENT OF FINANCIAL INSTITUTIONS

LSA Document #16-91(ER)

Filed with Publisher: March 1, 2016, 1:49 p.m.

By: Kks