

HOUSE BILL 2316

By Pitts

AN ACT to amend Tennessee Code Annotated, Title 45, Chapter 5, relative to the registration requirements and the making of residential mortgage loans under the Industrial Loan and Thrift Companies Act; Title 45, Chapter 13, relative to the licensing and regulation of mortgage lenders, mortgage loan brokers, mortgage loan servicers and mortgage loan originators; and, Title 45, Chapter 1, to authorize fingerprinting of certain department job applicants.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 45-5-102, is amended by adding the following definitions as appropriately designated subsections of the statute:

(_) “Loan processor or underwriter”

(A) In general, the term “loan processor or underwriter” means an individual who performs clerical or support duties as an employee (not an independent contractor) at the direction of and subject to the supervision and instruction of a registrant authorized to make residential mortgage loans.

(B) For purposes of subdivision (A), the term “clerical or support duties” may include subsequent to the receipt of an application for a residential mortgage loan:

(i) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of the loan; and/or

(ii) Communicating with a consumer to obtain the information necessary for the processing or underwriting of the loan, to the extent that such communication does not include offering or negotiating loan rates or

terms, or counseling consumers about residential mortgage loan rates or terms;

(_) “Mortgage loan originator” means:

(A) An individual who for compensation or gain or in the expectation of compensation or gain:

(i) Takes a residential mortgage loan application; or

(ii) Offers or negotiates terms of a residential mortgage loan.

(B) But, does not include an individual engaged solely as a loan processor or underwriter for a registrant, unless that individual is an independent contractor and not an employee;

(_) “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;

(_) “Residential mortgage loan” means any loan (including an extension of credit) 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 (as defined in section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined);

(_) “Residential real estate” means any real property located in Tennessee, upon which is constructed or intended to be constructed a dwelling;

(_) “Unique identifier” means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

SECTION 2. Tennessee Code Annotated, Section 45-5-102(7) is amended by deleting the language “a ‘mortgage loan’ as defined in § 45-13-102” and substituting instead the

language “a residential mortgage loan,” and by also deleting the second occurrence of “mortgage loan” and substituting the language “residential mortgage loan.”

SECTION 3. Tennessee Code Annotated, Section 45-5-202 is amended by deleting subsections (c) and (d) in their entirety, and substituting instead the following subsections:

(c) At the time of the filing of an application for a certificate of registration, each applicant that makes or proposes to make residential mortgage loans shall file with the commissioner a surety bond payable to the state, in a form to be approved by the commissioner, for the benefit of any person injured by the wrongful act, default, fraud or misrepresentation of the registrant. The surety bond shall provide coverage for each mortgage loan originator in an amount that reflects the dollar amount of residential mortgage loans originated by the registrant, as determined by the commissioner; provided, that for the first period of registration during which the company makes or proposes to make residential mortgage loans, and/or for the 2009-2010 registration period, as applicable, the surety bond shall be in the amount of two hundred thousand dollars (\$200,000). Only one (1) bond is required for the registrant, regardless of the number of offices. Immediately upon recovery upon any action on such bond, the registrant shall file a new bond. The bond shall be maintained by the registrant for not less than twenty-four (24) months following the expiration, revocation, suspension, or surrender of the certificate of registration. A registrant that has obtained registration under subsection (d) shall first comply with the surety bond requirements of this subsection prior to making or proposing to make a residential mortgage loan. A registrant authorized to make residential mortgage loans on July 1, 2009 and holding a letter of credit (as opposed to a surety bond), shall be required to comply with the surety bond requirements of this subsection in order to renew their registration in 2010.

(d) All other applicants shall, at the time of the filing of an application for a certificate of registration, file with the commissioner a surety bond payable to the state or a letter of credit, in each case in a form to be approved by the commissioner, for the benefit of any person injured by the wrongful act, default, fraud or misrepresentation of the registrant or the registrant's employees, or both, in the amount of fifty thousand dollars (\$50,000). Only one (1) bond or letter of credit is required, regardless of the number of offices of the registrant. The bond or letter of credit shall be maintained by the registrant for not less than twenty-four (24) months following the expiration, revocation, suspension, or surrender of the certificate of registration.

SECTION 4. Tennessee Code Annotated, Section 45-5-202 is amended by adding the following language as new subsections:

(e) As a condition of registration for applicants that propose to make residential mortgage loans, or as a condition of a registrant later obtaining such authority, the commissioner may adopt rules to require that certain individuals associated with the applicant or registrant shall have successfully completed testing and/or educational courses approved by the commissioner. Such rules may extend to any individual who is an officer, partner, managing member or controlling person, or to any other individual associated with the applicant or registrant as is reasonably necessary to meet the purposes of this chapter.

(f) The commissioner may require education and testing providers of any of the educational courses or tests required under this chapter to file information regarding the contents and materials of the proposed courses or tests with the commissioner for review and approval. The commissioner may set fees for the initial and continuing review of courses and tests.

(g) The commissioner is authorized to require an applicant for a certificate of registration to consent to a criminal history records check and to provide with the application fingerprints in a form acceptable to the commissioner. The commissioner may require such consent and fingerprints from any individual who is an officer, partner, managing member, or ultimate equitable owner of ten percent (10%) or more of the applicant, as well as from any other individual associated with the applicant as is reasonably necessary to meet the purposes of this chapter. Refusal of any person to consent to a criminal history records check or to provide fingerprints as allowed by this section constitutes grounds for the commissioner to deny registration to the applicant.

(h) Any criminal history records check conducted under subsection (g) shall be conducted by the Tennessee bureau of investigation and/or the federal bureau of investigation, and the results of the criminal history records check shall be forwarded to the commissioner. All costs incurred in conducting such criminal history records check shall be paid by the applicant, in addition to any other investigative and application fees required by this chapter.

SECTION 5. Tennessee Code Annotated, Section 45-5-203 is amended by designating the existing language as subsection (a) and by adding the following language as new subsections of the statute:

(b) As a condition of renewal of a certificate of registration for a registrant that makes or proposes to make residential mortgage loans, the registrant shall file with its renewal application evidence that its surety bond is adjusted in accordance § 45-5-202(c).

(c) As a condition of renewal of a certificate of registration for a registrant that makes or proposes to make residential mortgage loans, the commissioner may adopt rules to require that any of the individuals identified pursuant to § 45-5-202(e) shall have

successfully completed continuing education course requirements. The rules pertaining to continuing education requirements, as well as those pertaining to any testing and/or education requirements under § 45-5-202, may include criteria for content, accreditation of sponsors and programs, computation of credit, special cases and exemptions, general compliance procedures, and sanctions for noncompliance.

SECTION 6. Tennessee Code Annotated, Title 45, Chapter 5, Part 2 is amended by adding the following language as a new, appropriately designated section:

(a) Effective July 31, 2009, no registrant shall make a residential mortgage loan unless each individual that acts as a mortgage loan originator with respect to the loan has obtained a mortgage loan originator license under title 45, chapter 13, part 3, and has been sponsored by the registrant in accordance with subsection (b), except as follows:

(1) A registrant authorized to make residential mortgage loans on July 30, 2009 is authorized to continue doing so after such date, provided that each individual who acts as a mortgage loan originator with respect to any such loan is registered with the commissioner in affiliation with that registrant on or before July 30, 2009. Such excepted authority shall only continue for so long as any such mortgage loan originator registration remains effective.

(2) To register a mortgage loan originator under subdivision (1), the registrant must timely submit to the commissioner a nonrefundable registration fee of one hundred dollars (\$100) and a completed registration form containing any information the commissioner deems necessary, including the following:

(A) The name of the registrant for whom the mortgage loan originator provides origination services;

(B) The mortgage loan originator's name, birth date, social security number, and address; and

(C) The office location where the mortgage loan originator shall engage in residential mortgage loan origination services.

(3) Any mortgage loan originator timely registered with a registrant shall be considered "sponsored" by that registrant for purposes of subsection (b) for the term of the registration and any successive licensure.

(4) The registration of a mortgage loan originator under this section shall expire without further notice or process on December 31, 2009 unless, by such deadline, the individual has filed a completed application for a mortgage loan originator license under title 45, chapter 13, part 3, through the Nationwide Mortgage Licensing System and Registry, paid all licensing fees, and completed all other pre-licensing requirements including submission of fingerprints for a criminal background check and successful completion of all pre-licensure education and testing requirements. If the preceding is timely accomplished, the mortgage loan originator registration shall remain effective until such time as the commissioner has acted on the licensure application, but in no event shall it be valid after July 30, 2010. If the application for a license is approved, the license shall be issued for calendar year 2010.

(5) An individual registered as a mortgage loan originator under this subsection shall not be in violation of any law requiring a license to act as a mortgage loan originator, for any origination services performed while the registration is effective.

(b) To sponsor a mortgage loan originator on or after July 31, 2009, a registrant must file such form with the commissioner as the commissioner may prescribe and pay

to the commissioner a nonrefundable sponsorship fee of one hundred dollars (\$100.00), which fee may be decreased or increased by rule of the commissioner. Upon determining that the individual has obtained a license under title 45, chapter 13, part 3, and is not sponsored by any other registrant, mortgage lender, or mortgage loan broker, the commissioner shall authorize the sponsorship. A mortgage loan originator sponsorship terminates if the sponsoring registrant's authority to make residential mortgage loans expires or is revoked or otherwise terminates, or if the mortgage loan originator ceases providing services for the registrant.

(c) Should a mortgage loan originator sponsorship terminate, the mortgage loan originator's license shall become inactive, but shall not expire so long as the mortgage loan originator continues to meet all other requirements for licensure and renewal of licensure. An inactive license is reactivated if the mortgage loan originator obtains a new sponsorship under this section or under title 45, chapter 13, part 3. The commissioner may not approve a new sponsorship unless and until the commissioner has been notified that any prior sponsorship has terminated.

(d) Each mortgage loan originator who provides origination services shall clearly show their name, signature, any mortgage loan originator license number and any different unique identifier, on each residential mortgage loan application form. All such application forms shall also clearly show the name and registration number of the registrant. Each mortgage loan originator shall also clearly show their unique identifier on all solicitations or advertisements, including business cards or websites, and any other documents and materials as established by rule of the commissioner.

(e) The sponsoring registrant is responsible for and shall supervise the acts of each sponsored mortgage loan originator.

(f) A mortgage loan originator of a registrant is subject to all applicable requirements and prohibitions of title 45, chapter 13 (unless otherwise stated in such chapter).

(g) A registrant that is authorized to make residential mortgage loans is subject to investigation and examination under title 45, chapter 13, to the extent that such chapter provides the commissioner greater or different investigatory or examination power than is authorized under this chapter.

(h) It is a violation of this chapter for a registrant to commit any of the acts or practices prohibited by § 45-13-401 in the making of a residential mortgage loan, as applicable.

(i) A registrant that is authorized to make residential mortgage loans shall, pursuant to order or direction of the commissioner, submit to the Nationwide Mortgage Licensing System and Registry reports of condition pertaining to its residential mortgage loan business, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require.

SECTION 7. Tennessee Code Annotated, Section 45-5-403(a)(8) is amended by deleting the language "loans secured by a residential mortgage" and by instead substituting the language "a residential mortgage loan."

SECTION 8. Tennessee Code Annotated, Title 45, Chapter 13, is amended by deleting the chapter in its entirety and by substituting instead the following language, divided into five (5) parts:

Part 1 – *General Provisions.*

Section 45-13-101. *Short title.*

This chapter shall be known and may be cited as the "Tennessee Residential Lending, Brokerage and Servicing Act."

Section 45-13-102. *Purpose.*

The origination or offering of financing for residential real property has a direct, valuable and immediate impact upon Tennessee's consumers, Tennessee's economy, the neighborhoods and communities of Tennessee, and the housing and real estate industry. The General Assembly finds that accessibility to mortgage credit is vital to the state's citizens. It is the purpose of this chapter to ensure a sound system of making residential mortgage loans through the licensing, examination, and regulation of mortgage lenders, mortgage loan brokers, mortgage loan servicers, and mortgage loan originators. It is also the purpose of this chapter to carry out the purposes and to be compliant with the requirements of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

Section 45-13-103. *Administrative Authority.*

(a) The commissioner is granted broad administrative authority to administer, interpret, and enforce this chapter, and to promulgate reasonable substantive and procedural rules and regulations to carry out the purposes of this chapter.

Section 45-13-104. *Provisions remedial.*

The provisions of this chapter are declared to be remedial in nature, and all provisions of this chapter shall be liberally construed to effectuate its purpose.

Section 45-13-105. *Chapter definitions.*

As used in this chapter, unless the context otherwise requires:

(1) "Branch manager" means the individual whose principal office is physically located in, who is in charge of, and who is responsible for the business operations of a branch office of a mortgage lender or mortgage loan broker licensed under this chapter;

(2) "Branch office" means an office of a licensed mortgage lender or mortgage loan broker that is separate and distinct from the licensee's principal place of business;

(3) "Commissioner" means the commissioner of financial institutions or the commissioner's designated representative;

(4) "Control" means possession, direct or indirect, of the power to direct or cause the direction of management and policies of a person, whether through the ownership of voting securities by contract or otherwise; provided, that no individual shall be deemed to control a person solely on account of being a director, officer, or employee of the person. For purposes of this section, a person who, directly or indirectly, owns, controls, holds the power to vote, or holds proxies representing twenty-five percent (25%) or more of the then outstanding voting securities issued by another person is presumed to control the other person. For purposes of this section, the commissioner may determine whether a person, in fact, controls another person;

(5) "Depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act, and includes any credit union;

(6) "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;

(7) "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships;

(8) "Individual" means a natural person;

(9) "License" means a license issued to a mortgage lender, mortgage loan broker, mortgage loan servicer or mortgage loan originator under this chapter, as applicable;

(10) "Licensee" means a person to whom a license has been issued under this chapter, whether a mortgage lender, mortgage loan broker, mortgage loan servicer, or mortgage loan originator, as applicable, but the term shall also apply to any person holding a certificate of registration on July 31, 2009, for so long as the certificate is still valid;

(11) "Loan processor or underwriter"

(A) In general, the term "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 § 45-13-201.

(B) For purposes of subdivision (A), the term "clerical or support duties" may include subsequent to the receipt of an application:

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

(ii) Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms;

(12) "Managing principal" means an individual who agrees to be primarily responsible for the operations of a licensed mortgage lender or mortgage loan broker;

(13) "Mortgage lender" means any person who makes a residential mortgage loan or holds himself or herself out as able to make a residential mortgage loan;

(14) "Mortgage loan broker" means any person who for compensation or other gain, paid directly or indirectly, or in expectation of compensation or other gain, solicits, places, negotiates or originates a residential mortgage loan for another person, or offers to solicit, place, negotiate or originate a residential mortgage loan for another person or who closes a residential mortgage loan that may be in the mortgage loan broker's own name with funds provided by another person and which loan is thereafter assigned to the person providing the funding of the loan; regardless of whether the acts are done directly or indirectly, through contact by telephone, by electronic means, by mail, or in person with the borrower(s) or potential borrower(s);

(15) "Mortgage loan originator"

(A) In general, the term "mortgage loan originator"

(i) Means an individual who for compensation or gain or in the expectation of compensation or gain:

(a) Takes a residential mortgage loan application;

or

(b) Offers or negotiates terms of a residential mortgage loan.

(ii) Does not include an individual engaged solely as a loan processor or underwriter except as otherwise provided in § 45-13-301(d);

(iii) Does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with Tennessee law, unless the person or entity is compensated by a mortgage lender, mortgage loan broker, or other mortgage loan originator, or by any agent of such mortgage lender, mortgage loan broker, or other mortgage loan originator; and

(iv) Does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of title 11, United States Code.

(B) For purposes of this chapter, the term “real estate brokerage activity” means any activity that involves offering or providing real estate brokerage services to the public, including:

(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) Negotiating, on behalf of any party, 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 any such transaction);

(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; and

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

(16) "Mortgage loan servicer" means any person who in the regular course of business assumes responsibility for servicing and accepting payments for a residential mortgage loan;

(17) "Mortgagor" means any person who grants a mortgage, deed of trust, or other equivalent consensual security interest pursuant to a residential mortgage loan transaction;

(18) "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;

(19) "Nontraditional mortgage product" means any mortgage product other than a thirty (30) year fixed rate residential mortgage loan;

(20) "Origination services" means the activities of a mortgage loan originator performed in regards to a residential mortgage loan;

(21) "Person" means an individual, sole proprietorship, corporation, limited liability company, partnership, trust, association, or any other legal entity however organized;

(22) "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:

(A) Owned and controlled by a depository institution; and

(B) 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 Nationwide Mortgage Licensing System and Registry;

(23) "Registrant" shall have the same meaning as prescribed in the Industrial Loan and Thrift Companies Act, compiled in title 45, chapter 5;

(24) "Residential mortgage loan" means any loan (including an extension of credit) 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 (as defined in section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined);

(25) "Residential real estate" means any real property located in Tennessee, upon which is constructed or intended to be constructed a dwelling; and

(26) "Unique identifier" means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

Section 45-13-106. *Certificates of Registration and Registration Certificates.*

(a) Any certificate of registration or registration certificate issued by the commissioner under Tennessee Code Annotated, Title 45, Chapter 13, and outstanding on July 31, 2009, is not renewable, but shall remain valid until and expire on, December 31, 2009, unless such authority is extended as provided in subsection (b) or subsection (c), as applicable. Any mortgage lender, mortgage loan broker, or mortgage loan servicer holding a certificate of registration shall be considered to hold a license, and shall be subject to this chapter as a licensee, except that such persons shall not be required to comply with any of the requirements pertaining to eligibility for a license that were not applicable to their qualification for a certificate, until such time as they may be issued a license under this chapter. Any mortgage loan originator holding a valid registration certificate shall be subject to the prohibitions and enforcement mechanisms of this chapter, as well as to investigation and examination under this chapter, including the fingerprint background check provisions under § 45-13-302(f).

(b) A mortgage lender, mortgage loan broker, or mortgage loan servicer holding a valid certificate of registration may extend the authority of their certificate, provided that they have transitioned to the Nationwide Mortgage Licensing System and Registry by any deadline established by the commissioner, by filing on or before December 31, 2009 a licensure renewal application under § 45-13-203(c), including the requisite surety bond and renewal fee. If such renewal application is complete and timely filed, the person shall be authorized to continue to act as a mortgage lender, mortgage loan broker, or mortgage loan servicer until such time as the commissioner has acted on their renewal application. If such renewal application is not complete and timely filed, the person's certificate of registration shall expire without further notice or process on December 31,

2009. If the application for a license is approved, the license shall be issued for calendar year 2010.

(c) A mortgage loan originator holding a valid registration certificate may extend the authority of their certificate by filing on or before December 31, 2009, a completed application for a license under part 3 of this chapter through the Nationwide Mortgage Licensing System and Registry, and by also paying all licensure fees and completing all other requirements to obtain a license including submission of fingerprints for a criminal background check and successful completion of all pre-licensure testing and education requirements. If the preceding is timely accomplished, the registration certificate shall remain effective until such time as the commissioner has acted on the application, but in no event shall it be valid after July 30, 2010. If the application for a license is approved, the license shall be issued for calendar year 2010. Any mortgage loan originator timely filing an application for a license under this subsection shall be considered to be "sponsored" for purposes of part 3 of this chapter by the mortgage lender or mortgage loan broker for whom they are providing origination services, upon any successive licensure. If a completed application showing fulfillment of all pre-licensing requirements is not timely filed, the registration certificate shall expire without further notice or process on December 31, 2009. A mortgage loan originator holding a valid registration certificate under this subsection shall not be in violation of any law requiring a license to act as a mortgage loan originator, for any origination services performed while the certificate is valid.

Section 45-13-107. *Lost licenses, Substitutions.*

In the event that a license issued under this chapter is lost or destroyed, the person to whom the license was issued may, upon payment of a nonrefundable fee

prescribed by the commissioner, obtain a substitute license, upon furnishing proof satisfactory to the commissioner that the license has become lost or destroyed.

Section 45-13-108. *Filing of written report with commissioner -- Events impacting activities of licensee.*

Within fifteen (15) days of the occurrence of any one (1) of the events listed in subdivisions (1)-(6), a licensee shall file a written report with the commissioner describing the event and its expected impact on the activities of the licensee in this state:

(1) The filing for bankruptcy or reorganization by the licensee;

(2) The institution of revocation or suspension proceedings against the licensee by any state or governmental authority;

(3) The denial of the opportunity to engage in business by any state or governmental authority;

(4) Any felony indictment of the licensee or any of its officers, directors or principals;

(5) Any felony conviction of the licensee or any of its officers, directors, or principals; and

(6) Other events that the commissioner may determine and identify by rule.

Part 2 – *Licensing of Mortgage Lenders, Mortgage Loan Brokers, and Mortgage Loan Servicers.*

Section 45-13-201. *License required -- Exceptions.*

(a) No person shall act as a mortgage lender, mortgage loan broker, or mortgage loan servicer in this state without first obtaining a license under this chapter; provided, however, that no contractor or home improvement contractor or other person who supplies materials and renders services in the improvement of real property shall

engage in the business of making residential mortgage loans or of being a mortgage loan servicer or mortgage loan broker in this state.

(b) The requirement of a license under subsection (a), and the provisions of this chapter, do not apply to any of the following:

(1) Any depository institution;

(2) Any subsidiary of a depository institution that is owned and controlled by the depository institution and regulated by a federal banking agency;

(3) Any institution regulated by the Farm Credit Administration;

(4) Any individual who makes a residential mortgage loan to, or offers or negotiates terms of a residential mortgage loan with or on behalf of, an immediate family member of the individual;

(5) An individual who makes a residential mortgage loan, or simply offers or negotiates terms of a residential mortgage loan, when the loan is secured by a dwelling that served as the individual's residence; and

(6) 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 mortgage lender, a mortgage loan broker, a mortgage loan originator, or by any agent of such mortgage lender, mortgage loan broker, or mortgage loan originator.

(c) The requirement of a license to act as a mortgage lender under subsection (a), and the requirements of this chapter pertaining to mortgage lenders, unless otherwise stated, do not apply to any registrant making residential mortgage loans that is authorized to do so under the Industrial Loan and Thrift Companies Act compiled in title 45, chapter 5; provided, however, that all mortgage loan originators of such registrant must be licensed under part 3 of this chapter.

(d) The commissioner shall be authorized to exempt in whole or in part from the requirements of this chapter additional entities or classes of entities (not including individuals), that the commissioner finds inappropriate to include to effectuate the purposes of this chapter, so long as any such exemption is compliant with and does not impede the purposes of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

(e) Upon approval or consent by the United States department of housing and urban development, the commissioner shall be authorized to exempt in whole or in part from this chapter additional individuals or classes of individuals (such as those working for bona fide non profit corporations and government agencies), that the commissioner finds inappropriate to include to effectuate the purposes of this chapter.

Section 45-13-202. *Application for license -- Investigation fee.*

(a) The application for a license under § 45-13-201(a) shall be in writing, under oath, and in the form prescribed by the commissioner, and shall contain the following:

(1) The name and principal business address in Tennessee of the applicant, and the principal business address, if any, outside of Tennessee of the applicant; and all addresses within Tennessee at which the applicant is conducting or intends to conduct business;

(2) If the applicant is other than a corporation, the form of the legal entity (sole proprietorship, general partnership, limited partnership, joint venture, trust or other legal entity), and the name and address, as applicable, of the sole proprietor, general partner or partners, joint venturer, grantor or other principal, as may be defined by and required by the commissioner;

(3) If the applicant is a corporation, the name and address of each executive officer and each director, the registered agent for service of process,

and each stockholder owning or controlling through voting trust or other agreement ten percent (10%) or more of the outstanding capital stock of the corporation;

(4) Whether the applicant seeks licensure as a mortgage lender, mortgage loan broker, mortgage loan servicer, or any combination thereof; and

(5) Other information that the commissioner may reasonably request pertaining to the activities of the applicant as a mortgage lender, mortgage loan broker or mortgage loan servicer.

(b) Each applicant for a license pursuant to § 45-13-201(a) shall pay to the commissioner, at the time of making the application, a nonrefundable investigation fee of one hundred dollars (\$100).

(c) As a condition of licensure under this section, the commissioner may by rule require that each individual who is an officer, partner, managing member, managing principal or branch manager, or possesses control of the applicant as defined in § 45-13-105(4), or any other individual associated with the applicant as is reasonably necessary to meet the purposes of this chapter, shall have successfully completed pre-licensure testing and/or education courses approved by the commissioner. This subsection shall not apply to renewals of existing licenses.

(d) The commissioner is authorized to require an applicant for a license under § 45-13-201(a) to consent to a criminal history records check and to provide with the application fingerprints in a form acceptable to the commissioner. The commissioner may require such consent and fingerprints from any individual who is an officer, partner, managing member, managing principal, branch manager or ultimate equitable owner of ten percent (10%) or more of the applicant, as well as from any other individual associated with the applicant as is reasonably necessary to meet the purposes of this

chapter. No application shall be deemed complete until such consent and fingerprints have been submitted, and the refusal of any person to consent to a criminal history records check or to provide fingerprints as allowed by this subsection constitutes grounds for the commissioner to deny licensure to the applicant.

(e) Any criminal history records check conducted under subsection (d) shall be conducted by the Tennessee Bureau of Investigation and/or the Federal Bureau of Investigation, and the results of the criminal history records check shall be forwarded to the commissioner. The reasonable costs incurred in conducting such criminal history records check shall be paid by the applicant, in addition to any other application and investigative fees required by this section.

Section 45-13-203. *Licensing -- Posting -- Renewal -- Abatement of fees.*

(a) Upon the filing of a complete application for licensure as a mortgage lender, mortgage loan broker, and/or mortgage loan servicer, and the payment of all applicable fees, the commissioner shall investigate each application to the extent deemed necessary. The commissioner shall deliver a license to the applicant if the commissioner finds that the applicant, to include its principals:

(1) Has the financial responsibility, experience and character to warrant the belief that the business of the applicant will be operated lawfully and within the purposes of this chapter;

(2) That the applicant has a tangible net worth (tangible assets less liabilities) of not less than twenty-five thousand dollars (\$25,000), and an additional tangible net worth of twenty-five thousand dollars (\$25,000) for each additional branch office within Tennessee; and

(3) Such applicant has paid a nonrefundable license fee of five hundred dollars (\$500).

If the commissioner does not so find, the commissioner shall deny such application and notify the applicant of the denial, give notice of the grounds for the denial and notify the applicant of the right to request a hearing. If the commissioner denies an application, or if the commissioner fails to act on an application within ninety (90) days after the filing of a properly completed application, the applicant may make written demand to the commissioner for a hearing on the question of whether the license should be granted. The commissioner shall notify the applicant of the date when the application is deemed complete. Nothing contained herein shall prohibit an applicant from modifying or amending the application in order to seek approval by the commissioner. If the commissioner denies any application and if the applicant requests a hearing, the commissioner shall conduct such hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5; provided, that such applicant has requested such hearing in writing within thirty (30) days following the denial of the application by the commissioner. At any such hearing, the burden of proving that the applicant is entitled to a license is on the applicant.

(b) Each license shall be conspicuously posted in the respective place of business of the licensee for which the license was issued.

(c) On or before December 31 of each year, each person holding a license issued under this part shall pay a nonrefundable renewal fee of five hundred dollars (\$500) to the commissioner for the following year, commencing January 1, together with such renewal application as the commissioner may require, including the surety bond adjusted in accordance with § 45-13-204. Failure to timely pay the renewal fee or to timely submit a completed renewal application shall cause the license to expire at the close of business on December 31.

(1) As a condition of licensure renewal, the commissioner may by rule establish continuing education requirements for each of the individuals identified pursuant to § 45-13-202(c). The rules for pre-licensure and continuing education requirements under this part may include criteria for content, accreditation of sponsors and programs, computation of credit, special cases and exemptions, general compliance procedures, and sanctions for noncompliance.

(2) Any licensee making timely and proper application for renewal of its license shall be permitted to continue to operate under its existing license until its application is approved or denied. Should the commissioner deny the renewal application, the licensee may make written demand to the commissioner for a hearing on the question of whether the license should be renewed; provided, that any such request for hearing be received by the commissioner within thirty (30) days from the date of denial, and also provided that the failure to timely request a hearing shall cause the license to be automatically revoked without further notice or hearing at the end of the thirty (30) day period. If a hearing is timely requested under this subdivision, it shall be conducted under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and the license shall not expire until resolution of the appeal in accordance with such act.

(d) No abatement of the license fee shall be made if the license is surrendered, cancelled, revoked or suspended prior to the expiration of the period for which it was issued.

(e) The commissioner may require education and testing providers of any of the educational courses or tests required under this chapter to file information regarding the contents and materials of the proposed courses or tests with the commissioner for

review and/or approval. The commissioner may set fees for the initial and continuing review of courses and tests.

Section 45-13-204. *Surety bond required.*

(a) At the time of filing an application for a license under § 45-13-201(a), the applicant shall also file with the commissioner a surety bond payable to the state, in a form to be approved by the commissioner, for the benefit of any person injured by the wrongful act, default, fraud, or misrepresentation of the licensee. The bond must be issued by a bonding company qualified to do business in Tennessee.

(b) For mortgage loan servicers, the surety bond shall be maintained in the amount of two hundred thousand dollars (\$200,000).

(c) For mortgage lenders and mortgage loan brokers, the surety bond shall provide coverage for each mortgage loan originator in an amount in accordance with subsection (d); provided, however, that for the first calendar year of licensing in Tennessee, and/or for calendar years 2009 and 2010, as applicable, the surety bond for mortgage lenders shall be in the amount of two hundred thousand dollars (\$200,000), and the surety bond for mortgage loan brokers shall be in the amount of ninety thousand dollars (\$90,000).

(d) The penal sum of the surety bond of any mortgage lender or mortgage loan broker shall be maintained in an amount that reflects the dollar amount of loans originated, as determined by the commissioner.

(e) The bond shall be maintained for not less than twenty-four (24) months following the expiration, revocation, suspension, or surrender of the license.

(f) Immediately upon recovery upon any action on the bond, the licensee shall file a new bond to fulfill the requirements of this section.

Section 45-13-205. *Change of address or officers -- Annual report including past officers and directors.*

(a) Each licensed mortgage lender, mortgage loan broker, and mortgage loan servicer shall notify the commissioner five (5) days prior to any change in its principal place of business.

(b) Each licensed mortgage lender, mortgage loan broker, and mortgage loan servicer shall notify the commissioner in writing within fourteen (14) days of any change of its president, chief executive officer, treasurer or chief financial officer or among the general partners or partners.

Section 45-13-206. *Records and financial statements -- Deposits and periodic payments -- Disclosure.*

(a) Every licensed mortgage lender, mortgage loan broker, and mortgage loan servicer shall keep and maintain at all times in its principal place of business correct and complete records of all residential mortgage loan transactions arranged by the licensee.

(b) The financial statements furnished to the commissioner by each licensed mortgage lender, mortgage loan broker, and mortgage loan servicer shall be prepared in accordance with generally accepted accounting principles consistently applied.

(c) If a deposit is required in connection with an application for a residential mortgage loan, there shall be a written agreement, signed by the parties, pertaining to the disposition of the deposit, whether the loan is finally consummated or not, and the term for which the agreement is to remain in force before return of the deposit for nonperformance can be required. A licensee who receives deposits shall preserve and on request make available to the commissioner all information related to the deposits. The licensee shall further preserve all agreements between the parties involved in the transaction and all contracts, agreements and instructions pertaining thereto.

Section 45-13-207. *Preservation of records -- Reproduction -- Maintenance location.*

(a) All books and records required to be preserved by any regulation of the commissioner or required by any federal statute, regulation, or regulatory guideline, as applicable to each licensed mortgage lender, mortgage loan broker, and mortgage loan servicer, shall be preserved and made available to the commissioner, as provided in this chapter, for the time that the commissioner may by rule or regulation require, not to exceed twenty-five (25) months on all rejected applications and not to exceed twenty-four (24) months on loans paid in full. The licensee may cause any or all records at any time in its custody to be reproduced or preserved by itself or by any other person who agrees in writing to submit its operations to the examination of the commissioner to the extent that the operations directly affect the recordkeeping, by any microphotographic process, electronic or mechanical data storage technique or any other means. Any record reproduced or preserved by those processes, techniques or means shall have the same force and effect as the original record and be admitted into evidence equally with the original.

(b) Any licensee, after receiving the prior written approval of the commissioner, may maintain records at any location within or outside of the state.

Section 45-13-208. *Minimum information -- Annual report.*

(a) The commissioner may prescribe by rules and regulations the minimum information to be shown in the books, accounts and records of each licensee, so that the books, accounts and records will enable the commissioner to determine compliance with this chapter and with the rules and regulations lawfully made under this chapter.

(b) Each licensee, on a date to be determined by the commissioner, shall file an annual report with the commissioner giving information that the commissioner may reasonably require concerning the business and operations during the preceding

calendar year of the licensee under authority of this chapter. The annual report shall be on a form prescribed by the commissioner by regulation. The report shall be subscribed and affirmed as true by the licensee under the penalties of perjury. In addition to annual reports, the commissioner may require additional regular or special reports as deemed necessary for the proper supervision of licensees under this chapter. The additional reports shall be in the form prescribed by the commissioner and shall be subscribed and affirmed as true under the penalties of perjury.

(c) The annual report and statements required pursuant to this section shall include the names of all directors, officers, general partners and stockholders owning or controlling twenty-five percent (25%) or more of the outstanding capital stock of the licensee, any limited partner owning more than twenty-five percent (25%) of the partnership interest of the licensee, any changes among officers, directors, or general partners within the preceding year, and any change in principal place of business of the licensee.

Section 45-13-209. *Statement of account.*

Upon written request from the mortgagor, the holder of a residential mortgage loan shall deliver to the mortgagor within fourteen (14) days from receipt of the written request, a statement of the mortgagor's account showing the date and amount of all payments credited to the account within the previous twelve-month period and the total unpaid balance. Not more than two (2) statements shall be required in any twelve-month period. If the holder of a residential mortgage loan forwards to the mortgagor an annual payment and escrow analysis, or other such analysis, the submission of the analysis to the mortgagor shall constitute a statement of the mortgagor's account.

Section 45-13-210. *Change of control.*

(a) A change in control of a person licensed as a mortgage lender, mortgage loan broker, and/or mortgage loan servicer under this chapter shall require thirty (30) days prior written notice to the commissioner. In the case of a publicly traded corporation, notification shall be made in writing within thirty (30) days of a change or acquisition of control of a licensee.

(b) Upon notification of a change in control, the commissioner may require information deemed necessary to determine whether an application for a license is required. The commissioner may waive the filing of an application if, in the commissioner's discretion, the change in control does not pose any risk to the interests of the public.

(c) Whenever control is acquired or exercised in violation of this section, the license shall be deemed revoked as of the date of the unlawful acquisition of control. The licensee, or its controlling person, shall surrender the license to the commissioner on demand.

Section 45-13-211. *Managing principals and branch managers.*

(a) Each mortgage lender or mortgage loan broker licensed under this chapter shall have a managing principal who operates the business under that person's full charge, control, and supervision. Each principal and branch office of a mortgage lender or mortgage loan broker shall have a manager. The mortgage lender or mortgage loan broker shall have the responsibility of ensuring that the manager has sufficient experience in the mortgage lending industry to operate the business of the mortgage lender or mortgage loan broker lawfully. The managing principal for a mortgage lender's or mortgage loan broker's business may also serve as the branch manager of one of the mortgage lender's or mortgage loan broker's branch offices. Any individual mortgage

lender or mortgage loan broker who operates a sole proprietorship shall be considered a managing principal for purposes of this chapter.

(b) Each mortgage lender or mortgage loan broker shall file a form as prescribed by the commissioner indicating the business's designation of managing principal and branch manager for each branch and each individual's acceptance of the responsibility.

(c) Each mortgage lender or mortgage loan broker shall notify the commissioner in writing within fourteen (14) business days of any change in its managing principal or branch manager designated for each branch.

Part 3 – Mortgage Loan Originators.

Section 45-13-301. Mortgage Loan Originator – License Required.

(a) An individual, unless specifically exempted under subsection (b), shall not engage in the business of a mortgage loan originator with respect to any dwelling located in Tennessee without first obtaining and maintaining annually a license issued by the commissioner and without first being sponsored in accordance with § 45-13-303. Each individual must register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry in order to qualify for a mortgage loan originator license. The issuance of a mortgage lender or mortgage loan broker license to an individual does not exempt that individual from the requirements of this section.

(b) Registered mortgage loan originators, as defined in § 45-13-105(22), as well as any individuals described in § 45-13-201(b), are exempt from this chapter.

(c) An individual engaging solely in loan processor or underwriter activities, shall not represent 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 any of the activities of a mortgage loan originator.

(d) A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless such independent contractor loan processor or underwriter obtains and maintains a mortgage loan originator license issued under this part.

Section 45-13-302. *Issuance of Mortgage Loan Originator License.*

(a) Individuals applying for a mortgage loan originator license shall complete and file a form as prescribed by the commissioner, and shall pay a nonrefundable licensing fee of one hundred dollars (\$100.00), which fee may be decreased or increased by rule of the commissioner, and which shall constitute the licensing fee for the first year of licensing or part thereof. Each such application form shall be in writing and under oath, and shall contain any information the commissioner deems necessary, including the following:

(1) The individual's name, date of birth, social security number, and address;

(2) The name of any person for whom the individual intends to provide origination services, and the address of the office at which the individual will be stationed;

(3) Information pertaining to the individual's personal history and experience; and

(4) The individual's authorization for the commissioner and/or the Nationwide Mortgage Licensing System and Registry to obtain:

(A) An independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and

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

(b) In connection with an application for a mortgage loan originator license, the applicant shall furnish fingerprints to the commissioner or the commissioner's duly authorized agent (such as the Nationwide Mortgage Licensing System and Registry) for submission to the Federal Bureau of Investigation and/or any other governmental agency or entity authorized to receive such information (such as the Tennessee Bureau of Investigation), for a state and/or national and/or international criminal history background check, as well as authorization for a criminal history background check. The results of any such criminal history background check shall be forwarded to the commissioner. All costs incurred in conducting such criminal history records check shall be paid by the applicant, in addition to any other application and investigative fees.

(c) No mortgage loan originator license shall be issued unless the commissioner makes at a minimum the following findings:

(1) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction (provided, that a subsequent formal vacation of such revocation shall not be deemed a revocation);

(2) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in any domestic, foreign, or military court –

(A) During the seven (7) year period preceding the date of application for a mortgage loan originator license; or

(B) At any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering;

(C) Provided, that any pardon of a conviction shall not be a conviction for purposes of subdivisions (A) and (B).

(3) The applicant has demonstrated the financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the applicant will operate honestly, fairly, and efficiently within the purposes of this chapter. An individual has shown that he or she is not financially responsible when he or she has shown a disregard in the management of his or her own financial condition;

(4) The applicant has completed the pre-licensing education requirements set forth in § 45-13-304; and

(5) The applicant has passed a written test that meets the test requirement described in § 45-13-305.

(d) Upon submission of a properly completed application form, including submission of fingerprints and payment of all applicable fees, the commissioner shall investigate the application to determine whether the applicant qualifies for a license. If the commissioner finds the applicant so qualified, the commissioner shall issue the applicant a mortgage loan originator license that shall expire on December 31 in the year it was issued. If the commissioner does not find the applicant so qualified, the commissioner shall notify the applicant in writing, stating the basis for denial. If the commissioner denies an application or fails to act on a complete application within ninety (90) days, the applicant may make a written demand to the commissioner for a hearing on the question of whether the license should be granted. Any hearing requested under

this subsection shall be conducted under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5; provided, that the individual has requested such hearing in writing within thirty (30) days following the date of the commissioner's denial. At any such hearing, the burden of proving that the individual is entitled to a mortgage loan originator license shall be on the individual.

(e) The commissioner shall keep a current roster showing the names of all licensed mortgage loan originators.

(f) The commissioner shall have the authority to require a criminal history background check under subsection (b) at any time as a condition of continued licensure of a mortgage loan originator. Upon request of the commissioner, a mortgage loan originator shall furnish written consent to a criminal history record check and a set of the mortgage loan originator's fingerprints in a form acceptable to the commissioner. Failure to provide the consent and fingerprints within thirty (30) days of the commissioner's request constitutes grounds for the commissioner to suspend or revoke the mortgage loan originator's license.

(g) Any costs associated with a credit report pulled under this section shall be paid by the applicant.

Section 45-13-303. *Mortgage loan originator sponsorship required.*

(a) No mortgage loan originator license issued under this chapter is considered active unless the individual has also been sponsored by a licensed mortgage lender or mortgage loan broker, or by a registrant in accordance with the Industrial Loan and Thrift Companies Act, compiled in title 45, chapter 5. A mortgage loan originator is prohibited from providing origination services with an inactive license. No mortgage loan originator may be sponsored by more than one (1) person at the same time, and the provision of origination services for a person that has not properly sponsored the mortgage loan

originator shall constitute a violation of this chapter. The following subsections shall not apply to a mortgage loan originator that is properly sponsored by a registrant under the Industrial Loan and Thrift Companies Act, compiled in title 45, chapter 5.

(b) To sponsor a mortgage loan originator, a mortgage lender or mortgage loan broker must file with the commissioner such form as the commissioner may prescribe and pay to the commissioner a nonrefundable sponsorship fee of one hundred dollars (\$100.00), which fee may be decreased or increased by rule of the commissioner. Upon determining that the individual is duly licensed and not sponsored by any other person, the commissioner shall authorize the sponsorship, which may be done electronically and/or in writing. A mortgage loan originator sponsorship terminates if the sponsoring mortgage lender or mortgage loan broker's license expires or is revoked or otherwise terminates, or if the mortgage loan originator ceases providing services for such company.

(c) Should a mortgage loan originator sponsorship terminate, the mortgage loan originator's license shall become inactive, but shall not expire so long as the mortgage loan originator continues to meet the requirements for licensure and renewal of licensure. An inactive license is reactivated if the mortgage loan originator obtains a new sponsorship under this section, or under the Industrial Loan and Thrift Companies Act, compiled in title 45, chapter 5. The commissioner may not approve a new sponsorship unless and until the commissioner has been notified that any prior sponsorship has terminated.

(d) Each mortgage loan originator who provides origination services shall clearly show their name, signature, license number, and any different unique identifier, on each loan application form. All such application forms shall also clearly show the name and license number of the mortgage lender or mortgage loan broker. Each mortgage loan

originator shall also clearly show their unique identifier on all solicitations or advertisements, including business cards or websites, and any other documents and materials as established by rule of the commissioner.

(e) The sponsoring mortgage lender or mortgage loan broker is responsible for and shall supervise the acts of each sponsored mortgage loan originator.

Section 45-13-304. *Pre-licensing education of loan originators.*

(a) In order to meet the pre-licensing education requirement referred to in § 45-13-302(c)(4), an individual shall complete at least twenty (20) hours of education approved in accordance with subsection (b), which shall include at least:

(1) Three (3) hours of federal law and regulations;

(2) Three (3) hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(3) Two (2) hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) For purposes of subsection (a), pre-licensing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a pre-licensing education course shall include review and approval of the course provider.

(c) Nothing in this section shall preclude any pre-licensing education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the applicant or an entity which is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such employer or entity.

(d) Pre-licensing education may be offered either in a classroom, online or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(e) The pre-licensing education requirements approved by the Nationwide Mortgage Licensing System and Registry in subsections (a)(1), (2) and (3) for any state shall be accepted as credit towards completion of pre-licensing education requirements in Tennessee.

Section 45-13-305. *Testing of loan originators.*

(a) In order to meet the written test requirement referred to in § 45-13-302(c)(5), an individual shall pass, in accordance with the standards established under this section, 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 upon reasonable standards.

(b) A written test shall not be treated as a qualified written test for purposes of subsection (a) unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:

- (1) Ethics;
- (2) Federal law and regulation pertaining to mortgage origination;
- (3) State law and regulation pertaining to mortgage origination;
- (4) Federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(c) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant or 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.

(d) Minimum Competence –

(1) An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than seventy-five percent (75%) correct answers to questions.

(2) An individual may retake a test three (3) consecutive times with each consecutive taking occurring at least thirty (30) days after the preceding test.

(3) After failing three (3) consecutive tests, an individual shall wait at least six (6) months before taking the test again.

(4) A licensed mortgage loan originator who fails to maintain a valid license for a period of five (5) years or longer shall retake the test, not taking into account any time during which such individual is a registered mortgage loan originator.

Section 45-13-306. *Standards for mortgage loan originator license renewal.*

(a) The minimum standards for license renewal for mortgage loan originators shall include the following:

(1) The mortgage loan originator continues to meet the minimum standards for licensure under § 45-13-302(c);

(2) The mortgage loan originator has satisfied the annual continuing education requirements described in § 45-13-307; and

(3) The mortgage loan originator has paid a nonrefundable renewal fee of one hundred dollars (\$100.00), which amount may be decreased or increased by rule of the commissioner.

(b) To renew a mortgage loan originator license for the following calendar year, the commissioner must receive on or before December 31 a completed renewal application and fee meeting the requirements of subsection (a). If the renewal

requirements are not timely met, the mortgage loan originator license shall expire at the close of business on December 31.

(c) Should the commissioner deny a renewal application, the applicant may make written demand to the commissioner for a hearing on the question of whether the license should be renewed; provided, that any such request for hearing be received by the commissioner within thirty (30) days from the date of denial, and also provided that the failure to timely request a hearing shall cause the license to be automatically revoked without further notice or hearing at the end of the thirty (30) day period. If a hearing is timely requested under this subsection, it shall be conducted under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and the license shall not expire until resolution of the appeal in accordance with such act.

Section 45-13-307. Continuing Education for Mortgage Loan Originators.

(a) In order to meet the annual continuing education requirements referred to in § 45-13-306(a)(2), a licensed mortgage loan originator shall complete at least eight (8) hours of education approved in accordance with subsection (b) of this section, which shall include at least:

(1) Three (3) hours of federal law and regulations;

(2) Two (2) hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(3) Two (2) hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) For purposes of subsection (a), continuing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.

(c) Nothing in this section shall preclude any education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the mortgage loan originator or an entity which is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or entity.

(d) Continuing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(e) A licensed mortgage loan originator:

(1) May only receive credit for a continuing education course in the year in which the course is taken; and

(2) May not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(f) 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 two (2) hours credit for every one (1) hour taught.

(g) A person having successfully completed the education requirements approved by the Nationwide Mortgage Licensing System and Registry in subsections (a)(1), (2), and (3) for any state shall be accepted as credit towards completion of continuing education requirements in Tennessee.

Section 45-13-308. *Provisional mortgage loan originator license.*

Notwithstanding any provision in this chapter or in the Industrial Loan and Thrift Companies Act, compiled in title 45, chapter 5, to the contrary, the commissioner is authorized to issue a provisional mortgage loan originator license to any individual who

has not completed the pre-licensing education requirements set forth in § 45-13-304 or has not passed a written test that meets the test requirement described in § 45-13-305; provided, that such individual meets all other requirements for a license under this part, and also provided that no provisional mortgage loan originator license shall be issued after or valid after July 30, 2010. A provisional mortgage loan originator license shall for all purposes be considered a mortgage loan originator license issued under this part, except that a provisional license shall expire on July 30, 2010 unless the individual holding such license has by such date completed the pre-licensing education requirements set forth in § 45-13-304 and has passed a written test that meets the test requirement described in § 45-13-305. If the individual timely completes the pre-licensing education requirements and timely passes the written test, the “provisional” nature of the license shall be removed, and the license shall not expire until the end of the calendar year by which both such requirements have been met. Subject to the July 30, 2010 expiration date, a provisional mortgage loan originator license issued in 2009 may be renewed for 2010 pursuant to § 45-13-306 without satisfying the annual continuing education requirements described in § 45-13-307.

Part 4 – Prohibitions and Enforcement.

Section 45-13-401. Prohibited acts and practices.

It is a violation of this chapter for any person subject to this chapter to:

(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(2) Solicit or enter into a contract with a borrower that provides in substance that the person subject to this chapter may earn a fee or commission through “best efforts” to obtain a residential mortgage loan even though no loan is actually obtained for the borrower;

(3) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;

(4) Conduct any business covered by this chapter without holding a valid license as required under this chapter, or assist or aide and abet any person in the conduct of business under this chapter without a valid license as required under this chapter;

(5) Fail to comply with this chapter, or any rules or regulations promulgated under this chapter;

(6) Contract for and/or collect interest on a residential mortgage loan at a rate in violation of the maximum effective rate of interest applicable to the contract, as established pursuant to Tennessee Code Annotated, Title 47, Chapter 14 or 15, as applicable, unless otherwise authorized by law to do so;

(7) Fail to comply with any other state or federal law, or rules or regulations promulgated thereunder, applicable to any business authorized or conducted under this chapter including, but not limited to, the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, et seq., the Truth In Lending Act, 15 U.S.C. § 1601, et seq., and the Equal Credit Opportunity Act, 15 U.S.C. § 1691-1691f;

(8) Make, in any manner, any false or deceptive statement or representation to a borrower or potential borrower including, but not limited to, with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising;

(9) Make any false statement or material omission in connection with any information reported to or filed with the commissioner or with the Nationwide

Mortgage Licensing System and Registry, or in connection with any examination or investigation conducted by the commissioner;

(10) Fail to accurately account for monies belonging to a party to a residential mortgage loan transaction;

(11) Fail to disburse funds in accordance with a written agreement;

(12) Obtain any agreement or instrument in which blanks are left to be filled in after execution;

(13) Delay closing of any residential mortgage loan for the purpose of increasing interest, costs, fees, or charges payable by the borrower;

(14) Intimidate a real estate appraiser or influence an appraiser's report relating to market conditions or determination of value;

(15) Refuse to permit the commissioner to make an examination authorized under this chapter; or

(16) Assign or attempt to assign any license issued under this chapter.

Section 45-13-402. *False or misleading advertising unlawful – Exceptions.*

It is unlawful for any person to place or cause to be placed any false or misleading advertising matter pertaining to mortgage loans or the availability of mortgage loans; provided, that this section shall not apply to the owner, publisher, operator or employees of any publication or radio or television station that disseminates the advertising matter.

Section 45-13-403. *Payments to contractor from proceeds of mortgage loan for home improvement.*

(a) A licensed mortgage lender or mortgage loan broker shall not make any payments to a contractor or home improvement contractor from proceeds of a mortgage loan for home improvement other than:

(1) In the form of an instrument that is payable to the borrower or jointly to the borrower and the contractor or home improvement contractor; or

(2) At the election of the borrower by a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the licensee, and the contractor or home improvement contractor prior to the date of payment.

(b) A licensed mortgage lender or mortgage loan broker shall not permit a contractor or home improvement contractor to be a cosigner or to act as a guarantor for a mortgage loan for home improvement.

(c) As used in this section, "mortgage loan for home improvement" means a consumer credit mortgage loan transaction involving property located within this state regardless of the amount of the loan.

(d) The commissioner is authorized to impose a civil penalty in an amount not to exceed twenty-five thousand dollars (\$25,000) for each violation of this section after notice and opportunity for a hearing.

Section 45-13-404. *Investigation and examinations.*

(a) In addition to any authority allowed the commissioner elsewhere, the commissioner shall have the authority to conduct investigations and examinations of persons subject to this chapter, including those suspected to be engaging in business subject to this chapter, as often as necessary in order to carry out the purposes of this chapter. In order to carry out the purposes of this section, the commissioner may:

(1) 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;

(2) Use, hire, contract or employ public or privately available analytical systems, methods or software to examine or investigate persons subject to this chapter;

(3) Accept and rely on examination or investigation reports made by other government officials, within or without this state; and

(4) Accept audit reports made by independent certified public accountants for the person subject to this chapter 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 examination, report of investigation or other writing of the commissioner.

(b) For purposes of initial licensing, renewal, suspension, or revocation, or for general or specific inquiry relative to any other investigation or examination, the commissioner shall have the authority to access, receive, review and use any books, accounts, records, files, documents, information, or evidence including, but not limited to the following:

(1) Criminal, civil and administrative history information;

(2) Personal history and experience information including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and

(3) Any other documents, information, or evidence the commissioner deems relevant to the inquiry or investigation, regardless of the location, possession, control, or custody of such documents, information, or evidence.

(c) To carry out an investigation or examination, the commissioner may issue subpoenas, administer oaths, compel attendance, examine under oath all persons whose testimony may be relevant, and compel the production of any relevant records,

books, papers, contracts, accounts, files, or other documents. This power shall include the authority to interview the officers, principals, loan originators, employees, independent contractors, agents, and customers of the subject of the investigation or examination concerning the business of the licensee or other person subject to this chapter.

(d) Each person subject to investigation or examination shall make available to the commissioner upon request the books and records relating to the operations of such person, and shall permit the commissioner to have access to said person's offices and places of business. In addition, each such person shall make or compile reports or prepare other information as directed by the commissioner in order to carry out the purposes of this section including, but not limited to:

(1) Accounting compilations;

(2) Information lists and data concerning loan transactions in a format prescribed by the commissioner; or

(3) Such other information deemed necessary to carry out the purposes of this section.

(e) If any person fails to comply with a subpoena of the commissioner under this chapter or to testify concerning any matter about which the person may be interrogated under this chapter, the commissioner may petition any court of competent jurisdiction for enforcement, and may additionally suspend any license issued to said person pending compliance with the subpoena.

(f) Any mortgage lender, mortgage loan broker, mortgage loan servicer, or registrant that is investigated or examined under this section shall pay to the commissioner the reasonable and actual expenses of the investigation or examination.

The fees shall be payable in addition to all other fees, taxes and costs now required by law.

(g) Any person aggrieved by the conduct of a person subject to this chapter in connection with a residential mortgage loan, or in connection with any other activities of a mortgage lender, mortgage loan servicer or mortgage loan broker, may file a written complaint with the commissioner who is authorized to investigate the complaint.

(h) The commissioner has exclusive administrative power to investigate and enforce any and all complaints filed by any person that are not criminal in nature, which complaint relates to mortgage lenders, mortgage loan brokers, mortgage servicers, or mortgage loan originators.

(i) No person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information that the commissioner may lawfully examine or investigate.

(j) The authority of this section shall remain in effect whether the person subject to investigation or examination acts or claims to act under any licensing or registration law, or claims to act without such authority.

Section 45-13-405. *Violations -- Cease and Desist Orders -- Penalties.*

(a) If, after notice and opportunity for a hearing, the commissioner finds that a person has violated this chapter, or any administrative rule issued pursuant to this chapter, the commissioner may take any or all of the following actions:

(1) Order the person to cease and desist violating this chapter or any administrative rule issued pursuant to this chapter;

(2) Require the refund of any interest, fees, or charges collected by the person in violation of this chapter or any administrative rule issued pursuant to this chapter;

(3) Order the person to pay the commissioner a civil monetary penalty of not more than ten thousand dollars (\$10,000) for each violation of this chapter or administrative rule issued pursuant to this chapter; or

(4) Suspend or revoke any license issued under this chapter.

(b) For any violation of this chapter, the commissioner may deny an application for licensure or refuse to renew a license issued under this chapter. The commissioner may also, after notice and opportunity for a hearing, suspend or revoke any license issued under this chapter for failure to maintain the requirements for licensure.

(c) When a licensee is accused of any act, omission, or misconduct that would subject the licensee to disciplinary action, the licensee, with the consent and approval of the commissioner, may surrender the license and all the rights and privileges pertaining to it for a period of time established by the commissioner. A person who surrenders a license shall not be eligible for or submit any application for a license under this chapter for a period of time established by the commissioner.

(d) A licensee is subject to disciplinary action if any officer, director, person owning twenty-five percent (25%) or more of the licensee's outstanding capital, member, partner, managing principal, branch manager, mortgage loan originator, employee, or any other person who acts on behalf of the licensee, violates any provision of this chapter.

Section 45-13-406. *Consent orders.*

(a) The commissioner may enter into consent orders at any time with any person to resolve any matter arising under this chapter. A consent order shall be signed by the

person to whom it is issued, or a duly authorized representative, and shall indicate agreement to the terms contained in the consent order. A consent order need not constitute an admission by any person that any provision of this chapter, or any rule, regulation or order promulgated or issued under this chapter has been violated, nor need it constitute a finding by the commissioner that the person has violated any provision of this chapter or any rule, regulation or order promulgated or issued under this chapter.

(b) Notwithstanding the issuance of a consent order, the commissioner may seek civil or criminal penalties or compromise civil penalties concerning matters encompassed by the consent order.

(c) In cases involving extraordinary circumstances requiring immediate action, the commissioner may take any enforcement action authorized by this chapter by issuing a temporary emergency order, without providing the opportunity for a prior hearing. In such cases, the commissioner shall promptly afford a subsequent hearing upon an application to rescind the emergency order that is filed with the commissioner within twenty (20) days after receipt of the notice of the commissioner's emergency action. If no such appeal is timely filed, the temporary emergency order of the commissioner shall become final.

Section 45-13-407. *Bar from industry.*

(a) If the criminal, civil or administrative judgment involved any offense reasonably related to the qualifications, functions, or duties of a person engaged in the business in accordance with the provisions of this chapter, the commissioner, after notice and opportunity for hearing, may censure, suspend, or bar a person from any position of management, control, employment or providing services for any licensee or registrant or other person subject to the commissioner's jurisdiction, if the commissioner finds that the:

(1) Censure, suspension, or bar is in the public interest and that the person has committed or caused a violation of this chapter or any rule, regulation or order of the commissioner; or

(2) Person has been:

(A) Convicted of or pled guilty to or pled nolo contendere to any crime; or

(B) Held liable in any civil action by final judgment, or any administrative judgment by any public agency.

(b) Persons suspended or barred under this section are prohibited from participating in any business activity of a registrant or licensee and from engaging in any business activity on the premises where a registrant or licensee is conducting its business. This subsection (b) shall not be construed to prohibit suspended or barred persons from having their personal transactions processed by a registrant or licensee.

(c) This section shall apply to any violation, conviction, plea, or judgment after July 1, 2001.

Part 5 - Nationwide Mortgage Licensing System and Registry.

Section 45-13-501. Authority to Participate in the Nationwide Mortgage Licensing System and Registry.

(a) In addition to any other duties imposed upon the commissioner by law, the commissioner is authorized to require mortgage lenders, mortgage loan brokers, and mortgage loan servicers, and shall require all mortgage loan originators, to be licensed and/or registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out the preceding, the commissioner is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the commissioner may:

(1) Promulgate whatever rules and regulations necessary for participation in, transition to, or operation of the Nationwide Mortgage Licensing System and Registry;

(2) 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 licensees or other persons subject to this chapter;

(3) Require that applications for licensing under this chapter, as well as renewals of such licenses, be filed with the Nationwide Mortgage Licensing System and Registry;

(4) Require that any fees required to be paid under this chapter be paid through the Nationwide Mortgage Licensing System and Registry;

(5) Establish for licensees deadlines for transitioning to the Nationwide Mortgage Licensing System and Registry, which authority includes the refusal to accept any applications or renewal applications not filed with the Nationwide Mortgage Licensing System and Registry after such deadlines, notwithstanding any dates established elsewhere in this chapter; provided, however, that the commissioner shall provide reasonable notice of such deadlines pertaining to transitioning; and

(b) Notwithstanding any other provision of this section, the commissioner retains full authority and discretion to license persons under this chapter and to enforce this chapter to its fullest extent. Nothing in this section shall be deemed to be a reduction or derogation of that authority and discretion.

(c) Applicants for and holders of licenses issued under this chapter shall pay all costs associated with submitting an application to or transitioning a license to the Nationwide Mortgage Licensing System and Registry, as well as all costs required by the Nationwide Mortgage Licensing System and Registry for maintaining and renewing any license issued by the commissioner on the Nationwide Mortgage Licensing System and Registry.

Section 45-13-502. *Nationwide Mortgage Licensing System and Registry as Agent.*

The commissioner may use the Nationwide Mortgage Licensing System and Registry as an agent for channeling information, whether criminal or non-criminal in nature, whether derived from or distributed to the United States department of justice or any other state or federal governmental agency, or any other source, that the commissioner is authorized to request or distribute under this chapter.

Section 45-13-503. *Mortgage call reports.*

Each person holding a license issued under this chapter shall, pursuant to order or direction of the commissioner, submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require.

Section 45-13-504. *Nationwide Mortgage Licensing System and Registry information challenge process.*

The commissioner shall establish a process whereby mortgage loan originators may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the commissioner.

Section 45-13-505. *Confidentiality.*

In order to promote more effective regulation and reduce regulatory burden through supervisory information sharing -

(1) Except as otherwise provided in Public Law 110-289, Section 1512, the requirements under any federal or state law regarding 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 (including the rules of any federal or state court) with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. Such information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or state law, including under Tennessee Code Annotated, Section 45-1-120.

(2) For these purposes, the commissioner is authorized to enter 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, regulation or order of the commissioner.

(3) Information or material that is subject to a privilege or confidentiality under subdivision (1) shall not be subject to:

(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; or

(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 such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege.

(C) This section shall supersede any inconsistent provisions of Tennessee Code Annotated, Title 10, Chapter 7, Part 5, pertaining to the records open to public inspection.

(D) This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

Section 45-13-506. Report to Nationwide Mortgage Licensing System and Registry.

The commissioner shall regularly report violations of this chapter by mortgage loan originators, as well as enforcement actions and other relevant information pertaining thereto, to the Nationwide Mortgage Licensing System and Registry, subject to § 45-13-505.

SECTION 9. Tennessee Code Annotated, Section 45-1-117 is amended by adding the following language as a new appropriately designated subsection of the statute:

(_) As a condition of employment with the department, the commissioner is authorized to require an applicant to provide the department or a duly authorized state contractor with a fingerprint sample in a form acceptable to the commissioner, as well as consent to a criminal history records check. Any criminal history records check conducted under this subsection shall be conducted by the Tennessee bureau of investigation and/or the federal bureau of investigation, and the results of such check shall be forwarded to the commissioner. The department shall pay the reasonable costs

incurred in conducting the criminal history records check. The commissioner shall by rule or by policy determine what classes of applicants shall submit to a fingerprint criminal history records check and what officers or employees of the department shall have access to the results of the criminal history records check. Notwithstanding the foregoing, this subsection shall not apply to applicants for clerical or support staff positions as determined by the commissioner. The department shall maintain the confidentiality of all criminal history records information received pursuant to this subsection.

SECTION 10. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 11. Sections 1, 2, 3, 4, 6 and 7 of this act shall take effect upon becoming a law, the public welfare requiring it. For the purpose of promulgating rules and regulations, Sections 5 and 8 of this act shall take effect upon becoming a law, the public welfare requiring it; however, for all other purposes, Sections 5 and 8 of this act shall take effect July 31, 2009, the public welfare requiring it. For the purpose of promulgating rules and regulations, Section 9 of this act shall take effect upon becoming a law, the public welfare requiring it; however, for all other purposes Section 9 of this act shall take effect January 1, 2010, the public welfare requiring it.