

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

A Bill

HOUSE BILL 1801

5 By: Representative Lundstrum
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE FAIR MORTGAGE LENDING ACT; AND
9 FOR OTHER PURPOSES.
10

Subtitle

11 TO AMEND THE FAIR MORTGAGE LENDING ACT.
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16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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18 SECTION 1. Arkansas Code § 23-39-505(a)(4)(D), concerning the
19 qualifications for licensure as a loan officer, mortgage banker, mortgage
20 broker, or mortgage servicer under the Fair Mortgage Lending Act, is amended
21 to read as follows:

22 (D)(i) The qualifications, business history, and financial
23 condition of the applicant and ~~any partner, officer, director, any person~~
24 ~~occupying a similar status or performing similar functions, any a~~ managing
25 principal, ~~or any person directly or indirectly controlling~~ of the applicant.
26

27 (ii) The qualifications and business history of
28 persons under subdivision (a)(4)(D)(i) of this section shall include:

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

32 (b) A conviction of a misdemeanor involving
33 fraudulent dealings or moral turpitude or relating to any aspect of the
34 mortgage industry, the securities industry, the insurance industry, or any
35 other activity pertaining to financial services; ~~and~~

36 (c) A felony conviction; and

(d) Fingerprints for submission to the Federal



1 Bureau of Investigation and any governmental agency or entity authorized to
 2 receive fingerprints for a state, national, and international criminal
 3 background check; and

4
 5 SECTION 2. Arkansas Code § 23-39-505(c), concerning requirements for
 6 licensure as a mortgage banker, mortgage broker, or mortgage servicer under
 7 the Fair Mortgage Lending Act, is amended to read as follows:

8 ~~(c) In addition to the requirements under subsections (a) and (b) of~~
 9 ~~this section, each~~ Each applicant for licensure as a mortgage broker,
 10 mortgage banker, or mortgage servicer shall comply with the following
 11 requirements at the time of application and at all times thereafter:

12 (1) If the applicant is a sole proprietor, the applicant shall
 13 have at least three (3) years of experience in mortgage lending or other
 14 experience or competency requirements as the commissioner may adopt by rule
 15 or order;

16 (2) If the applicant is a general or limited partnership, at
 17 least one (1) of its general partners shall have the experience as described
 18 in subdivision (c)(1) of this section;

19 (3) If the applicant is a corporation, at least one (1) of its
 20 principal officers shall have the experience as described in subdivision
 21 (c)(1) of this section; and

22 (4) If the applicant is a limited liability company, at least
 23 one (1) of its managers shall have the experience as described under
 24 subdivision (c)(1) of this section.

25
 26 SECTION 3. Arkansas Code § 23-39-505(f), concerning the surety bond
 27 requirements for licensure under the Fair Mortgage Lending Act, is amended to
 28 read as follows:

29 (f)(1)~~(A)~~ Each mortgage broker, mortgage banker, and mortgage servicer
 30 shall post a surety bond in the an amount ~~prescribed by rule or order of the~~
 31 ~~commissioner.;~~

32 ~~(B) The amount of the surety bond prescribed by the~~
 33 ~~commissioner under subdivision (f)(1)(A) of this section shall be:~~

34 ~~(i)(A)~~ Based upon loan activity during the previous year;
 35 ~~and~~

36 ~~(ii)(B)~~ Not less than one hundred thousand dollars

1 (\$100,000); and

2 (C) As prescribed by rule or order of the commissioner.

3 (2) The surety bond shall be in ~~the a~~ form ~~prescribed by~~
 4 satisfactory to the commissioner ~~and shall run to the state for the benefit~~
 5 ~~of any claimants against the licensee and loan officers employed by the~~
 6 ~~licensee to secure the faithful performance of the obligations of the~~
 7 ~~licensee and loan officers employed by the licensee under this subchapter.~~

8 (3) Every bond shall provide for suit on the bond by any person
 9 who has a cause of action under this chapter.

10 (4) The aggregate liability of the surety shall not exceed the
 11 principal sum of the bond.

12 ~~(4) A party having a claim against the licensee may bring suit~~
 13 ~~directly on the surety bond, or the commissioner may bring suit on behalf of~~
 14 ~~any claimants, either in one (1) action or in successive actions.~~

15 (5) ~~Consumer claims shall be given priority in recovering from~~
 16 ~~the bond~~ A surety bond shall cover claims for at least five (5) years after
 17 the licensee ceases to provide mortgage services in this state or longer if
 18 required by the commissioner.

19
 20 SECTION 4. Arkansas Code § 23-39-510 is amended to read as follows:

21 23-39-510. Licensee duties.

22 (a) In addition to duties imposed by other statutory or common law, a
 23 person required to be licensed under this subchapter shall:

24 (1) Safeguard and account for any money received for, from, or
 25 on behalf of the borrower;

26 (2) Follow reasonable and lawful instructions from the borrower;

27 (3) Act with reasonable skill, care, and diligence;

28 (4) Make reasonable efforts with lenders with whom a mortgage
 29 broker regularly does business to secure a loan that is reasonably
 30 advantageous to the borrower considering all the circumstances, including the
 31 rates, charges, and repayment terms of the loan and the loan options for
 32 which the borrower qualifies with such lenders;

33 (5) Include the full name, address, and telephone number of the
 34 licensee in all solicitations and advertisements; and

35 (6)(A) Provide the Securities Commissioner with a quarterly
 36 report of mortgage activity.

1 (B) The commissioner may designate by rule or order the
 2 information to be provided in the quarterly report.

3 (b) At the time a mortgage servicer accepts assignment of servicing
 4 rights for a mortgage loan in this state, the mortgage servicer shall
 5 disclose to the borrower the following:

6 (1) Any notice required by the Real Estate Settlement Procedures
 7 Act of 1974, § 12 U.S.C. 2601 et seq., as it existed on January 1, 2017, or
 8 by regulations promulgated thereunder; and

9 (2) A notice in a clear and conspicuous form and content that
 10 the mortgage servicer is licensed in Arkansas and that complaints about the
 11 mortgage servicer may be submitted to the commissioner.

12 (c) The unique identifier of a person soliciting or originating a
 13 mortgage loan shall be clearly shown on all mortgage loan application forms,
 14 solicitations, advertisements, business cards, websites, and any other
 15 document or medium established by rule or order of the commissioner.

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