

State of Arkansas
85th General Assembly
Regular Session, 2005

A Bill

HOUSE BILL 2658

By: Representative J. Hutchinson

For An Act To Be Entitled

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

Subtitle

TO AMEND THE FAIR MORTGAGE LENDING ACT.

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

SECTION 1. Arkansas Code §§ 23-39-502 – 23-39-509 are amended to read as follows:

23-39-502. Definitions.

For purposes of this subchapter:

(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~~ one (1) or more branch offices of a mortgage broker, ~~or mortgage banker, or mortgage servicer;~~

(2) "Branch office" means ~~an office of a licensee~~ a location that is separate and distinct from the licensee's principal ~~office,~~ place of business:

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

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

(C) Which, due to the actions of any employee, associate,



1 or loan officer of the licensee, may be construed by the public as a branch
 2 office of the licensee where mortgage loans are originated, solicited,
 3 accepted, negotiated, funded, or serviced or from which mortgage loan
 4 commitments or interest rate guarantee agreements are issued;

5 (3) "Commissioner" means the Securities Commissioner and
 6 includes the commissioner's designees;

7 (4) "Control" means the power to vote more than twenty percent
 8 (20%) of outstanding voting shares or other interests of a corporation,
 9 partnership, limited liability company, limited partnership, association, or
 10 trust;

11 (5) "Employee" means an individual who is employed by a mortgage
 12 broker, mortgage banker, or mortgage servicer, whether by employment
 13 contract, agency, or other arrangement, and regardless of whether the
 14 individual ~~and who~~ is treated as an employee for purposes of compliance with
 15 the federal income tax laws;

16 (6)(A) "Exempt person" means a person not required to be
 17 licensed as a mortgage broker, mortgage banker, mortgage servicer, or loan
 18 officer under this subchapter.

19 (B) "Exempt person" includes any of the following:

20 (i) An employee of a licensee whose responsibilities
 21 are limited to clerical and administrative tasks for his or her employer and
 22 who does not solicit borrowers, accept applications, or negotiate the terms
 23 of loans on behalf of the employer;

24 (ii) An agency or corporate instrumentality of the
 25 federal government or any state, county, or municipal government granting
 26 mortgage loans under specific authority of the laws of any state or of the
 27 United States;

28 (iii) A trust company or industrial loan company
 29 chartered under the laws of Arkansas;

30 (iv) An insurance company licensed or authorized to
 31 conduct business ~~with~~ by the State Insurance Department;

32 (v) A small-business investment corporation licensed
 33 under the Small Business Investment Act of 1958, 15 U.S.C. § 661 et seq.;

34 (vi) A real estate investment trust as defined in 26
 35 U.S.C. § 856;

36 (vii) A state or federally chartered bank, savings

1 bank, savings and loan association, or credit union, the accounts of which
 2 are insured by the Federal Deposit Insurance Corporation or the National
 3 Credit Union Administration ~~or a direct, wholly owned subsidiary of these~~
 4 ~~organizations whose accounts are insured by the Federal Deposit Insurance~~
 5 ~~Corporation or the National Credit Union Administration~~ or any of their
 6 operating subsidiaries;

7 (viii) An agricultural loan organization that is
 8 subject to licensing, supervision, or auditing by the United States
 9 Agricultural Stabilization and Conservation Service, Commodity Credit
 10 Corporation, Farmers Home Administration, Farm Credit Administration, or the
 11 United States Department of Agriculture;

12 (ix) A nonprofit corporation that:

13 (a) Qualifies as a nonprofit entity
 14 under § 501(c)(3) of the Internal Revenue Code;

15 (b) Is not primarily in the business of
 16 soliciting or brokering mortgage loans; and

17 (c) Makes or services mortgage loans to
 18 promote home ownership or home improvements for the disadvantaged;

19 (x)(a) A licensed real estate agent or broker who is
 20 performing those activities subject to the regulation of the Arkansas Real
 21 Estate Commission.

22 (b) Notwithstanding subdivision (6)(B)(x)(a)
 23 of this section, an exempt person does not include a real estate agent or
 24 broker who receives compensation of any kind in connection with the referral,
 25 placement, or origination of a mortgage loan;

26 (xi) A person who as a seller of real property
 27 receives mortgages, deeds of trust, or other security instruments on real
 28 estate as security for a purchase money obligation, if:

29 (a) The person does not receive from or hold
 30 on behalf of the borrower any funds for the payment of insurance or taxes on
 31 the real property; and

32 (b) The maker of the liens or mortgages does
 33 not sell the liens or mortgages in the secondary market other than to
 34 affiliated or subsidiary persons;

35 (xii) An individual or husband and wife who provide
 36 funds for investment in loans secured by a lien on real property on his or

her or their own account and who do not:

(a) Charge a fee or cause a fee to be paid for any service other than the normal and scheduled rates for escrow, title insurance, and recording services; and

(b) Collect funds to be used for the payment of any taxes or insurance premiums on the property securing the loans;

(xiii) An attorney at law rendering services in the performance of his or her duties as an attorney at law;

(xiv) A person doing business under the laws of Arkansas or the United States relating to any broker-dealer, agent, investment adviser, or investment adviser representative registered with the State Securities Department;

(xv) A person performing any act under order of any court;

(xvi) A person acting as a mortgage broker, mortgage banker, or mortgage servicer for any person located in Arkansas, if the mortgage broker, mortgage banker, or mortgage servicer has no office or employee in Arkansas and the real property that is the subject of the mortgage is located outside of Arkansas;

(xvii) A person who brokers, makes, or services mortgage loans if the only mortgage loans that the person brokers, makes, or services in Arkansas are nonresidential mortgage loans;

~~(xvii)~~ (xviii) An officer or employee of an exempt person described in subdivisions (6)(B)(ii)-(xvi) of this section if acting in the scope of employment for the exempt person; and

~~(xviii)~~ (xix) Other persons as the commissioner may by rule or order designate;

(7) "Licensee" means a loan officer, mortgage broker, mortgage banker, or mortgage servicer who is licensed under this subchapter;

(8) "Loan officer" means an individual other than an exempt person described in subdivision (6) of this section who in exchange for compensation as an employee of a mortgage broker or a mortgage banker licensed under this subchapter; ~~solicits, accepts, or offers to accept applications for mortgage loans;~~

(A) Solicits or offers to solicit an application for a mortgage loan;

1 (B) Accepts or offers to accept an application for a
 2 mortgage loan;

3 (C) Negotiates or offers to negotiate the terms or
 4 conditions of a mortgage loan; or

5 (D) Issues or offers to issue a mortgage loan commitment
 6 or interest rate guarantee agreement;

7 (9) "Make a mortgage loan" means to close a mortgage loan, to
 8 advance funds, to offer to advance funds, or to make a commitment to advance
 9 funds to a borrower under a mortgage loan;

10 (10) "Managing principal" means a person who meets the
 11 requirements of § 23-39-505 and who agrees to be primarily responsible for
 12 the operations of a licensed mortgage broker, ~~or mortgage banker,~~ or mortgage
 13 servicer;

14 (11) "Mortgage banker" means a person who engages in the
 15 business of making mortgage loans for compensation or other gain;

16 (12) "Mortgage broker" means a person who for compensation or
 17 other gain or in the expectation of compensation or other gain and,
 18 regardless of whether the acts are done directly or indirectly, through
 19 contact by telephone, by electronic means, by mail, or in person with the
 20 borrowers or potential borrowers:

21 (A) Accepts or offers to accept an application for a
 22 mortgage loan;

23 (B) Solicits or offers to solicit an application for a
 24 mortgage loan;

25 (C) Negotiates or offers to negotiate the terms or
 26 conditions of a mortgage loan; or

27 (D) Issues or offers to issue mortgage loan commitments or
 28 interest rate guarantee agreements to borrowers;

29 (13) "Mortgage loan" means a loan primarily secured by either a
 30 mortgage or a deed of trust on real property;

31 (14) "Mortgage servicer" means a person who ~~under a contract~~
 32 ~~with a mortgage banker~~ receives from or on behalf of a borrower:

33 (A) Funds or credits ~~from or on behalf of a borrower~~ in
 34 payment for a mortgage loan; or

35 (B) The taxes or insurance associated with a mortgage
 36 loan;

(15) "Nonresidential mortgage loan" means a loan secured by an interest in real property used or to be used for other than one-to-four-family residential purposes;

(16) "Operating subsidiary" means a separate corporation, limited liability company, or similar entity in which a national or state bank, savings and loan association, or credit union, the accounts of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, maintains more than fifty percent (50%) voting rights, a controlling interest, or otherwise controls the subsidiary and no other party controls more than fifty percent (50%) of the voting rights or a controlling interest in the subsidiary;

~~(15)~~(17) "Person" means an individual, partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities, however organized; and

~~(16)~~(18) "Principal place of business" means a stationary construction consisting of at least one (1) enclosed room or building in which negotiations of mortgage loan transactions of others may be conducted in private or in which the primary business functions of the licensee are conducted.

23-39-503. License required - Licensee records.

(a)(1) It is unlawful for any person located in Arkansas, other than an exempt person, to act or attempt to act, directly or indirectly, as a mortgage broker, mortgage banker, loan officer, or mortgage servicer without first obtaining a license from the Securities Commissioner under this subchapter.

(2) Each mortgage banker and mortgage servicer that was exempt from the licensing requirements of §§ 23-39-101 - 23-39-309 [repealed] or held a valid license under §§ 23-39-101 - 23-39-309 [repealed] as of December 31, 2003, shall have one hundred twenty (120) days from the end of its fiscal year to register under this section.

(3) Each loan officer shall have until July 1, 2004, to register under this section.

(b) It is unlawful for any person other than an exempt person to act or attempt to act, directly or indirectly, as a mortgage broker, mortgage banker, loan officer, or mortgage servicer with any person located in

1 Arkansas without first obtaining a license from the commissioner under this
2 subchapter.

3 (c) It is unlawful for any person other than an exempt person to
4 employ, to compensate, or to appoint as its agent any person to act as a loan
5 officer unless the loan officer is licensed as a loan officer under this
6 subchapter.

7 (d)(1) The license of a loan officer shall terminate when his or her
8 employment by or relationship with a mortgage broker or mortgage banker
9 licensed under this subchapter terminates.

10 (2) When a loan officer ceases to be employed by a mortgage
11 broker or mortgage banker licensed under this subchapter, ~~the loan officer~~
12 ~~and~~ the mortgage broker or mortgage banker by whom that person was employed
13 shall notify the commissioner in writing within thirty (30) days from the
14 date on which the loan officer ceased to be employed.

15 (3)(A) Any licensee that does not comply with this section shall
16 pay a ~~fine~~ late fee equal to ten dollars (\$10.00) for each day that he or she
17 fails to notify the commissioner as provided in subdivision (d)(2) of this
18 section, not to exceed six hundred dollars (\$600).

19 (B) The late fee may be waived, in whole or in part, in
20 the sole discretion of the commissioner and for good cause shown.

21 (4) A loan officer shall not be employed simultaneously by more
22 than one (1) mortgage broker or mortgage banker licensed under this
23 subchapter.

24 (e) Each mortgage broker and mortgage banker licensed under this
25 subchapter shall maintain ~~on file with the commissioner~~ a list of all loan
26 officers employed by the mortgage broker or mortgage banker and who engage or
27 attempt to engage in business with any person in Arkansas.

28 (f) No person other than an exempt person shall hold himself or
29 herself out as a mortgage banker, mortgage broker, mortgage servicer, or loan
30 officer unless the person is licensed in accordance with this subchapter.

31
32 23-39-504. Rulemaking authority.

33 The Securities Commissioner may adopt any rules that he or she deems
34 necessary to:

- 35 (1) Carry out the provisions of this subchapter;
36 (2) Provide for the protection of the borrowing public; and

1 (3) Instruct mortgage ~~lenders or brokers,~~ mortgage bankers,
2 mortgage servicers, and loan officers in interpreting this subchapter.

3
4 23-39-505. Qualifications for licensure - Issuance.

5 (a)(1) Any person ~~other than an exempt person~~ desiring to obtain a
6 license as a loan officer, mortgage banker, mortgage broker, or mortgage
7 servicer shall make written application for licensure to the Securities
8 Commissioner in the form prescribed by the commissioner.

9 (2) The application may require that the information be
10 submitted in electronic format.

11 (3) In addition to any other information required under this
12 subchapter ~~and in accordance with~~ or any rules adopted by the commissioner,
13 the application shall contain any information the commissioner deems
14 necessary and shall include the following:

15 (A) The applicant's name, address, and social security
16 number;

17 (B) The applicant's form of business and place of
18 organization, if applicable;

19 (C) The applicant's proposed method of and locations for
20 doing business, if applicable;

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

25 (ii) The qualifications and business history of
26 persons under subdivision (a)(3)(D)(i) of this section shall include:

27 (a) A description of any injunction or
28 administrative order, including any denial to engage in a regulated activity,
29 by any state or federal authority to which the person is, has been, or has
30 sought to be subject;

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

35 (c) Any felony convictions; and

36 (E) With respect to:

1 (i) An application for licensing as a mortgage
2 banker, mortgage broker, or mortgage servicer, the applicant's financial
3 condition and business history; and

4 (ii) The application for licensing as a loan
5 officer, the applicant's business history.

6 (b) In addition to meeting the requirements imposed by the
7 commissioner under subsection (a) of this section, each individual applicant
8 for licensure as a loan officer shall:

9 (1) Be at least eighteen (18) years of age; and

10 (2) Have satisfactorily completed any educational and testing
11 requirements as the commissioner may by rule or order impose.

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

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

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

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

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

29 (d) Each applicant shall identify in its application one (1) person
30 meeting the requirements of subsection (c) of this section to serve as the
31 applicant's managing principal.

32 (e) Each applicant for initial licensure shall pay a filing fee of
33 seven hundred fifty dollars (\$750) for licensure as a mortgage broker,
34 mortgage banker, or mortgage servicer or fifty dollars (\$50.00) for licensure
35 as a loan officer.

36 (f)(1) Each mortgage banker and mortgage servicer shall post a surety

1 bond in the amount of one hundred thousand dollars (\$100,000), and each
 2 mortgage broker shall post a surety bond in the amount of fifty thousand
 3 dollars (\$50,000).

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

8 (3) The aggregate liability of the surety shall not exceed the
 9 principal sum of the bond.

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

13 (5) Consumer claims shall be given priority in recovering from
 14 the bond.

15 (6) Any appropriate deposit of cash or securities shall be
 16 accepted in lieu of any bond that is required.

17 (g) Each applicant filing for licensure as a mortgage banker, mortgage
 18 broker, or mortgage servicer shall file with the commissioner as part of his
 19 or her application audited financial statements that ~~are prepared in~~
 20 ~~accordance with generally accepted accounting principals as promulgated by~~
 21 ~~the Financial Accounting Standards Board, accompanied by an unqualified~~
 22 ~~opinion acceptable to the commissioner and dated within twelve (12) months~~
 23 ~~preceding the date on which the application is filed, that~~ reflect that the
 24 applicant has a net worth of at least twenty-five thousand dollars (\$25,000),
 25 and are:

26 (1) Prepared by an independent certified public accountant;

27 (2) Prepared in accordance with generally accepted accounting
 28 principals as promulgated by the Financial Accounting Standards Board;

29 (3) Accompanied by an unqualified opinion acceptable to the
 30 commissioner; and

31 (4) Dated within twelve (12) months preceding the date on which
 32 the application is filed.

33 (h) Any general partner, manager of a limited liability company, or
 34 officer of a corporation who individually meets the requirements under
 35 subsection (b) of this section shall be deemed to have met the qualifications
 36 for licensure as a loan officer ~~upon payment of the applicable fee upon~~

1 filing a written application with the commissioner in the form prescribed by
2 the commissioner and payment of the applicable fee.

3 (i)(1) Each principal office and each branch office of a mortgage
4 broker, mortgage banker, or mortgage servicer licensed under this subchapter
5 shall obtain a separate license.

6 (2) A licensed mortgage broker, mortgage banker, or mortgage
7 servicer shall file with the commissioner an application in the form
8 prescribed by the commissioner that identifies the address of the principal
9 office, each branch office, and each branch manager.

10 (3) The commissioner shall assess a filing fee of one hundred
11 dollars (\$100) for each branch office that is issued a license.

12 (j) Except as set forth in § 23-39-503(d), each license issued by the
13 commissioner under this subchapter shall expire at the close of business on
14 the following dates unless previously surrendered by the licensee and the
15 surrender is accepted by the commissioner, it is abandoned by the licensee as
16 provided in § 23-39-506, or it is suspended or revoked by the commissioner:

17 (1) One hundred eighty (180) days after the end of the
18 licensee's current fiscal year in the case of a mortgage broker, mortgage
19 banker, or mortgage servicer; and

20 (2) On the last day of the twelfth month after the date of
21 issuance in the case of a loan officer.

22 (k) Licenses issued under this subchapter are not transferable.

23 (l)(1) Control of a licensee shall not be acquired through a stock or
24 equity purchase, transfer of interest, or other device without the prior
25 written consent of the commissioner.

26 (2) Any person seeking to acquire control of a licensee shall:

27 (A) Pay the commissioner a fee of one hundred dollars
28 (\$100);

29 (B) Submit to the commissioner the information required
30 under subdivision (a)(3)(D) of this section and any other information deemed
31 relevant by the commissioner; and

32 (C) Certify that the licensee shall continue to meet the
33 qualifications under this section.

34 (3) The commissioner may refuse to give written consent if he or
35 she finds that any of the grounds for denial, revocation, or suspension of a
36 license under § 23-39-514 are applicable to the person seeking to acquire

1 control of a license.

2
3 23-39-506. License renewal - Termination.

4 (a)~~(1)~~ Each licensed mortgage broker, mortgage banker, and mortgage
5 servicer wishing to renew a license shall:

6 (1) File a renewal application with the Securities Commissioner
7 in the form prescribed by the commissioner within one hundred twenty (120)
8 days after the end of the licensee's fiscal year;

9 ~~(2) Each person under subdivision (a)(1) of this section may~~
10 ~~renew its license by:~~

11 ~~(A) Filing a renewal application on the form prescribed by~~
12 ~~the commissioner;~~

13 ~~(B) Filing audited financial statements through the end of~~
14 ~~the licensee's previous fiscal year that are prepared in accordance with~~
15 ~~generally accepted accounting principals as promulgated by the Financial~~
16 ~~Accounting Standards Board, accompanied by an unqualified opinion acceptable~~
17 ~~to the commissioner; and~~

18 (2)(A) Submit with the renewal application audited financial
19 statements through the end of the licensee's previous fiscal year that
20 reflect that the applicant has a net worth of at least twenty-five thousand
21 dollars (\$25,000).

22 (B) The audited financial statements shall be:

23 (i) Prepared by an independent certified public
24 accountant;

25 (ii) Prepared in accordance with generally accepted
26 accounting principles as promulgated by the Financial Accounting Standards
27 Board; and

28 (iii) Accompanied by an unqualified opinion
29 acceptable to the commissioner; and

30 ~~(C)(3) Paying~~ Pay the commissioner an annual renewal fee of three
31 hundred fifty dollars (\$350) for the licensee's principal office and one
32 hundred dollars (\$100) for each of the licensee's licensed branch office
33 offices.

34 ~~(b) A loan officer's license shall become invalid on the last day of~~
35 ~~the twelfth month from the date of issuance unless on or before that date, or~~
36 ~~another date as the commissioner designates, the loan officer files a renewal~~

1 ~~application on the form prescribed by the commissioner and pays an annual~~
 2 ~~renewal fee of fifty dollars (\$50.00).~~

3 ~~(e)-(1)(b)~~ The failure of a mortgage broker, mortgage banker, or
 4 mortgage servicer to timely file a renewal application shall subject ~~that~~
 5 ~~person~~ the licensee to a late fee of ~~fifty dollars (\$50.00)~~ twenty-five
 6 dollars (\$25.00) for each day, up to a maximum of ~~thirty (30)~~ sixty (60)
 7 days, that the renewal application is late.

8 (c) Each licensed loan officer wishing to renew a license shall:

9 (1) File an application with the commissioner in the form
 10 prescribed by the commissioner no later than sixty (60) days prior to the
 11 expiration date of the license; and

12 (2) Pay an annual renewal fee of fifty dollars (\$50.00).

13 (d) The failure of a loan officer to timely file a renewal application
 14 shall subject the loan officer to a late fee of fifty dollars (\$50.00).

15 ~~(2)(e)(1)~~ The Any late fee ~~shall be~~ assessed pursuant to subsection
 16 (b) or subsection (d) of this section shall be in addition to the renewal
 17 application fee under subsection (a) or subsection (c) of this section, but
 18 may be waived, in whole or in part, at the sole discretion of the
 19 commissioner for good cause shown.

20 ~~(3)(2)~~ If a mortgage broker, mortgage banker, ~~or~~ mortgage
 21 servicer, or loan officer fails to file a renewal application within ~~thirty~~
 22 ~~(30)~~ sixty (60) days after the date the renewal application is due, the
 23 commissioner may deem the license to be abandoned and ~~terminated~~ surrendered
 24 and may require the licensee to comply with the requirements for the initial
 25 issuance of a license under this subchapter in order to continue in business.

26 ~~(4)(3)~~ The commissioner shall not reissue any license for which
 27 a late fee has accrued as a result of a person's failure to timely ~~renew a~~
 28 license file a renewal application unless the late fee has been paid or
 29 waived by the commissioner for good cause shown.

30 ~~(d)~~ Licenses issued under this subchapter are not transferable.

31 ~~(e)(1)~~ Control of a licensee shall not be acquired through a stock or
 32 equity purchase, transfer of interest, or other device without the prior
 33 written consent of the commissioner.

34 ~~(2)~~ Any person seeking to acquire control of a licensee shall:

35 (A) Pay a fee of one hundred dollars (\$100);

36 (B) Submit to the commissioner the information required

~~under § 23-39-505(a)(3)(D) and any other information deemed relevant by the commissioner; and~~

~~(C) Certify that the licensee continues to meet the qualifications under § 23-39-505.~~

~~(3) The commissioner may refuse to give written consent if he or she finds that any of the grounds for denial, revocation, or suspension of a license under § 23-39-514 are applicable to the acquiring person.~~

23-39-507. Continuing education.

(a) In addition to the other licensing requirements under this subchapter ~~as a condition of license renewal~~, the Securities Commissioner may adopt rules to require continuing education of licensees under this subchapter for the purpose of enhancing the professional competence and professional responsibility of mortgage bankers, mortgage brokers, mortgage servicers, and loan officers and may condition the renewal of a license upon compliance with the commissioner's rules.

(b) The rules under subsection (a) of this section may include criteria for:

- (1) The content of continuing education courses;
- (2) Accreditation of continuing education sponsors and programs;
- (3) Accreditation of videotape or other audiovisual programs;
- (4) Computation of credit;
- (5) Special cases and exemptions;
- (6) General compliance procedures; and
- (7) Sanctions for noncompliance with the continuing education requirements.

(c) Annual continuing professional education requirements shall be determined by the commissioner but shall not exceed eight (8) credit hours within a one-year period.

23-39-508. Managing principals and branch managers.

(a) Each mortgage broker, ~~or mortgage banker~~, or mortgage servicer licensed under this subchapter shall have a managing principal who operates the business under that person's full charge, control, and supervision.

~~(b) Each principal office and branch office of a mortgage broker or mortgage banker licensed under this subchapter shall have a branch manager~~

~~who meets the experience requirements under § 23-39-505(e)(1).~~ Any individual licensee who operates as a sole proprietorship shall be considered a managing principal for the purposes of this subchapter.

(c) The managing principal for a licensee may also serve as the branch manager of one (1) or more of the licensee's branch offices.

(d)(1) Each branch office of a mortgage broker, mortgage banker, or mortgage servicer licensed under this subchapter shall have a designated branch manager who is in charge of and who is responsible for the business operations of a branch office.

(2) Each branch manager of a mortgage broker or mortgage banker must be licensed as a loan officer.

~~(d)(e)~~ Each mortgage broker, ~~or~~ mortgage banker, or mortgage servicer licensed under this subchapter shall file a form as prescribed by the Securities Commissioner indicating the ~~business's~~ licensee's designation of managing principal and branch manager for each branch and each individual's acceptance of the responsibility as managing principal or branch manager.

~~(e)(f)~~ Each mortgage broker, ~~or~~ mortgage banker, or mortgage servicer licensed under this subchapter shall notify the commissioner within thirty (30) days of any change in its managing principal or branch manager designated for each branch.

~~(f)(g)~~ (1) Any mortgage broker, ~~or~~ mortgage banker, or mortgage servicer that does not comply with this section shall pay a ~~fine~~ late fee equal to ten dollars (\$10.00) for each day that he or she fails to notify the commissioner of the violation, not to exceed six hundred dollars (\$600).

(2) The late fee may be waived, in whole or in part, in the sole discretion of the commissioner and for good cause shown.

~~(2)(3)~~ The commissioner may revoke or suspend the license of ~~or~~ may deny the renewal of any mortgage broker, ~~or~~ mortgage banker, or mortgage servicer who fails to pay any ~~fine issued~~ late fee assessed under subdivision (f)(1)(g)(1) of this section.

~~(g) Any individual licensee who operates as a sole proprietorship shall be considered a managing principal for the purposes of this subchapter.~~

23-39-509. Offices - Address changes - Location of records.

(a) Each mortgage broker, mortgage banker, and mortgage servicer shall maintain a principal place of business.

(b) In addition, each mortgage broker, mortgage banker, and mortgage servicer shall identify the location in which all of the books, records, and files pertaining to mortgage loan transactions relating to borrowers in Arkansas are maintained.

(c) The Securities Commissioner by rule may impose terms and conditions under which the records and files shall be maintained, including whether the records must be maintained in Arkansas.

(d)(1) Each mortgage banker, mortgage broker, or mortgage servicer shall report any change of address of the principal place of business, any branch office, or location in which the files pertaining to mortgage loan transactions relating to borrowers in Arkansas are maintained within thirty (30) days after the change.

(2)(A) Any licensee that does not comply with subdivision (d)(1) of this section shall pay a ~~fine~~ late fee equal to ten dollars (\$10.00) for each day that he or she fails to notify the commissioner, up to a maximum of six hundred dollars (\$600).

(B) The late fee may be waived, in whole or in part, at the sole discretion of the commissioner for good cause shown.

(3) The commissioner may revoke or suspend the license of ~~or may deny the renewal of the license of the~~ any mortgage broker, mortgage banker, or mortgage servicer who fails to pay any ~~fine issued~~ late fee assessed under subdivision (d)(2) of this section.

SECTION 2. Arkansas Code § 23-39-511 is amended to read as follows:
23-39-511. Records - Escrow funds or trust accounts.

(a) The Securities Commissioner shall keep a list of all applicants for licensure under this subchapter that includes:

- (1) The applicant's name;
- (2) The date of application;
- (3) The applicant's place of residence; and
- (4) Whether the license was granted or refused.

(b)(1) The commissioner shall keep a current roster showing the names and places of business of all licensees that shows their respective loan officers.

(2) The roster under subdivision (b)(1) of this section shall:

- (A) Be kept on file in the office of the commissioner;

(B) Contain information regarding all orders or other actions taken against the licensees, loan officers, and other persons; and

(C) Be open to public inspection.

(c) Every licensee shall make and keep the accounts, correspondence, memoranda, papers, books, and other records as prescribed in rules adopted by the commissioner.

(d)(1) If the information contained in any document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the licensee shall file a correcting amendment to the information contained in the document within thirty (30) days from the date on which the change takes place.

(2)(A) Any licensee that does not comply with subdivision (d)(1) of this section shall pay a ~~fine~~ late fee equal to ten dollars (\$10.00) for each day that he or she fails to file a correcting amendment, up to a maximum of six hundred dollars (\$600).

(B) The late fee may be waived, in whole or in part, at the sole discretion of the commissioner for good cause shown.

(e)(1) A licensee shall maintain in a segregated escrow fund or trust account any funds that come into the licensee's possession but that are not the licensee's property and which the licensee is not entitled to retain under the circumstances.

(2) The escrow fund or trust account under subdivision (e)(1) of this section shall be held on deposit in a federally insured financial institution.

SECTION 3. Arkansas Code § 23-39-513(1), concerning prohibited activities in mortgage loan transactions, is amended to read as follows:

In addition to the other activities that are prohibited under this subchapter, it is unlawful for any person other than a person described in § 23-39-502(6)(B)(vii) in the course of any mortgage loan transaction or activity:

(1) To misrepresent or conceal any material fact or make any false promise likely to influence, persuade, or induce an applicant for a mortgage loan or a borrower to take a mortgage loan or to pursue a course of misrepresentation through agents or otherwise;

SECTION 4. Arkansas Code § 23-39-514 is amended to read as follows:

23-39-514. Disciplinary authority.

(a) The Securities Commissioner by order may deny, suspend, revoke, or refuse to issue or renew a license of a licensee or applicant under this subchapter or may restrict or limit the activities relating to mortgage loans of any licensee or any person who owns an interest in or participates in the business of a licensee if the commissioner finds that:

(1) The order is in the public interest; and

(2) Any of the following circumstances apply to the applicant, licensee, or any partner, member, manager, officer, director, loan officer, managing principal, or any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant or licensee. The person:

(A) Has filed an application for license that as of its effective date or as of any date after filing contained any omission or statement that in light of the circumstances under which it was made is false or misleading with respect to any material fact;

(B) Has violated or failed to comply with any provision of this subchapter, any rule adopted by the commissioner, or any order of the commissioner issued under this subchapter or under Acts 1977, No. 806, as amended;

(C) Has pleaded guilty or nolo contendere to or been found guilty of:

(i) Any felony;

(ii) Any offense involving breach of trust, moral turpitude, or fraudulent or dishonest dealing within the past ten (10) years; or

(iii) Any offense involving mortgage lending, any aspect of the mortgage industry, or any aspect of the securities industry, the insurance industry, or any other activity pertaining to financial services;

(D) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the mortgage industry, the securities business, the insurance business, or any other activity pertaining to financial services;

(E) Is the subject of an order of the commissioner;

1 ~~(i) denying~~ Denying, suspending, or
 2 revoking that person's license as a mortgage broker, mortgage banker,
 3 mortgage servicer, loan officer, securities broker-dealer, securities agent,
 4 investment adviser, or investment adviser representative; or

5 (ii) Directing that person to cease and desist from
 6 any activity regulated by the commissioner, including any order entered
 7 pursuant to Acts 1977, No. 806, as amended;

8 (F) Is the subject of an order, including any denial,
 9 suspension, or revocation of authority to engage in a regulated activity by
 10 any other state or federal authority to which the person is, has been, or has
 11 sought to be subject, entered within the past five (5) years, including, but
 12 not limited to, the mortgage industry;

13 (G) Has been found by a court of competent jurisdiction to
 14 have charged or collected any fee or rate of interest or made or brokered any
 15 mortgage loan with terms or conditions or in a manner contrary to Arkansas
 16 Constitution, Amendment 60;

17 (H) Does not meet the qualifications or the financial
 18 responsibility, character, or general fitness requirements under § 23-39-505
 19 or any bond or net worth requirements under this subchapter;

20 (I) Has been the executive officer or controlling
 21 shareholder or owned a controlling interest in any mortgage broker, mortgage
 22 banker, or mortgage servicer who has been subject to an order or injunction
 23 described in subdivisions (a)(2)(D)-(G) of this section; or

24 (J)(i) Has failed to pay the proper filing fee, ~~or~~ renewal
 25 fee, or any late fees under this subchapter.

26 (ii) The commissioner may enter a denial order
 27 against a person under this subsection when the person has failed to pay the
 28 proper filing fee, ~~or~~ renewal fee, or any late fees under this subchapter,
 29 but the commissioner shall vacate the order when all fees, ~~including any late~~
 30 ~~fee~~, have been paid.

31 (b)(1) The commissioner, by order, may impose a civil penalty upon a
 32 licensee or any partner, officer, director, member, manager, or other person
 33 occupying a similar status or performing a similar function on behalf of a
 34 licensee for any violation of this subchapter, a rule under this subchapter,
 35 or an order of the commissioner.

36 (2) The civil penalty shall not exceed ten thousand dollars

1 (\$10,000) for each violation under subdivision (b)(1) of this section by a
2 mortgage broker, mortgage banker, mortgage servicer, or loan officer.

3 (c)(1) The commissioner, by order, may summarily postpone or suspend
4 the license of a licensee pending final determination of any proceeding under
5 this section.

6 (2) Upon entering the order, the commissioner shall promptly
7 notify the applicant or licensee that the order has been entered and the
8 reasons for issuing the order.

9 (3) The applicant or licensee may contest the order by
10 delivering a written request for a hearing to the commissioner within thirty
11 (30) days from the date on which ~~the licensee receives~~ notice of the order is
12 sent by the commissioner to the address of the licensee on file with the
13 commissioner by first class mail, postage prepaid.

14 (4) The commissioner shall schedule a hearing to be held within
15 thirty (30) days after the commissioner receives a timely written request for
16 a hearing.

17 (5) If a licensee does not request a hearing and the
18 commissioner does not order a hearing, the order will remain in effect until
19 it is modified or vacated by the commissioner.

20 (6) If a hearing is requested or ordered by the commissioner,
21 after notice of and opportunity for hearing, the commissioner may modify or
22 vacate the order or extend it until final determination.

23 (d)(1) In addition to other powers under this subchapter, upon finding
24 that any action of a person is in violation of this subchapter, the
25 commissioner may summarily order the person to cease and desist from the
26 prohibited action.

27 (2)(A) Upon entering the order under subdivision (d)(1) of this
28 section, the commissioner shall promptly notify the person that the order has
29 been entered and state the reasons for the order.

30 (B) The person may contest the cease and desist order by
31 delivering a written request for a hearing to the commissioner within thirty
32 (30) days from the date on which ~~the person receives~~ notice of the order is
33 sent by the commissioner to the last known address of the licensee by first
34 class mail, postage prepaid.

35 (C) The commissioner shall schedule a hearing to be held
36 within thirty (30) days after the commissioner receives a timely written

1 request for a hearing.

2 (D) If the person does not request a hearing and the
3 commissioner does not order a hearing, the order will remain in effect until
4 it is modified or vacated by the commissioner.

5 (E) If a hearing is requested or ordered, after notice of
6 and opportunity for hearing, the commissioner may modify or vacate the order
7 or make it permanent.

8 (3)(A) A person shall be subject to a civil penalty of up to
9 twenty-five thousand dollars (\$25,000) for each violation of the
10 commissioner's cease and desist order committed after entry of the order if:

11 (i) The person subject to the cease and desist order
12 fails to appeal the order in accordance with § 23-39-515 or if the person
13 appeals and the appeal is denied or dismissed; and

14 (ii) The person continues to engage in the
15 prohibited action in violation of the commissioner's order.

16 (B) The commissioner may file an action requesting the
17 civil penalty under subdivision (d)(3)(A) of this section with the Pulaski
18 County Circuit Court or any other court of competent jurisdiction.

19 (C) The penalties of this section apply in addition to,
20 but not in lieu of, any other provision of law applicable to a person for the
21 person's failure to comply with an order of the commissioner.

22 (e) Unless otherwise provided, any action, hearing, or other
23 proceeding under this subchapter shall be governed by the Arkansas
24 Administrative Procedure Act, § 25-15-201 et seq.

25 (f) If the commissioner has grounds to believe that any person has
26 violated the provisions of this subchapter or that facts exist that would be
27 the basis for an order against a licensee or other person, the commissioner
28 or the commissioner's designee, at any time, may investigate or examine the
29 loans and business of the licensee and examine the books, accounts, records,
30 and files of any licensee or other person relating to the complaint or matter
31 under investigation.

32 (g)(1) The commissioner or the commissioner's designee may:

33 ~~(1)~~(A) Administer oaths and affirmations;

34 ~~(2)~~(B) Issue subpoenas to require the attendance of and to
35 examine under oath all persons whose testimony the commissioner deems
36 relevant to the person's business; and

1 ~~(3)~~(C) Require the production of any books, papers,
2 correspondence, memoranda, agreements, or other documents or records which
3 the commissioner deems relevant or material to the inquiry.

4 (2)(A) In case of contumacy by or refusal to obey a subpoena
5 issued to any person, the Pulaski County Circuit Court upon application by
6 the commissioner may issue an order requiring the person to appear before the
7 commissioner or the officer designated by the commissioner, to produce
8 documentary evidence if so ordered, or to give evidence touching the matter
9 under investigation or in question.

10 (B) Failure to obey the order of the court may be punished
11 by the court as a contempt of court.

12 (3)(A) The assertion that the testimony or evidence before the
13 commissioner may tend to incriminate or subject a person to a penalty or
14 forfeiture shall not excuse the person from:

15 (i) Attending and testifying;
16 (ii) Producing any document or record;
17 (iii) Obeying the subpoena of the commissioner or
18 any officer designated by the commissioner;

19 (B) However, no person may be prosecuted or subjected to
20 any penalty or forfeiture for or on account of any transaction, matter, or
21 thing concerning which the person is compelled, after claiming a privilege
22 against self-incrimination, to testify or produce evidence, except that the
23 person testifying is not exempt from prosecution and punishment for perjury
24 or contempt committed while testifying.

25 (h)(1) From time to time and with or without cause, the commissioner
26 may conduct examinations with or without cause of the books and records of
27 any applicant or licensee in order to determine the compliance with this
28 subchapter and any rules adopted under this subchapter.

29 (2) The applicant or licensee shall pay a fee for each
30 examination under subdivision (h)(1) of this section, not to exceed one
31 hundred fifty dollars (\$150) per examiner for each day or part of a day
32 during which any examiners are absent from the office of the commissioner for
33 the purpose of conducting the examination.

34 (3) In addition, the applicant or licensee shall pay the actual
35 hotel and traveling expenses of the examiner traveling to and from the office
36 of the commissioner while the examiner is conducting an examination under

subdivision (h)(1) of this section.

(i) If the commissioner finds that the managing principal, branch manager, or loan officer of a licensee had knowledge of, or reasonably should have had knowledge of, or participated in any activity that results in the entry of an order under this section suspending or withdrawing the license of a licensee, the commissioner may prohibit the managing principal, branch manager, or loan officer from serving as a managing principal, branch manager, or loan officer for any period of time the commissioner deems appropriate.

(j) All orders shall contain written findings of fact and conclusions of law. Except for orders entered under subdivisions (c)(1) and (d)(1) of this section, before entering an order under this section, the commissioner shall provide:

(1) Prior notice to the licensee or person who is the subject of the order; and

(2) An opportunity for hearing; ~~and~~

~~(3) Written findings of fact and conclusions of law.~~

(k) This section does not prohibit or restrict the informal disposition of a proceeding or allegations that might give rise to a proceeding by stipulation, settlement, consent, or default in lieu of a formal or informal hearing on the allegations or in lieu of the sanctions authorized by this section.

(l)(1) If it appears upon sufficient grounds or evidence satisfactory to the commissioner that any person or licensee has engaged in or is about to engage in any act or practice that violates this subchapter or any rule or regulation adopted or order issued under this subchapter or that the assets or capital of any licensee are impaired or the licensee's affairs are in an unsafe condition, the commissioner may:

(A) Refer the evidence which is available concerning violations of this subchapter or any rule, regulation, or order issued under this subchapter to the appropriate prosecuting attorney or regulatory agency, who, with or without the reference, may institute the appropriate criminal or regulatory proceedings under this subchapter; and

(B)(i) Summarily order the licensee or person to cease and desist from the act or practice under subdivisions (c)(1) and (d)(1) of this section, apply to the Pulaski County Circuit Court to enjoin the act or

1 practice and to enforce compliance with this subchapter or any rule,
2 regulation, or order issued under this subchapter, or both.

3 (ii) However, without issuing a cease and desist
4 order, the commissioner may apply directly to the Pulaski County Circuit
5 Court for injunctive or other relief.

6 (2) Upon proper showing, the court shall grant a permanent or
7 temporary injunction, restraining order, or writ of mandamus.

8 (3) The commissioner may also seek and upon proper showing the
9 appropriate court shall grant any other ancillary relief that may be in the
10 public interest, including:

11 (A) The appointment of a receiver, temporary receiver, or
12 conservator;

13 (B) A declaratory judgment;

14 (C) An accounting;

15 (D) Disgorgement;

16 (E) Assessment of a fine in an amount of not more than ten
17 thousand dollars (\$10,000) for each violation; and

18 (F) Any other relief as may be appropriate in the public
19 interest.

20 (4) The court may not require the commissioner to post a bond.
21

22 SECTION 5. EMERGENCY CLAUSE. It is found and determined by the
23 General Assembly of the State of Arkansas that the requirement of three (3)
24 years' experience for branch managers and their on-site physical presence at
25 the branch for which they are designated as manager creates a hardship
26 resulting in the lack of ability of some companies to become licensed in this
27 state; and that this act is immediately necessary because the provisions of
28 this act relaxing these requirements will increase the ability of companies
29 to effectively manage their branch offices. Therefore, an emergency is
30 declared to exist and this act being immediately necessary for the
31 preservation of the public peace, health, and safety shall become effective
32 on:

33 (1) The date of its approval by the Governor;

34 (2) If the bill is neither approved nor vetoed by the Governor,
35 the expiration of the period of time during which the Governor may veto the
36 bill; or

1 (3) If the bill is vetoed by the Governor and the veto is
2 overridden, the date the last house overrides the veto.

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