

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

As Engrossed: S3/3/21

A Bill

SENATE BILL 149

5 By: Senator J. Dismang
6 By: Representative Maddox
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE FAIR MORTGAGE LENDING ACT; TO
10 MODIFY CERTAIN DEFINITIONS UNDER THE FAIR MORTGAGE
11 LENDING ACT; TO CLARIFY THE QUALIFICATIONS FOR
12 LICENSURE UNDER THE FAIR MORTGAGE LENDING ACT; TO
13 PROVIDE A PROCESS TO ALLOW A LOAN OFFICER TO WORK
14 REMOTELY; TO MODIFY THE PROCESS FOR A CHANGE OF NAME
15 OR ADDRESS OF A LICENSEE UNDER THE FAIR MORTGAGE
16 LENDING ACT; TO REQUIRE A LICENSEE TO ESTABLISH
17 CYBERSECURITY POLICY AND PROCEDURE; AND FOR OTHER
18 PURPOSES.

Subtitle

21 TO AMEND THE FAIR MORTGAGE LENDING ACT.
22
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25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
26

27 SECTION 1. Arkansas Code § 23-39-502(3), concerning the definition of
28 "branch office" under the Fair Mortgage Lending Act, is amended to read as
29 follows:

30 (3) "Branch office" means a location that is separate and
31 distinct from the licensee's principal place of business and includes ~~a net~~
32 ~~branch or~~ any location from which business is conducted under the license or
33 in the name of the mortgage broker, mortgage banker, or mortgage servicer:

34 (A) The address of which appears on business cards,
35 stationery, or advertising used by the licensee in connection with business
36 conducted under this subchapter at the branch office;



1 (B) At which the licensee's name, advertising, promotional
2 materials, or signage suggests that mortgage loans are originated, solicited,
3 accepted, negotiated, funded, or serviced or from which mortgage loan
4 commitments or interest rate guarantee agreements are issued; or

5 (C) Which, due to the actions of any employee, associate,
6 loan officer, or transitional loan officer of the licensee, may be construed
7 by the public as a branch office of the licensee where mortgage loans are
8 originated, solicited, accepted, negotiated, funded, or serviced or from
9 which mortgage loan commitments or interest rate guarantee agreements are
10 issued;

11
12 SECTION 2. Arkansas Code § 23-39-502(13), concerning the definition of
13 "managing principal" under the Fair Mortgage Lending Act, is amended to read
14 as follows:

15 (13)(A) "Managing principal" means a person who meets the
16 requirements of § 23-39-508 and who agrees to be primarily responsible for
17 the operations of a licensed mortgage broker, mortgage banker, or mortgage
18 servicer.

19 (B) "Managing principal" includes a qualifying individual;

20
21 SECTION 3. Arkansas Code § 23-39-502(17), concerning the definition of
22 "mortgage servicer" under the Fair Mortgage Lending Act, is amended to read
23 as follows:

24 (17)(A) "Mortgage servicer" means a person that receives or has the
25 right to receive from or on behalf of a borrower:

26 ~~(A)(i)~~ Funds or credits in payment for a mortgage
27 loan; or

28 ~~(B)(ii)~~ The taxes or insurance associated with a
29 mortgage loan.

30 (B) In the case of a home equity conversion mortgage or a
31 reverse mortgage, "mortgage servicer" includes a person that makes a payment
32 to the borrower;

33
34 SECTION 4. Arkansas Code § 23-39-503(d)(1), concerning the license of
35 a loan officer under the Fair Mortgage Lending Act, is amended to read as
36 follows:

1 (d)(1)~~(A)~~ The license of a loan officer or a transitional loan officer
 2 terminates when the loan officer's or transitional loan officer's employment
 3 by or relationship with a mortgage broker or mortgage banker licensed under
 4 this subchapter terminates.

5 ~~(B) A transitional loan officer license terminates when~~
 6 ~~the transitional loan officer's employment by or relationship with a mortgage~~
 7 ~~broker or mortgage banker licensed under this subchapter terminates.~~

8
 9 SECTION 5. Arkansas Code § 23-39-505(a)(4), concerning the information
 10 required by an applicant for a license under the Fair Mortgage Lending Act,
 11 is amended to read as follows:

12 (4) In addition to any other information required under this
 13 subchapter or rules adopted by the commissioner, the application shall
 14 contain information the commissioner deems necessary and shall include the
 15 following:

16 (A) For a license as a mortgage banker, mortgage broker,
 17 or mortgage servicer:

18 (i) The applicant's name, address, and ~~Social~~
 19 ~~Security number~~ federal employer identification number;

20 ~~(B)(ii)~~ (ii) The applicant's form of business and place
 21 of organization, including without limitation:

22 ~~(i)(a)~~ (a) A copy of the applicant's
 23 organizational and governance documents; and

24 ~~(i)(b)~~ (b) If the applicant is a foreign entity,
 25 a copy of the certificate of authority from the Secretary of State;

26 ~~(C)(i)(iii)~~ (iii) The applicant's proposed method of ~~and~~
 27 ~~locations for~~ doing business, ~~if applicable~~ including whether the applicant
 28 is proposing to be licensed as a mortgage broker, mortgage banker, or
 29 mortgage servicer;

30 ~~(ii) The applicant's proposed method of doing~~
 31 ~~business shall include whether the applicant is proposing to be licensed as a~~
 32 ~~mortgage broker, mortgage banker, or mortgage servicer;~~

33 ~~(D)(i)(iv)~~ (iv) The applicant's proposed locations for
 34 doing business;

35 (v) The qualifications, business history, and
 36 financial condition of the applicant ~~and a managing principal of the~~

1 ~~applicant.; and~~

2 (vi) A disclosure of a beneficial interest in an
3 affiliated industry business held by the applicant or by a principal,
4 officer, director, or employee of the applicant; and

5 (B) For a license as a loan officer, transitional loan
6 officer, or managing principal of an applicant:

7 (i) The applicant's name, address, and Social
8 Security number; and

9 (ii) The qualifications, ~~and~~ business history, and
10 financial condition of the individual or managing principal of an applicant,
11 ~~of persons under subdivision (a)(4)(D)(i) of this section shall include~~
12 including:

13 (a) A description of an injunction or
14 administrative order, including a denial to engage in a regulated activity by
15 any state or federal authority that had jurisdiction over the applicant;

16 (b) A Disclosure of a conviction of a
17 misdemeanor involving fraudulent dealings or moral turpitude or relating to
18 any aspect of the mortgage industry, the securities industry, the insurance
19 industry, or any other activity pertaining to financial services;

20 (c) A Disclosure of a felony conviction; and

21 (d) Fingerprints for submission to the Federal
22 Bureau of Investigation and any governmental agency or entity authorized to
23 receive fingerprints for a state, national, and international criminal
24 background check; ~~and.~~

25 ~~(E) A disclosure of a beneficial interest in an affiliated~~
26 ~~industry business held by the applicant or by a principal, officer, director,~~
27 ~~or employee of the applicant.~~

28
29 SECTION 6. Arkansas Code § 23-39-505(d), concerning the designation of
30 a managing principal under the Fair Mortgage Lending Act, is amended to read
31 as follows:

32 (d) Each applicant for a license as a mortgage broker, mortgage
33 banker, or mortgage servicer shall identify in its application one (1) person
34 meeting the requirements of subsection (c) of this section to serve as the
35 applicant's managing principal.

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1 SECTION 7. Arkansas Code § 23-39-505(h), concerning the qualifications
2 of a loan officer under the Fair Mortgage Lending Act, is repealed.

3 ~~(h) Any general partner, manager of a limited liability company, or~~
4 ~~officer of a corporation who individually meets the requirements under~~
5 ~~subsection (b) of this section shall be deemed to have met the qualifications~~
6 ~~for licensure as a loan officer upon filing a written application with the~~
7 ~~commissioner in the form prescribed by the commissioner and payment of the~~
8 ~~applicable fee.~~

9
10 SECTION 8. Arkansas Code § 23-39-506(c), concerning the renewal of a
11 loan officer license under the Fair Mortgage Lending Act, is amended to read
12 as follows:

13 (c)(1) Each licensed loan officer wishing to renew a license shall:
14 ~~(1)(A)~~ File an application with the commissioner in the
15 form prescribed by the commissioner between November 1 and December 31 of the
16 calendar year;

17 ~~(2)(B)~~ Comply with the continuing education requirements
18 as required by rules promulgated by the commissioner; and

19 ~~(3)(C)~~ Pay an annual renewal fee of fifty dollars
20 (\$50.00).

21 (2) If an initial loan officer license is issued between
22 November 1 through December 31 of the calendar year, the loan officer is not
23 required to file a renewal application until the subsequent renewal period.
24

25 SECTION 9. Arkansas Code § 23-39-509(d), concerning the business
26 location of a mortgage broker, mortgage banker, or mortgage servicer under
27 the Fair Mortgage Lending Act, is amended to read as follows:

28 (d)(1) A principal place of business or branch office from which a
29 mortgage broker, mortgage banker, or mortgage servicer conducts mortgage loan
30 activity or business shall be a physical address.

31 (2) Mortgage loan activity or business includes without
32 limitation the address appearing on business cards, stationery, promotional
33 materials, or advertising.

34 (3) The commissioner may by rule or order impose terms and
35 conditions under which a loan officer may conduct mortgage loan activity or
36 business from a location that is not licensed under this subchapter as a

1 principal place of business or branch office.

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3 SECTION 10. Arkansas Code § 23-39-509(e), concerning notice of a
4 change of address that is required by a mortgage broker, mortgage banker, or
5 mortgage servicer under the Fair Mortgage Lending Act, is amended to read as
6 follows:

7 (e)(1) A mortgage banker, mortgage broker, or mortgage servicer shall
8 ~~report a change of address of the principal place of business, a branch~~
9 ~~office, or a location in which the files pertaining to mortgage loan~~
10 ~~transactions are maintained within thirty (30) days after the change not use~~
11 ~~any name or address to conduct mortgage loan activity or business other than~~
12 ~~the name and address specified on the license issued by the commissioner.~~

13 (2)(A) ~~A licensee that does not comply with subdivision (e)(1)~~
14 ~~of this section shall pay a late fee of two hundred fifty dollars (\$250)~~
15 mortgage broker, mortgage banker, or mortgage servicer may change the name of
16 the licensee or address of the principal place of business or branch office
17 specified on the most recent filing with the commissioner if:

18 (A)(i) At least thirty (30) calendar days before the
19 change, the licensee files a notice of the change with the commissioner.

20 (ii) If necessary, the licensee shall provide a bond
21 rider or endorsement, or addendum, as applicable, to the surety bond on file
22 with the commissioner that reflects the new name or change of address of the
23 licensee's principal place of business; and

24 (B) ~~All or part of the late fee may be waived by the~~
25 ~~commissioner for good cause~~ The commissioner does not disapprove the name
26 change or the change of address in writing or request additional information
27 within the thirty-day time frame described in subdivision (e)(2)(A)(i) of
28 this section.

29 (3) ~~The commissioner may revoke or suspend the license of a~~
30 ~~mortgage broker, mortgage banker, or mortgage servicer who fails to pay a~~
31 ~~late fee assessed under subdivision (e)(2) of this section.~~

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33 SECTION 11. Arkansas Code § 23-39-510, concerning the duties of a
34 licensee under the Fair Mortgage Lending Act, is amended to add additional
35 subsections to read as follows:

36 (d)(1) A mortgage broker, mortgage banker, or mortgage servicer

1 licensed or required to be licensed under this subchapter shall establish,
2 implement, update, and enforce written physical security and cybersecurity
3 policies and procedures reasonably designed to ensure the confidentiality,
4 integrity, and availability of physical and electronic records and
5 information.

6 (2) A policy or procedure described in subdivision (d)(1) of
7 this section shall be tailored to the size and sophistication of the mortgage
8 broker, mortgage banker, or mortgage servicer.

9 (3) The commissioner may impose additional conditions by rule or
10 order to clarify the requirements of a policy or procedure described in
11 subdivision (d)(1) of this section.

12 (e) A mortgage broker, mortgage banker, or mortgage servicer shall
13 establish, enforce, and maintain policies and procedures reasonably designed
14 to achieve compliance with this subchapter and any other state law or rule or
15 federal law or regulation that is applicable to any business the licensee is
16 authorized to conduct in this state.

17
18 SECTION 12. Arkansas Code § 23-39-514(i)(2), concerning the authority
19 of the Securities Commissioner to require an applicant or licensee to pay a
20 fee for an examination under the Fair Mortgage Lending Act, is amended to
21 read as follows:

22 (2) The applicant or licensee shall pay a fee for each
23 examination under subdivision (i)(1) of this section, not to exceed one
24 hundred fifty dollars (\$150) per examiner for each day or part of a day
25 during which ~~any examiners are absent from the office of the commissioner for~~
26 ~~the purpose of conducting the~~ an examination is conducted.

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28 /s/J. Dismang
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