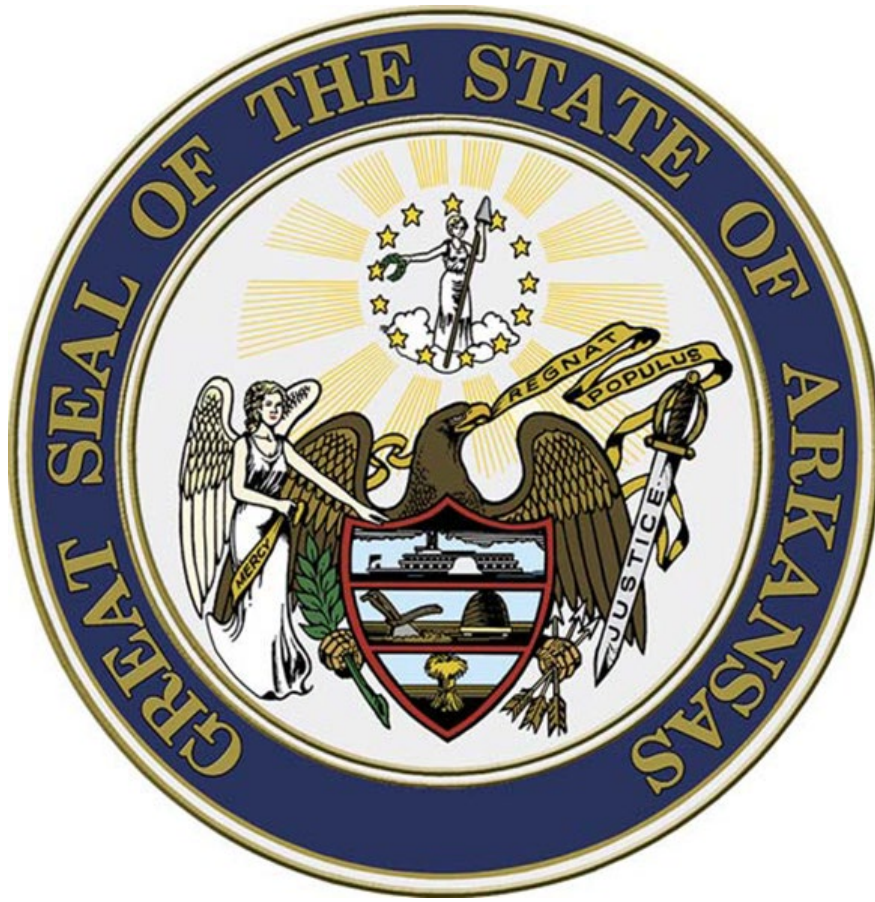


# **FAIR MORTGAGE LENDING ACT EFFECTIVE AUGUST 5, 2025**



**Published By:  
ARKANSAS SECURITIES DEPARTMENT  
1 Commerce Way  
Suite 402  
Little Rock, Arkansas 72202**

## Table of Contents

23-39-501. Title.	1
23-39-502. Definitions.	1
23-39-503. License required — Licensee records.	15
23-39-504. Authority.	16
23-39-505. Qualifications for licensure — Issuance.	17
23-39-506. License renewal — Termination.	25
23-39-507. Continuing education.	28
23-39-508. Managing principals and branch managers.	29
23-39-509. Offices — Address changes — Location of records.	30
23-39-510. Licensee duties.	31
23-39-511. Records — Escrow funds or trust accounts.	33
23-39-512. Public inspection of records — Exceptions.	34
23-39-513. Prohibited activities.	37
23-39-514. Disciplinary authority.	40
23-39-515. Review of order of the commissioner.	47
23-39-516. Criminal penalty.	48
23-39-517. [Repealed.]	
23-39-518. Cooperation with other regulatory agencies.	49
23-39-519. Prudential standards for covered institution servicers — Financial condition.	51
23-39-520. Corporate governance for covered institution servicers.	52
23-39-521. Standards for safeguarding customer information.	54
23-39-522. Information security program required elements.	55
23-39-523. Exceptions.	62

### 23-39-501. Title.

This subchapter may be referred to as the “Fair Mortgage Lending Act”.

**History.** Acts 2003, No. 554, § 1.

### 23-39-502. Definitions.

As used in this subchapter:

- (1) “**Affiliate**” means a person that directly or indirectly through one (1) or more intermediaries controls, is controlled by, or is under common control with the person;
- (2) (A) “**Allowable assets for liquidity**” means assets that may be used to satisfy liquidity requirements under this subchapter.  
(B) “**Allowable assets for liquidity**” includes without limitation:
  - (i) Unrestricted cash and cash equivalents; and
  - (ii) Unencumbered investment-grade assets held for sale or trade;
- (3) “**Applicant**” means a person that has applied to become licensed under this subchapter as a loan officer, transitional loan officer, mortgage broker, mortgage banker, or mortgage servicer;
- (4) “**Authorized user**” means an employee, contractor, agent, or other person that participates in a financial institution's business operations and is authorized to access and use a financial institution's information systems and data;
- (5) “**Board of directors**” means a formal body that is responsible for corporate governance and compliance with this subchapter;
- (6) “**Branch manager**” means the individual who is in charge of the business operations of one (1) or more branch offices of a mortgage broker, mortgage banker, or mortgage servicer;
- (7) “**Branch office**” means a location that is separate and distinct from the licensee's principal place of business and includes any location from which business is conducted under the license or in the name of the mortgage broker, mortgage banker, or mortgage servicer:
  - (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, loan officer, or transitional loan officer of the licensee, may be construed by the public as a branch office of the licensee where mortgage loans are originated, solicited, accepted, negotiated, funded, or serviced or from which mortgage loan commitments or interest rate guarantee agreements are issued;
- (8) “**Commissioner**” means the Securities Commissioner and includes the commissioner's designees;
- (9) “**Consumer**” means an individual or that individual's legal representative who obtains or has obtained a financial product or service from a financial institution that is to be used primarily for personal, family, or household purposes;
- (10) “**Consumer report**” means the same as defined in the Fair Mortgage Lending Act, 15 U.S.C. § 1681 et seq., as it existed on January 1, 2025;
- (11) (A) “**Control**” means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise.
  - (B) A person is presumed to control a company if the person:
    - (i) Is a director, general partner, or executive officer of the company;
    - (ii) Directly or indirectly has the right to vote twenty-five percent (25%) or more of a class of a voting security of the company or has the power to sell or direct the sale of twenty-five percent (25%) or more of a class of voting securities of the company;
    - (iii) In the case of a limited liability company, is a managing member of the limited liability company; or
    - (iv) In the case of a partnership, has the right to receive upon dissolution or has contributed ten percent (10%) or more of the capital of the partnership;
- (12) “**Control affiliate**” means a partnership, corporation, trust, limited liability company, or other organization that directly or indirectly controls or is controlled by the applicant;
- (13) “**Control person**” means an individual who directly or indirectly exercises control over the applicant;

- (14) (A) **“Corporate governance”** means the structure of and how the licensee is managed.
- (B) **“Corporate governance”** includes the corporate rules, policies, processes, and practices used to oversee and manage a licensee;
- (15) (A) **“Covered institution servicer”** means a nonbank mortgage servicer that:
  - (i) As reported in the mortgage call report, services:
    - (a) Portfolios of two thousand (2,000) or more of one (1) to four (4) unit residential mortgage loans serviced or subserviced for others, excluding whole loans owned; and
    - (b) Loans being interim serviced before sale as of the most recent calendar year end; and
  - (ii) Operates in two (2) or more states, districts, or territories of the United States either currently or as of the prior calendar year end.
- (B) **“Covered institution servicer”** does not include:
  - (i) A person exempt from mortgage servicer licensing requirements under this subchapter;
  - (ii) A mortgage servicer that has the status of a tax-exempt organization under 26 U.S.C. § 501(c)(3), as in effect on January 1, 2025; or
  - (iii) A mortgage servicer solely owning or conducting reverse mortgage servicing, or both, or the reverse mortgage portfolio administered by a large mortgage servicer;
- (16) **“Customer”** means a consumer who has a customer relationship with a financial institution;
- (17) **“Customer information”** means a record containing nonpublic personal information about a customer of a financial institution, whether in paper, electronic, or other form, that is handled or maintained by or on behalf of a financial institution or the financial institution's affiliates;
- (18) **“Customer relationship”** means a continuing relationship between a consumer and a financial institution under which the financial institution provides to the consumer one (1) or more financial products or services that are used primarily for personal, family, or household purposes;
- (19) **“Employee”** means an individual who is licensed with or employed by a mortgage broker, mortgage banker, or mortgage servicer, whether by employment contract, agency, or other arrangement and regardless of whether the individual is

treated as an employee for purposes of compliance with the federal income tax laws;

- (20) **“Encryption”** means the transformation of data into a form that results in a low probability of assigning meaning without the use of a protective process or key, consistent with current cryptographic standards and accompanied by appropriate safeguards for cryptographic key material;
- (21) (A) **“Exempt person”** means a person not required to be licensed as a mortgage broker, mortgage banker, mortgage servicer, loan officer, or transitional loan officer under this subchapter.
- (B) **“Exempt person”** includes any of the following:
- (i) An employee of a licensee whose responsibilities are limited to clerical and administrative tasks for his or her employer and who does not solicit borrowers, accept applications, or negotiate the terms of loans on behalf of the employer;
  - (ii) An agency or corporate instrumentality of the federal government or any state, county, or municipal government granting mortgage loans under specific authority of the laws of any state or of the United States;
  - (iii) A trust company or industrial loan company chartered under the laws of Arkansas;
  - (iv) A small-business investment corporation licensed under the Small Business Investment Act of 1958, 15 U.S.C. § 661 et seq., as it existed on January 1, 2025;
  - (v) A real estate investment trust as defined in 26 U.S.C. § 856, as it existed on January 1, 2025;
  - (vi) A state or federally chartered bank, an operating subsidiary of a state-chartered bank regulated by the State Bank Department, a savings bank, a savings and loan association, or a credit union, the accounts of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration;
  - (vii) An agricultural loan organization that is subject to licensing, supervision, or auditing by the United States Farm Service Agency, Commodity Credit Corporation, United States Department of Agriculture Rural Development, United States Farm Credit Administration, or the United States Department of Agriculture;
  - (viii) A nonprofit corporation that:

- (a) Qualifies as a nonprofit entity under § 501(c)(3) of the Internal Revenue Code;
- (b) Is not primarily in the business of soliciting or brokering mortgage loans; and
- (c) Makes or services mortgage loans to promote home ownership or home improvements for the disadvantaged;
- (ix) (a) A licensed real estate agent or broker who is performing those activities subject to the regulation of the Arkansas Real Estate Commission.
- (b) Notwithstanding subdivision (21)(B)(ix)(a) of this section, “exempt person” does not include a real estate agent or broker who receives compensation of any kind in connection with the referral, placement, or origination of a mortgage loan;
- (x) A person who engages in seller-financed transactions or who as a seller of real property receives mortgages, deeds of trust, or other security instruments on real estate as security for a purchase money obligation if:
  - (a) The person does not receive from or hold on behalf of the borrower any funds for the payment of insurance or taxes on the real property; and
  - (b) The seller does not sell the liens or mortgages in the secondary market other than to affiliated or subsidiary persons;
- (xi) An individual or married couple who provide 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;
- (xii) An attorney licensed in Arkansas rendering legal services to his or her client, when the conduct that would subject the attorney to the jurisdiction of this subchapter is ancillary to the provision of the legal services offered;
- (xiii) A person performing any act under order of any court;

- (xiv) 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;
  - (xv) An officer or employee of an exempt person described in subdivisions (21)(B)(ii)-(xiv) of this section if acting in the scope of employment for the exempt person; and
  - (xvi) A manufactured or modular home retailer and its employees if:
    - (a) The manufactured or modular home retailer or its employees perform only administrative or clerical tasks on behalf of a person required to be licensed under this subchapter; or
    - (b) The manufactured or modular home retailer and its employees:
      - (1) Do not receive compensation or financial gain for engaging in loan officer activities that exceeds the amount of compensation or financial gain that could be received in a comparable cash transaction for a manufactured home;
      - (2) Disclose to the consumer in writing any corporate affiliation with a mortgage banker;
      - (3) Provide referral information for at least one (1) unaffiliated creditor if the manufactured or modular home retailer has a corporate affiliation with a mortgage banker and the mortgage banker offers a recommendation; and
      - (4)
        - (A) Do not directly negotiate loan terms with the consumer or lender.
        - (B) As used in subdivision (21)(B)(xvi)(b)(4)(A) of this section, “loan terms” includes rates, fees, and other costs;
- (22) **“External audit”** means a formal report prepared by an independent certified public accountant expressing an opinion on whether financial statements are:
- (A) Presented fairly, in all material aspects, according to the applicable financial reporting framework; and

- (B) Inclusive of an evaluation of the adequacy of a company's internal control structure;
- (23) **“Financial institution”** means a mortgage broker, mortgage banker, or mortgage servicer licensed under this subchapter;
- (24) (A) **“Financial product or service”** means a product or service that a financial holding company could offer by engaging in a financial activity under section 4(k) of the Bank Holding Company Act of 1956, 12 U.S.C. § 1843(k), as it existed on January 1, 2025.
  - (B) **“Financial product or service”** includes a financial institution's evaluation or brokerage of information that a financial institution collects in connection with a request or an application from a consumer for a financial product or service;
- (25) **“Information security program”** means the administrative, technical, or physical safeguards a financial institution uses to access, collect, distribute, process, protect, store, use, transmit, dispose of, or otherwise handle customer information;
- (26) **“Information system”** means a discrete set of electronic information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of electronic information, including any specialized system, such as an industrial controls system or a process controls system, a telephone switching and private branch exchange system, and an environmental control system, that contain customer information or that is connected to a system that contains customer information;
- (27) **“Interim serviced before sale”** means the activity of collecting a limited number of contractual mortgage payments immediately after origination on loans held for sale but before the loans have been sold into the secondary market;
- (28) **“Internal audit”** means the internal activity of performing independent, objective assurance, and consulting to evaluate and improve the effectiveness of company operations, risk management, internal controls, and governance processes;
- (29) (A) **“Key individual”** means an individual who is ultimately responsible for establishing or directing policies and procedures of a licensee.
  - (B) **“Key individual”** includes without limitation:
    - (i) An executive officer;
    - (ii) A manager;
    - (iii) A director;
    - (iv) A trustee; or

- (v) A control person;
- (30) **“Licensee”** means a loan officer, transitional loan officer, mortgage broker, mortgage banker, or mortgage servicer that is licensed under this subchapter;
- (31) (A) **“Loan officer”** means an individual other than an exempt person described in subdivision (21) of this section who in exchange for compensation as an employee of or who otherwise receives compensation or remuneration from a mortgage broker or a mortgage banker:
  - (i) Solicits or offers to solicit an application for a mortgage loan;
  - (ii) Accepts or offers to accept an application for a mortgage loan;
  - (iii) Negotiates or offers to negotiate the terms or conditions of a mortgage loan;
  - (iv) Issues or offers to issue a mortgage loan commitment or interest rate guarantee agreement; or
  - (v) Provides or offers to provide modification of a mortgage loan.
- (B) **“Loan officer”** does not include:
  - (i) An individual who performs clerical or administrative tasks in the processing of a mortgage loan at the direction of and subject to the supervision and instruction of a licensed loan officer;
  - (ii) An underwriter if the individual performs no activities under subdivision (31)(A) of this section; or
  - (iii) An individual who is solely involved in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. § 101(53D), as it existed on January 1, 2025;
- (32) **“Make a mortgage loan”** means to close a mortgage loan, to advance funds, to offer to advance funds, or to make a commitment to advance funds to a borrower under a mortgage loan;
- (33) (A) **“Managing principal”** means a person who meets the requirements of § 23-39-508 and who agrees to be primarily responsible for the operations of a licensed mortgage broker, mortgage banker, or mortgage servicer.
  - (B) **“Managing principal”** includes a qualifying individual;
- (34) **“Mortgage banker”** means a person who engages in the business of making mortgage loans for compensation or other gain;
- (35) **“Mortgage broker”** means a person who for compensation or other gain or in the expectation of compensation or other gain and, regardless of whether the acts are

done directly or indirectly, through contact by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers:

- (A) Accepts or offers to accept an application for a mortgage loan;
  - (B) Solicits or offers to solicit an application for a mortgage loan;
  - (C) Negotiates or offers to negotiate the terms or conditions of a mortgage loan; or
  - (D) Issues or offers to issue mortgage loan commitments or interest rate guarantee agreements to borrowers;
- (36) **“Mortgage call report”** means a quarterly or annual report of residential real estate loan origination, servicing, and financial information completed by a company licensed through the Nationwide Multistate Licensing System and Registry;
- (37) (A) **“Mortgage loan”** means a loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, reverse mortgage, or other equivalent consensual security interest encumbering:
- (i) A dwelling as defined in section 1602(w) of the Truth in Lending Act, 15 U.S.C. § 1601 et seq., as it existed on January 1, 2025; or
  - (ii) Residential real estate upon which is constructed or intended to be constructed a dwelling.
- (B) **“Mortgage loan”** includes a residential mortgage loan;
- (38) (A) **“Mortgage servicer”** means:
- (i) An entity performing the routine administration of a residential mortgage loan on behalf of an owner of the related mortgage under the terms of a servicing contract; or
  - (ii) A person that receives or has the right to receive from or on behalf of a borrower:
    - (a) Funds or credits in payment for a mortgage loan; or
    - (b) The taxes or insurance associated with a mortgage loan.
- (B) In the case of a home equity conversion mortgage or a reverse mortgage, “mortgage servicer” includes a person that makes a payment to the borrower;
- (39) **“Mortgage servicing rights”** means the contractual right to service residential mortgage loans on behalf of the owner of the associated mortgage in exchange for specified compensation according to a servicing contract;

- (40) (A) **“Mortgage trigger lead”** means a lead resulting from a consumer report obtained under 15 U.S.C. § 1681b, as it existed on January 1, 2025, if the issuance of the consumer report is triggered by an inquiry made with a consumer reporting agency in response to an application for credit.
- (B) **“Mortgage trigger lead”** does not include a consumer report obtained by a lender that holds or services existing indebtedness of the applicant who is the subject of the consumer report;
- (41) **“Multifactor authentication”** means authentication through verification of at least two (2) of the following types of authentication factors:
  - (A) Knowledge factors, including without limitation a password;
  - (B) Possession factors, including without limitation a token; or
  - (C) Inherence factors, including without limitation biometric characteristics;
- (42) (A) **“Nonpublic personal information”** means:
  - (i) Personally identifiable financial information; and
  - (ii) A list, description, or other grouping of consumers, and publicly available information pertaining to a consumer, that is derived using personally identifiable financial information that is not publicly available.
- (B) **“Nonpublic personal information”** includes without limitation a list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available.
- (C) **“Nonpublic personal information”** does not include:
  - (i) Publicly available information except as included on a list described in subdivision (42)(A)(ii) of this section;
  - (ii) A list, description, or other grouping of consumers, and publicly available information pertaining to the list, description, or other grouping of consumers, that is derived without using personally identifiable financial information that is not publicly available; or
  - (iii) A list of individuals' names and addresses that contains only publicly available information and is not:
    - (a) Derived, in whole or in part, using personally identifiable financial information that is not publicly available; and

- (b) Disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution;
- (43) (A) **“Notification event”** means acquisition of unencrypted customer information without the authorization of the customer to which the customer information pertains.
- (B) For purposes of subdivision (43)(A) of this section:
    - (i) Customer information is considered unencrypted if the encryption key was accessed by an unauthorized person; and
    - (ii) Unauthorized acquisition is presumed to include unauthorized access to unencrypted customer information unless a financial institution has reliable evidence showing that there has not been, or could not reasonably have been, unauthorized acquisition of the customer information;
- (44) **“Operating liquidity”** means the funds necessary to perform normal business operations, including payment of rent, salaries, interest expense, and other typical expenses associated with operating an entity;
- (45) **“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;
- (46) **“Penetration testing”** means a test methodology in which assessors attempt to circumvent or defeat the security features of an information system by attempting penetration of databases or controls from outside or inside a financial institution's information system;
- (47) **“Person”** means an individual, partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities, however organized;
- (48) (A) **“Personally identifiable financial information”** means information:
  - (i) A consumer provides to a financial institution to obtain a financial product or service from a financial institution;
  - (ii) About a consumer resulting from a transaction involving a financial product or service between a financial institution and a consumer; or

- (iii) A financial institution otherwise obtains about a consumer in connection with providing a financial product or service to that consumer.
- (B) **“Personally identifiable financial information”** includes:
  - (i) Information a consumer provides to a financial institution on an application to obtain a loan, credit card, or other financial product or service;
  - (ii) Account balance information, payment history, overdraft history, and credit or debit card purchase information;
  - (iii) The fact that an individual is or has been a financial institution's customer or has obtained a financial product or service from a financial institution;
  - (iv) Information about a financial institution's consumer if the information is disclosed in a manner that indicates that the individual is or has been the financial institution's consumer;
  - (v) Information that a consumer provides to a financial institution or that a financial institution or a financial institution's agent otherwise obtains in connection with collecting on or servicing a credit account;
  - (vi) Information a financial institution collects through an internet cookie or an information collecting device from a computer server; and
  - (vii) Information from a consumer report.
- (C) **“Personally identifiable financial information”** does not include:
  - (i) A list of names and addresses of customers of an entity that is not a financial institution; and
  - (ii) Information that does not identify a consumer, including aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses;
- (49) **“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;
- (50) (A) **“Publicly available information”** means information that a financial institution has a reasonable basis to believe is lawfully made available to the public from:

- (i) Federal, state, or local government records;
  - (ii) Widely distributed media; or
  - (iii) Disclosures to the public that are required to be made by federal, state, or local law.
- (B) **“Publicly available information”** includes without limitation:
  - (i) Information in government records, including information in government real estate records and security interest filings; and
  - (ii)
    - (a) Information from widely distributed media, including information from a telephone book, television or radio program, newspaper, or website that is available to the public on an unrestricted basis.
    - (b) A website is not restricted under subdivision (50)(B)(ii)(a) of this section merely because an internet service provider or a site operator requires a fee or a password, so long as access is available to the public.
- (C) For purposes of this subdivision (50), a financial institution has a reasonable basis to believe that:
  - (i) Information is lawfully made available to the public if the financial institution has taken steps to determine:
    - (a) That the information is of the type that is available to the public; and
    - (b) Whether an individual can direct that the information not be made available to the public and, if so, that the financial institution's consumer has not directed that the information not be made available to the public;
  - (ii) Mortgage information is lawfully made available to the public if the financial institution determines that the mortgage information is of the type included on the public record in the jurisdiction where the mortgage would be recorded; and
  - (iii) An individual's telephone number is lawfully made available to the public if the financial institution has located the telephone number in a telephone directory or the consumer has informed the financial institution that the telephone number is not unlisted;
- (51) **“Qualified individual”** means an individual designated by a financial institution to oversee, implement, and enforce the financial institution's information security program;

- (52) “**Residential mortgage loans serviced**” means a specific portfolio or portfolios of residential mortgage loans for which a licensee is contractually responsible to the owner or owners of the mortgage loans for the defined servicing activities;
- (53) “**Reverse mortgage**” means a nonrecourse loan that pays a homeowner loan proceeds drawn from accumulated home equity;
- (54) “**Risk management assessment**” means the functional evaluations performed under the risk management program and reports provided to a board of directors under a relevant governance protocol;
- (55) “**Risk management program**” means the policies and procedures designed to identify, measure, monitor, and mitigate risk sufficient for the level of sophistication of a covered institution servicer;
- (56) “**Security event**” means an event resulting in unauthorized access to, or disruption or misuse of:
  - (A) An information system or information stored on the information system; or
  - (B) Customer information held in physical form;
- (57) “**Service provider**” means a person or entity that receives, maintains, processes, or otherwise is permitted access to customer information through its provision of services directly to a financial institution that is subject to this subchapter;
- (58) “**Servicing liquidity**” means the financial resources necessary to manage liquidity risk arising from servicing functions required in acquiring and financing mortgage servicing rights, hedging costs, and margin calls associated with the mortgage servicing rights asset and financing facilities and advances or costs of advance financing for principal, interest, taxes, insurance, and any other servicing-related advances;
- (59) “**Sponsor**” means a mortgage broker or mortgage banker licensed under this subchapter that has assumed the responsibility for and agrees to supervise the actions of a loan officer or transitional loan officer;
- (60) “**Tangible net worth**” means the total equity less:
  - (A) The receivables due from related entities;
  - (B) Goodwill and other intangibles; and
  - (C) Pledged assets;
- (61) “**Transitional loan officer**” means an individual who, in exchange for compensation as an employee of, or who otherwise receives compensation or remuneration from, a mortgage broker or a mortgage banker, is authorized to act as a loan officer subject to a transitional loan officer license;

- (62) **“Transitional loan officer license”** means a license that:
  - (A) Is issued to an individual who is employed and sponsored by a mortgage banker or mortgage broker licensed under this subchapter;
  - (B) Is limited to a term of no more than one hundred twenty (120) days; and
  - (C) Is not subject to reapplication, renewal, or extension by the commissioner;
- (63) **“Unique identifier”** means a number or other identifier assigned by protocols established by the automated licensing system approved by the commissioner; and
- (64) **“Whole loans”** mean those loans in which a mortgage and the underlying credit risk is owned and held on the balance sheet of an entity with all ownership rights.

**History.** Acts 2003, No. 554, § 1; 2005, No. 1679, § 1; 2007, No. 748, § 1; 2009, No. 731, §§ 1-5; 2011, No. 894, §§ 1-4; 2013, No. 1167, §§ 1-4; 2019, No. 200, §§ 1-8; 2021, No. 531, §§ 1-3; 2023, No. 325, §§ 1, 2; 2025, No. 262, § 1; 2025, No. 263, § 1.

### **23-39-503. License required — Licensee records.**

- (a) 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, transitional loan officer, or mortgage servicer without first obtaining a license from the Securities Commissioner under this subchapter.
- (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, transitional loan officer, or mortgage servicer with any person located in Arkansas without first obtaining a license from the commissioner under this subchapter.
- (c) It is unlawful for any person other than an exempt person to employ, to compensate, or to appoint as its agent any person to act as a loan officer unless the loan officer is licensed as a loan officer or a transitional loan officer under this subchapter.
- (d) (1) (A) If the employment of a loan officer or transitional loan officer is surrendered or canceled, then the sponsor shall terminate the sponsorship of the loan officer or transitional loan officer with the commissioner within thirty (30) days from the date that the loan officer or transitional loan officer ceased to be employed or ceased activities for the sponsor.
- (B) The termination of a sponsorship extinguishes the right of the loan officer or transitional loan officer to engage in any mortgage loan activity.

- (2) Upon receipt of a termination of sponsorship, the license of a loan officer shall be designated as approved-inactive until a licensed mortgage broker or mortgage banker files an application with the commissioner to sponsor the loan officer under § 23-39-506(c).
- (3) (A) A licensee that does not comply with subdivision (d)(1)(A) of this section shall pay a late fee of two hundred fifty dollars (\$250) for failure to timely notify the commissioner.
- (B) The late fee may be waived, in whole or in part, at the sole discretion of the commissioner and for good cause shown.
- (4) A loan officer or a transitional loan officer shall not be employed simultaneously by more than one (1) mortgage broker or mortgage banker licensed under this subchapter.
- (e) Each mortgage broker and mortgage banker licensed under this subchapter shall maintain a list of all loan officers and all transitional loan officers employed by the mortgage broker or mortgage banker and who engage or attempt to engage in business with any person in Arkansas.
- (f) No person other than an exempt person shall hold himself or herself out as a mortgage banker, mortgage broker, mortgage servicer, loan officer, or transitional loan officer unless the person is licensed in accordance with this subchapter.

**History.** Acts 2003, No. 554, § 1; 2003 (2nd Ex. Sess.), No. 26, § 1; 2005, No. 1679, § 1; 2007, No. 748, § 2; 2009, No. 731, § 6; 2019, No. 200, § 9; 2021, No. 531, § 4; 2023, No. 325, § 3.

**23-39-504. Authority.**

- (a) The Securities Commissioner may adopt any rules that he or she deems necessary to:
  - (1) Carry out the provisions of this subchapter;
  - (2) Provide for the protection of the borrowing public;
  - (3) Provide any requirements necessary for the State of Arkansas to participate in a multistate automated licensing system; and
  - (4) Instruct mortgage brokers, mortgage bankers, mortgage servicers, loan officers, and transitional loan officers in interpreting this subchapter.
- (b) The commissioner may:
  - (1) If risk is determined by a formal review of a specific covered institution servicer to be extremely high, order or direct the covered institution

servicer to satisfy additional conditions necessary to ensure that the covered institution servicer will continue to operate in a safe and sound manner and be able to continue to service loans in compliance with state law or rule and federal law or regulations;

- (2) If risk is determined by a formal review of a specific covered institution servicer to be extremely low, provide notice that all or part of this subchapter is not applicable to the covered institution servicer; and
- (3) If economic, environmental, or societal events are determined to be of severity to warrant a temporary suspension of all or certain sections of this subchapter, provide public notice of the temporary suspension.

**History.** Acts 2003, No. 554, § 1; 2005, No. 1679, § 1; 2007, No. 748, § 3; 2019, No. 200, § 10; Acts 2025, No. 262, § 2.

### **23-39-505. Qualifications for licensure — Issuance.**

- (a)
  - (1) A person desiring to obtain a license as a loan officer, transitional loan officer, mortgage banker, mortgage broker, or mortgage servicer shall make written application for licensure to the Securities Commissioner in the form prescribed by the commissioner.
  - (2) The commissioner may approve by rule or order a limited license with limitations, qualifications, or conditions.
  - (3) The application may require that the information be submitted in an electronic format.
  - (4) In addition to any other information required under this subchapter or rules adopted by the commissioner, the application shall contain information the commissioner deems necessary and shall include the following:
    - (A) For a license as a mortgage banker, mortgage broker, or mortgage servicer:
      - (i) The applicant's name, address, and federal employer identification number;
      - (ii) The applicant's form of business and place of organization, including without limitation:
        - (a) A copy of the applicant's organizational and governance documents; and
        - (b) If the applicant is a foreign entity, a copy of the certificate of authority from the Secretary of State;

- (iii) The applicant's proposed method of doing business, including whether the applicant is proposing to be licensed as a mortgage broker, mortgage banker, or mortgage servicer;
  - (iv) The applicant's proposed locations for doing business;
  - (v) The qualifications, business history, and financial condition of the applicant; and
  - (vi) A disclosure of a beneficial interest in an affiliated industry business held by the applicant or by a principal, officer, director, or employee of the applicant; and
- (B) For a license as a loan officer, transitional loan officer, or managing principal of an applicant:
  - (i) The applicant's name, address, and Social Security number; and
  - (ii) The qualifications, business history, and financial condition of the individual or managing principal of an applicant, including:
    - (a) A description of an injunction or administrative order, including a denial to engage in a regulated activity by any state or federal authority that had jurisdiction over the applicant;
    - (b) Disclosure of a conviction of a misdemeanor involving fraudulent dealings or moral turpitude or relating to any aspect of the mortgage industry, the securities industry, the insurance industry, or any other activity pertaining to financial services;
    - (c) Disclosure of a felony conviction; and
    - (d) Fingerprints for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive fingerprints for a state, national, and international criminal background check.
- (b) In addition to meeting the requirements imposed by the commissioner under subsection (a) of this section, each individual applicant for licensure as a loan officer shall:
  - (1) Be at least eighteen (18) years of age;

- (2)
    - (A) Have received a high school diploma or a high school equivalency diploma approved by the Adult Education Section.
    - (B) Subdivision (b)(2)(A) of this section does not apply to an individual who is licensed as a loan officer on July 1, 2007;
  - (3) Have satisfactorily completed any educational and testing requirements as the commissioner may by rule or order impose; and
  - (4) Furnish to the commissioner or through an automated licensing system, information concerning the applicant's identity and background, including:
    - (A) Fingerprints for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive fingerprints for a state, national, and international criminal background check; and
    - (B) Personal history and experience in a form prescribed by the automated licensing system and the commissioner, including the submission of authorization for the automated licensing system and the commissioner to obtain:
      - (i) An independent credit report from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., as it existed on January 1, 2011; and
      - (ii) Information related to any administrative, civil, or criminal proceeding by a governmental jurisdiction.
- (c) Each applicant for licensure as a mortgage broker, mortgage banker, or mortgage servicer shall comply with the following requirements at the time of application and at all times thereafter:
  - (1) If the applicant is a sole proprietor, the applicant shall have at least three (3) years of experience in mortgage lending or other experience or competency requirements as the commissioner may adopt by rule or order;
  - (2) If the applicant is a general or limited partnership, at least one (1) of its general partners shall have the experience as described in subdivision (c)(1) of this section;
  - (3) If the applicant is a corporation, at least one (1) of its principal officers shall have the experience as described in subdivision (c)(1) of this section; and
  - (4) If the applicant is a limited liability company, at least one (1) of its managers shall have the experience as described under subdivision (c)(1) of this section.

- (d) Each applicant for a license as a mortgage broker, mortgage banker, or mortgage servicer shall identify in its application one (1) person meeting the requirements of subsection (c) of this section to serve as the applicant's managing principal.
- (e) Each applicant for initial licensure shall pay a filing fee of:
  - (1) Seven hundred fifty dollars (\$750) for the principal place of business of a mortgage broker, mortgage banker, or mortgage servicer;
  - (2) One hundred dollars (\$100) for each branch office of a mortgage broker, mortgage banker, or mortgage servicer; and
  - (3) Fifty dollars (\$50.00) for each loan officer.
- (f) (1) Each mortgage broker, mortgage banker, and mortgage servicer shall post a surety bond in an amount:
  - (A) Based upon loan activity during the previous year;
  - (B) Not less than one hundred thousand dollars (\$100,000); and
  - (C) As prescribed by rule or order of the commissioner.
- (2) The surety bond shall:
  - (A) Be in a form satisfactory to the commissioner; and
  - (B) Run to the State of Arkansas for benefit of a claimant against the licensee to secure the faithful performance of the obligations of the licensee under this subchapter.
- (3) (A) A party having a claim against a licensee may bring suit directly on the surety bond of the licensee under this subsection or the commissioner may bring suit on behalf of a claimant in one (1) action or in successive actions.
- (B) A consumer claim shall be given priority in recovering from the surety bond.
- (C) Every bond shall provide for suit on the bond by any person who has a cause of action under this subchapter.
- (4) The aggregate liability of the surety shall not exceed the principal sum of the bond.
- (5) A surety bond shall cover claims for at least five (5) years after the licensee ceases to provide mortgage services in this state or longer if required by the commissioner.
- (6) (A) A surety bond shall remain in effect until cancellation.

- (B) The cancellation of a surety bond shall occur only after sixty (60) days' written notice to the commissioner.
  - (C) The cancellation of a surety bond shall not affect liability incurred or accrued during the sixty-day period under subdivision (f)(6)(B) of this section.
- (7)
  - (A) If an action is commenced on a licensee's surety bond, the commissioner may require the filing of a new surety bond.
  - (B) If a new surety bond is required under subdivision (f)(7)(A) of this section, the licensee shall file a replacement surety bond in the required amount specified under subdivision (f)(1)(B) of this section within thirty (30) days.
  - (C) Immediately upon recovery of an action on the surety bond, the licensee shall file a new surety bond.
- (g)
  - (1) An applicant filing for licensure as a mortgage banker shall file with the commissioner as part of his or her application audited financial statements that reflect that the applicant has a net worth of at least twenty-five thousand dollars (\$25,000).
  - (2) For purposes of complying with subdivision (g)(1) of this section, the financial statement shall be:
    - (A) Determined according to:
      - (i) Generally accepted accounting principles as promulgated by the Financial Accounting Standards Board; or
      - (ii) The international financial reporting standards promulgated by the International Financial Reporting Standards Foundation and the International Accounting Standards Board;
    - (B) Accompanied by an opinion acceptable to the commissioner; and
    - (C) Dated within fifteen (15) months preceding the date on which the application is filed.
- (h) [Repealed.]
- (i) Each principal place of business and each branch office of a mortgage broker, mortgage banker, or mortgage servicer licensed under this subchapter shall obtain a separate license.
- (j) Except as set forth in § 23-39-503(d), each license issued by the commissioner under this subchapter expires at the close of business on December 31 of the calendar year unless the license is:

- (1) Previously surrendered by the licensee and the surrender is accepted by the commissioner;
  - (2) Abandoned by the licensee as provided in § 23-39-506;
  - (3) Suspended or revoked by the commissioner; or
  - (4) Terminated if the temporary authority granted to a transitional loan officer has expired due to:
    - (A) The end of a one hundred twenty (120) day period; or
    - (B) The individual's having received a loan officer license under this subchapter.
- (k) Licenses issued under this subchapter are not transferable.
- (l) (1) Control of a licensee shall not be acquired through a stock or equity purchase, transfer of interest, or other device without the prior written consent of the commissioner.
  - (2) A person seeking to acquire control of a licensee, at least thirty (30) days before the proposed change of control, shall:
    - (A) Pay the commissioner a fee of one hundred dollars (\$100);
    - (B) Submit to the commissioner:
      - (i) The information required under subdivision (a)(4)(D) of this section;
      - (ii) The proposed transaction documents; and
      - (iii) Any other information deemed relevant by the commissioner; and
    - (C) Submit financial statements according to subsection (g) of this section, if a licensee holds a mortgage banker or mortgage servicer license.
    - (D) [Repealed.]
  - (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 person seeking to acquire control of a license.
  - (4) (A) Failure to notify the commissioner at least thirty (30) days before the proposed change of control shall result in a late fee of one hundred dollars (\$100).

- (B) All or part of the late fee may be waived by the commissioner for good cause.
- (m)
  - (1) An application filed with the commissioner may be withdrawn upon written request of the applicant delivered to the commissioner at any time before the granting of the license.
  - (2) However, if a notice of intent to deny the application has been sent to the applicant, the applicant shall not withdraw the application except upon the written direction of the commissioner.
- (n)
  - (1) Unless a proceeding has been commenced to suspend or revoke the license, a license may be surrendered by a licensee by filing a written request to surrender the license in a form acceptable to the commissioner.
  - (2) The surrender of the license becomes effective upon acceptance by the commissioner.
  - (3) Notwithstanding a surrender or termination of a license and acceptance of the surrender or termination by the commissioner, if a licensee or any person acting on behalf of the licensee has knowingly violated any provision of this subchapter or any rule or order promulgated or issued under this subchapter:
    - (A) A proceeding may be commenced at any time within one (1) year following the effective date of the surrender or termination of the license; and
    - (B) An order may be entered revoking the license as of a date before the acceptance of the surrender or termination of the license.
- (o) To issue a loan officer license, the commissioner shall find that:
  - (1) The applicant has:
    - (A) Never had a loan officer license revoked in a governmental jurisdiction;
    - (B) [Repealed.]
    - (C) Demonstrated sufficient financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the loan officer will operate honestly, fairly, and efficiently within the purposes of this subchapter; and
    - (D) Complied with the prelicensing education and testing requirements of subdivision (b)(3) of this section; and

- (2) The applicant's employer has met the surety bond requirement of subdivision (f)(1) of this section.
- (p) (1) An applicant filing for licensure as a mortgage servicer but that does not operate as a covered institution servicer shall file with the commissioner as part of his or her application audited financial statements that reflect that the applicant has a net worth of at least one hundred thousand dollars (\$100,000).
- (2) For the purposes of complying with subdivision (p)(1) of this section, the financial statement shall be:
  - (A) Determined according to:
    - (i) Generally accepted accounting principles as promulgated by the Financial Accounting Standards Board; or
    - (ii) The international financial reporting standards promulgated by the International Financial Reporting Standards Foundation and the International Accounting Standards Board;
  - (B) Accompanied by an opinion acceptable to the commissioner; and
  - (C) Dated within fifteen (15) months preceding the date on which the application is filed.
- (3) (A) An applicant applying to service Arkansas residential mortgage loans may apply to the commissioner to waive or adjust one (1) or more of the net worth requirements under subdivision (p)(1) or subdivision (p)(2) of this section.
- (B) (i) In reviewing a request to waive or adjust one (1) or more of the net worth requirements under subdivision (p)(1) or subdivision (p)(2) of this section, the commissioner may consider the number and types of loans being serviced and whether the licensee has a positive net worth and adequate operating reserves.
- (ii) As used in this subdivision (p)(3)(B), "operating reserves" means the funds set aside in anticipation of future payments or obligations and are included in servicing liquidity.
- (q) (1) An applicant filing for licensure as a mortgage servicer that operates as a covered institution servicer shall file with the commissioner as part of his or her application proof that the applicant is in compliance with:

- (A) The Federal Housing Finance Agency's Eligibility Requirements for Enterprise Single-Family Seller/Servicers for minimum capital ratio; and
  - (B) The net worth and servicing liquidity requirements, whether or not the mortgage servicer is approved for government-sponsored enterprise servicing.
- (2) For the purposes of complying with subdivision (q)(1) of this section, the financial data shall be:
- (A) Determined according to:
    - (i) Generally accepted accounting principles as promulgated by the Financial Accounting Standards Board; or
    - (ii) The international financial reporting standards promulgated by the International Financial Reporting Standards Foundation and the International Accounting Standards Board;
  - (B) Accompanied by an opinion acceptable to the commissioner; and
  - (C) Dated within fifteen (15) months preceding the date on which the application is filed.

**History.** Acts 2003, No. 554, § 1; 2005, No. 1679, § 1; 2007, No. 748, § 4; 2009, No. 164, § 10; 2009, No. 731, §§ 7-17; 2011, No. 894, §§ 5-8; 2015, No. 1115, § 29; 2017, No. 669, §§ 1-3; 2019, No. 200, §§ 11-17; 2019, No. 910, § 2348; 2021, No. 531, §§ 5-7; Acts 2025, No. 262, §§ 3-5.

**23-39-506. License renewal — Termination.**

- (a) A licensed mortgage broker, mortgage banker, and mortgage servicer wishing to renew a license shall:
  - (1) File a renewal application with the Securities Commissioner in the form prescribed by the commissioner between November 1 and December 31 of the calendar year;
  - (2) Present proof to the commissioner that the surety bond required in § 23-39-505(f)(1) is still in effect; and
  - (3) Pay the commissioner an annual renewal fee of three hundred fifty dollars (\$350) for the licensee's principal place of business and one hundred dollars (\$100) for each of the licensee's branch offices.

- (b) The failure of a mortgage broker, mortgage banker, or mortgage servicer to timely file a renewal application shall subject the licensee to a late fee of one hundred dollars (\$100).
- (c) (1) Each licensed loan officer wishing to renew a license shall:
  - (A) File an application with the commissioner in the form prescribed by the commissioner between November 1 and December 31 of the calendar year;
  - (B) Comply with the continuing education requirements as required by rules promulgated by the commissioner; and
  - (C) Pay an annual renewal fee of fifty dollars (\$50.00).
- (2) If an initial loan officer license is issued between November 1 through December 31 of the calendar year, the loan officer is not required to file a renewal application until the subsequent renewal period.
- (3) A license of a loan officer may change from approved-inactive to approved if, before the license of the loan officer terminates, a licensed mortgage broker or mortgage banker:
  - (A) Files an application for sponsorship of the license of the loan officer;
  - (B) Pays a fee of fifty dollars (\$50.00); and
  - (C) Provides notice to the commissioner that the licensed mortgage broker or mortgage banker is sponsoring the loan officer.
- (d) The failure of a loan officer to timely file a renewal application shall subject the loan officer to a late fee of fifty dollars (\$50.00).
- (e) (1) (A) A late fee assessed under subsection (b) or subsection (d) of this section shall be in addition to the renewal application fee under subsection (a) or subsection (c) of this section.
  - (B) All or part of the late fee may be waived by the commissioner for good cause.
- (2) (A) The commissioner may consider an application and a license to be abandoned and surrendered and may require the licensee to comply with the requirements for the initial issuance of a license under this subchapter in order to continue in business if the licensee:
  - (i) Fails to file a renewal application within fifteen (15) days after the date the renewal application is due;

- (ii) Unreasonably fails to remedy any deficiency in an application within thirty (30) days following the sending of written notice to the licensee; or
    - (iii) Unreasonably fails to deliver additional information or documents to the commissioner within thirty (30) days following the sending of written notice to the licensee.
  - (B) For purposes of this subdivision (e)(2), notice shall be complete upon:
    - (i) Deposit in the United States mail, postage prepaid, to the address of the licensee listed in the application; or
    - (ii) Delivery through an automated licensing system approved by the commissioner.
- (3) The commissioner shall not reissue a license for which a late fee has accrued as a result of a person's failure to timely file a renewal application unless the late fee has been paid or waived by the commissioner for good cause.
- (f)
  - (1) A mortgage banker shall submit audited financial statements to the commissioner within ninety (90) days after the end of the mortgage banker's fiscal year.
  - (2) The audited financial statements submitted to the commissioner under subdivision (f)(1) of this section shall:
    - (A) Reflect that the mortgage banker has a net worth of at least twenty-five thousand dollars (\$25,000); and
    - (B) Comply with the requirements of § 23-39-505(g).
  - (3)
    - (A) Failure to timely submit audited financial statements to the commissioner shall result in a late fee of two hundred fifty dollars (\$250).
    - (B) All or part of the late fee may be waived by the commissioner for good cause.
- (g)
  - (1) A mortgage servicer subject to § 23-39-505(p) or § 23-39-505(q) shall submit audited financial statements to the commissioner within ninety (90) days after the end of the mortgage servicer's fiscal year.
  - (2) The audited financial statements submitted to the commissioner under subdivision (g)(1) of this section shall reflect that the mortgage servicer has a net worth that remains in compliance with § 23-39-505(p) or § 23-39-505(q), as applicable.

- (3)
    - (A) A licensee servicing Arkansas residential mortgage loans, other than a covered institution servicer, may apply to the commissioner to waive or adjust one (1) or more of the net worth requirements.
    - (B) In considering a request to waive or adjust one (1) or more of the net worth requirements, the commissioner shall consider the number and types of loans being serviced and whether the licensee has a positive net worth and adequate operating reserves.
    - (C) For purposes of this section, “operating reserves” means the funds set aside in anticipation of future payments or obligations and are included in liquidity.
  - (4)
    - (A) Failure to timely submit audited financial statements to the commissioner shall result in a late fee of two hundred fifty dollars (\$250).
    - (B) All or part of the late fee may be waived by the commissioner for good cause.
- (h) A covered institution servicer shall remain in compliance with the requirements of § 23-39-505(q) and § 23-39-519.

**History.** Acts 2003, No. 554, § 1; 2005, No. 1679, § 1; 2007, No. 748, § 5; 2009, No. 731, § 18; 2011, No. 894, §§ 9, 10; 2019, No. 200, § 18; 2021, No. 531, § 8; 2023, No. 325, § 4; Acts 2025, No. 262, §§ 6, 7.

### **23-39-507. Continuing education.**

- (a) In addition to the other licensing requirements under this subchapter, 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.

**History.** Acts 2003, No. 554, § 1; 2005, No. 1679, § 1.

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

- (a) (1) Each mortgage broker, 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.
- (2) The managing principal shall:
  - (A) Have at least three (3) years of experience in mortgage lending; or
  - (B) Meet the experience and competency requirements prescribed by rule or order of the Securities Commissioner.
- (b) 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.
- (e) Each mortgage broker, mortgage banker, or mortgage servicer licensed under this subchapter shall file a form as prescribed by the Securities Commissioner indicating the 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.
- (f) Each mortgage broker, 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.

- (g) (1) A mortgage broker, mortgage banker, or mortgage servicer that does not comply with this section shall pay a late fee of two hundred fifty dollars (\$250).
- (2) All or part of the late fee may be waived by the commissioner for good cause.
- (3) The commissioner may revoke or suspend the license of any mortgage broker, mortgage banker, or mortgage servicer who fails to pay any late fee assessed under subdivision (g)(1) of this section.

**History.** Acts 2003, No. 554, § 1; 2005, No. 1679, § 1; 2007, No. 748, § 6; 2009, No. 731, § 19.

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

- (a) A mortgage broker, mortgage banker, and mortgage servicer shall maintain a principal place of business.
- (b) A mortgage broker, mortgage banker, and mortgage servicer shall identify the location in which the licensee's books, records, and files pertaining to mortgage loan transactions are maintained.
- (c) The Securities Commissioner by rule may impose terms and conditions under which the records and files shall be maintained, including if the records must be maintained in this state.
- (d) (1) A principal place of business or branch office from which a mortgage broker, mortgage banker, or mortgage servicer conducts mortgage loan activity or business shall be a physical address.
- (2) Mortgage loan activity or business includes without limitation the address appearing on business cards, stationery, promotional materials, or advertising.
- (3) The commissioner may by rule or order impose terms and conditions under which a loan officer may conduct mortgage loan activity or business from a location that is not licensed under this subchapter as a principal place of business or branch office.
- (e) (1) A mortgage banker, mortgage broker, or mortgage servicer shall not use any name or address to conduct mortgage loan activity or business other than the name and address specified on the license issued by the commissioner.

- (2) A mortgage broker, mortgage banker, or mortgage servicer may change the name of the licensee or address of the principal place of business or branch office specified on the most recent filing with the commissioner if:
  - (A)
    - (i) At least thirty (30) calendar days before the change, the licensee files a notice of the change with the commissioner.
    - (ii) If necessary, the licensee shall provide a bond rider or endorsement, or addendum, as applicable, to the surety bond on file with the commissioner that reflects the new name or change of address of the licensee's principal place of business; and
  - (B) The commissioner does not disapprove the name change or the change of address in writing or request additional information within the thirty-day time frame described in subdivision (e)(2)(A)(i) of this section.
- (f) A mortgage broker, mortgage banker, or mortgage servicer that ceases to do business in this state shall:
  - (1) Notify the commissioner within thirty (30) days after the mortgage broker, mortgage banker, or mortgage servicer ceases to do business in this state that the mortgage broker, mortgage banker, or mortgage servicer has ceased to do business in this state; and
  - (2) Provide the commissioner the address where all records pertaining to loans made or serviced in this state will be maintained for the period of time required by this subchapter or rule of the commissioner.

**History.** Acts 2003, No. 554, § 1; 2005, No. 1679, § 1; 2007, No. 748, § 7; 2009, No. 731, § 20; 2011, No. 894, § 11; 2021, No. 531, §§ 9, 10.

### **23-39-510. Licensee duties.**

- (a) In addition to duties imposed by other statutory or common law, a person required to be licensed under this subchapter shall:
  - (1) Safeguard and account for any money received for, from, or on behalf of the borrower;
  - (2) Follow reasonable and lawful instructions from the borrower;
  - (3) Act with reasonable skill, care, and diligence;
  - (4) Make reasonable efforts with lenders with whom a mortgage broker regularly does business to secure a loan that is reasonably advantageous to the borrower considering all the circumstances, including the rates,

- charges, and repayment terms of the loan and the loan options for which the borrower qualifies with such lenders;
- (5) Include the full name, address, and telephone number of the licensee in all solicitations and advertisements; and
  - (6)
    - (A) Provide the Securities Commissioner with a quarterly report of mortgage activity.
    - (B) The commissioner may designate by rule or order the information to be provided in the quarterly report.
- (b) At the time a mortgage servicer accepts assignment of servicing rights for a mortgage loan in this state, the mortgage servicer shall disclose to the borrower the following:
- (1) Any notice required by the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2601 et seq., as it existed on January 1, 2017, or by regulations promulgated thereunder; and
  - (2) A notice in a clear and conspicuous form and content that the mortgage servicer is licensed in Arkansas and that complaints about the mortgage servicer may be submitted to the commissioner.
- (c) The unique identifier of a person soliciting or originating a mortgage loan shall be clearly shown on all mortgage loan application forms, solicitations, advertisements, business cards, websites, and any other document or medium established by rule or order of the commissioner.
- (d)
  - (1) A mortgage broker, mortgage banker, or mortgage servicer licensed or required to be licensed under this subchapter shall establish, implement, update, and enforce written physical security and cybersecurity policies and procedures reasonably designed to ensure the confidentiality, integrity, and availability of physical and electronic records and information.
  - (2) A policy or procedure described in subdivision (d)(1) of this section shall be tailored to the size and sophistication of the mortgage broker, mortgage banker, or mortgage servicer.
  - (3) The commissioner may impose additional conditions by rule or order to clarify the requirements of a policy or procedure described in subdivision (d)(1) of this section.
- (e) A mortgage broker, mortgage banker, or mortgage servicer shall establish, enforce, and maintain policies and procedures reasonably designed to achieve compliance with this subchapter and any other state law or rule or federal law or regulation that is applicable to any business the licensee is authorized to conduct in this state.

**History.** Acts 2003, No. 554, § 1; 2009, No. 731, § 21; 2011, No. 894, § 12; 2017, No. 669, § 4; 2021, No. 531, § 11.

**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 and their respective transitional 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 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 late fee of two hundred fifty dollars (\$250).
    - (B) All or part of the late fee may be waived by the commissioner for good cause.
- (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.

**History.** Acts 2003, No. 554, § 1; 2005, No. 1679, § 2; 2009, No. 731, § 22; 2019, No. 200, § 19.

**23-39-512. Public inspection of records — Exceptions.**

- (a)
  - (1) Unless otherwise specified in this section, all information filed with the Securities Commissioner shall be available for public inspection.
  - (2) The information contained in or filed with any application or report may be made available to the public under any rules the commissioner prescribes that are consistent with state or federal law governing the disclosure of public information.
- (b) Except for reasonably segregable portions of information and records that by law would be made routinely available to a party in litigation with the commissioner, the commissioner shall not publish or make available the following information:
  - (1) Information contained in reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation;
  - (2) Interagency or intra-agency memoranda or letters, including:
    - (A) Generally, records that reflect discussions between or consideration by the commissioner or members of the staff of the State Securities Department or the staff of the Department of Commerce working for the State Securities Department, or both, of any action taken or proposed to be taken by the commissioner or by any members of the staff of the State Securities Department or the staff of the Department of Commerce working for the State Securities Department; and
    - (B) Specifically, reports, summaries, analyses, conclusions, or any other work product of the commissioner or of attorneys, accountants, analysts, or other members of the commissioner's staff, prepared in the course of an inspection of the books or records of any person whose affairs are regulated by the commissioner or prepared otherwise in the course of an examination or investigation or related litigation conducted by or on behalf of the commissioner;

- (3) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, including:
  - (A) Information concerning all employees of the State Securities Department or the Department of Commerce working for the State Securities Department and information concerning persons subject to regulation by the State Securities Department; and
  - (B) Personal information about employees of mortgage brokers, mortgage bankers, mortgage servicers, loan officers, or transitional loan officers reported to the commissioner under the State Securities Department's rules concerning registration of those persons;
- (4) (A) Investigatory records compiled for law enforcement purposes to the extent that production of the records would:
  - (i) Interfere with enforcement proceedings;
  - (ii) Deprive a person of a right to a fair trial or an impartial adjudication; or
  - (iii) Disclose the identity of a confidential source.
- (B) The commissioner may also withhold investigatory records that would:
  - (i) Constitute an unwarranted invasion of personal privacy;
  - (ii) Disclose investigative techniques and procedures; or
  - (iii) Endanger the life or physical safety of law enforcement personnel.
- (C) Investigatory records under this section include:
  - (i) All documents, records, transcripts, correspondence, and related memoranda and work products concerning examinations and other investigations and related litigation as authorized by law that pertain to or may disclose the possible violations by any person of any provision of any of the statutes or rules administered by the commissioner; and
  - (ii) All written communications from or to any person confidentially complaining or otherwise furnishing information respecting the possible violations, as well as all correspondence and memoranda in connection with the confidential complaints or information;

- (5) Information contained in or related to examinations, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions or mortgage lenders;
- (6)
  - (A) Financial records of mortgage bankers, mortgage brokers, mortgage servicers, loan officers, or transitional loan officers, obtained during or as a result of an examination by the State Securities Department.
  - (B) However, when a record under this subchapter is required to be filed with the commissioner as part of an application for license, annual renewal, or otherwise, the record, including financial statements prepared by certified public accountants, shall be public information unless sections of the information are bound separately and are marked “confidential” by the mortgage banker, mortgage broker, mortgage servicer, loan officer, or transitional loan officer upon its submission.
  - (C) Information under subdivision (6)(B) of this section bound separately and marked “confidential” shall be considered nonpublic until ten (10) days after the commissioner has given the mortgage banker, mortgage broker, mortgage servicer, loan officer, or transitional loan officer notice that an order will be entered declaring the material public.
  - (D) If the mortgage banker, mortgage broker, mortgage servicer, loan officer, or transitional loan officer believes the commissioner's order is incorrect, the mortgage banker, mortgage broker, mortgage servicer, loan officer, or transitional loan officer may seek an injunction from the Pulaski County Circuit Court ordering the State Securities Department to hold the information as nonpublic pending a final order from a court of competent jurisdiction if the order of the commissioner is appealed under applicable law;
- (7) Trade secrets obtained from any person; or
- (8) Any other records that are required to be closed to the public and are not considered open to public inspection under the Freedom of Information Act of 1967, § 25-19-101 et seq., or under other law.
- (c) This section does not prevent the commissioner from sharing with other state or federal law enforcement authorities, regulatory authorities, or self-regulatory organizations authorized by law any information that the commissioner may have or may obtain in aid of the enforcement of this subchapter or any other state or federal law.

- (d) (1) Except as otherwise provided in this subchapter, the requirements of any federal or state law regarding privacy or confidentiality of any information or material provided to an automated licensing system under this subchapter and any privilege arising under federal or state law, including the rules of any federal or state court with respect to the information or material, shall continue to apply to the information or material after the information or material has been disclosed to the automated licensing system.
- (2) The information or material provided to an automated licensing system under this subchapter may be shared with a state or federal regulatory official with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or state law.

**History.** Acts 2003, No. 554, § 1; 2009, No. 731, §§ 23, 24; 2019, No. 200, §§ 20, 21; 2019, No. 315, § 2500; 2019, No. 910, §§ 573, 574.

### **23-39-513. Prohibited activities.**

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(9)(B)(vi) 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;
- (2) To improperly refuse to issue a satisfaction or release of a mortgage;
- (3) To fail to account for or to deliver to any person any funds, documents, or other thing of value obtained in connection with a mortgage loan, including money provided by a borrower for a real estate appraisal or a credit report, that the mortgage banker, mortgage broker, mortgage servicer, loan officer, or transitional loan officer is not entitled to retain;
- (4) To pay, receive, or collect, in whole or in part, any commission, fee, or other compensation for brokering a mortgage loan in violation of this subchapter, including a mortgage loan brokered or solicited by any unlicensed person other than an exempt person;
- (5) To advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information without disclosing the lengths of the loans, whether the interest rates are fixed or adjustable, and any other material limitations on the loans;

- (6) To fail to disburse funds in accordance with a written commitment or agreement to make or service a mortgage loan;
- (7) In connection with the advertisement, solicitation, brokering, making, servicing, purchase, or sale of any mortgage loan, to engage in any transaction, practice, or course of business that:
  - (A) Is not in good faith or fair dealing;
  - (B) Is misleading or deceptive; or
  - (C) Constitutes a fraud upon any person;
- (8)
  - (A) To broker or make a residential mortgage loan that contains a penalty for prepayment if the prepayment is made after the expiration of the thirty-six-month period immediately following the date on which the loan was made.
  - (B) A penalty for prepayment under subdivision (8)(A) of this section made within the thirty-six-month period shall not exceed any of the following amounts:
    - (i) Three percent (3%) of the principal loan amount remaining on the date of prepayment if the prepayment is made within the first twelve-month period immediately following the date the loan was made;
    - (ii) Two percent (2%) of the principal loan amount remaining on the date of prepayment if the prepayment is made within the second twelve-month period immediately following the date the loan was made; or
    - (iii) One percent (1%) of the principal loan amount remaining on the date of prepayment if the prepayment is made within the third twelve-month period immediately following the date the loan was made;
- (9)
  - (A) To influence or attempt to influence through coercion, extortion, or bribery the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan.
  - (B) This subdivision (9) does not prohibit a mortgage broker or mortgage banker from asking the appraiser to do one (1) or more of the following:
    - (i) Consider additional appropriate property information;
    - (ii) Provide further detail, substantiation, or explanation for the appraiser's value conclusion; or
    - (iii) Correct errors in the appraisal report;

- (10) To broker or make a refinancing of a residential mortgage loan when the refinancing charges additional points and fees, within a twelve-month period after the original loan agreement was signed, unless the refinancing results in a reasonable, tangible net benefit to the borrower, considering all of the circumstances surrounding the refinancing;
- (11) To broker, make, or service a mortgage loan in violation of any federal law or any law of this state;
- (12) To engage in practices that are dishonest or unethical in the mortgage industry;
- (13) To unreasonably fail to deliver or provide information or documents promptly to the commissioner upon written request or to knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information;
- (14) To unreasonably fail to supervise the branches, loan officers, transitional loan officers, and employees of the mortgage broker, mortgage banker, or mortgage servicer;
- (15) To fail to make payments in a timely manner from an escrow account held for the borrower to pay insurance, taxes, and other charges concerning the mortgage property without good cause, and the failure to pay results in late penalties or other negative activity;
- (16) To place hazard, homeowners, or flood insurance on a mortgaged property:
  - (A) Without providing prior written notice to the borrower;
  - (B) If the mortgage servicer knows or has reason to know that adequate insurance coverage already exists; or
  - (C) In an amount that unreasonably exceeds the value of the insurable improvements or the last-known coverage amount or policy limits of insurance; or
- (17)
  - (A) To fail to refund to the borrower unearned premiums paid by or charged to a borrower for hazard, homeowners, or flood insurance placed by a mortgage banker or mortgage servicer if reasonable proof is available or provided that the borrower had or obtained coverage in effect resulting in the unnecessary placement of forced insurance.
  - (B) The borrower shall receive a refund of excess premium funds taken from the borrower when reasonable proof is provided within twelve (12) months of the forced placement.
- (18) To use a mortgage trigger lead in a misleading or deceptive manner by, including without limitation:

- (A) Failing to state in the initial communication with a consumer:
  - (i) The loan officer's name and the mortgage broker or mortgage banker on behalf of whom the loan officer is acting;
  - (ii) A brief explanation of how the loan officer or his or her sponsor obtained the consumer's contact information to make the communication, or an explanation of a mortgage trigger lead;
  - (iii) That the solicitation is based on personal information about the consumer that was purchased, directly or indirectly, from a consumer reporting agency without the knowledge or permission of the lender, mortgage broker, or mortgage banker with whom the consumer initially applied;
  - (iv) That the loan officer and his or her sponsor is not affiliated with the creditor to which the consumer made the credit application that resulted in the mortgage trigger lead;
  - (v) That the purpose of the communication is to solicit new business for the sponsor; and
  - (vi) To make a firm offer of credit as provided by the Fair Credit Reporting Act, 15 U.S.C. § 1681b(e), as it existed on January 1, 2025;
- (B) Soliciting or contacting a consumer who has opted out of prescreened offers of credit under the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., as it existed on January 1, 2025;
- (C) Placing a telephone call to a consumer who has placed his or her contact information on a national “Do-Not-Call” registry established and maintained by the Federal Trade Commission under 16 C.F.R. § 310.4, as it existed on January 1, 2025; or
- (D) Knowingly using information from a mortgage trigger lead in violation of this subdivision (18) or the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., as it existed on January 1, 2025.

**History.** Acts 2003, No. 554, § 1; 2003 (2nd Ex. Sess.), No. 26, § 2; 2005, No. 1679, § 3; 2007, No. 748, § 8; 2009, No. 164, § 11; 2009, No. 731, § 25; 2011, No. 720, § 1; 2011, No. 894, §§ 13-15; 2013, No. 1167, § 5; 2019, No. 200, §§ 22, 23, 2025, No. 263, § 2..

#### **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, transitional 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 a 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;
  - (C) Has pleaded guilty or nolo contendere to or has been found guilty in a domestic, foreign, or military court of:
    - (i) A felony;
    - (ii) An offense involving breach of trust, moral turpitude, money laundering, or fraudulent or dishonest dealing within the past ten (10) years; or
    - (iii) An 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:
    - (i) Denying, suspending, revoking, restricting, or limiting that person's license as a mortgage broker, mortgage banker, mortgage servicer, loan officer, transitional loan officer,

securities broker-dealer, securities agent, investment adviser, or investment adviser representative; or

- (ii) Directing that person to cease and desist from an activity regulated by the commissioner, including any order entered pursuant to Acts 1977, No. 806;
  - (F) Is the subject of an order, including a denial, suspension, or revocation of authority to engage in a regulated activity by any other state or federal authority to which the person is, has been, or has sought to be subject, entered within the past five (5) years, including without limitation the mortgage industry;
  - (G) Has been found by a court of competent jurisdiction to have charged or collected any fee or rate of interest or made or brokered any mortgage loan with terms or conditions or in a manner contrary to Arkansas Constitution, Amendment 60;
  - (H) Does not meet the qualifications or the financial responsibility, character, or general fitness requirements under § 23-39-505 or any bond or net worth requirements under this subchapter;
  - (I) Has been the executive officer or controlling shareholder or owned a controlling interest in any mortgage broker, mortgage banker, or mortgage servicer that has been subject to an order or injunction described in subdivisions (a)(2)(D)-(G) of this section; or
  - (J)
    - (i) Has failed to pay the proper filing fee, renewal fee, or any late fee under this subchapter.
    - (ii) The commissioner may enter a denial order against a person under this subsection when the person has failed to pay the proper filing fee, renewal fee, or any late fee under this subchapter, but the commissioner shall vacate the order when all fees have been paid.
- (b)
  - (1) The commissioner by order may impose a civil penalty upon a licensee or any partner, officer, director, member, manager, or other person occupying a similar status or performing a similar function on behalf of a licensee for any violation of this subchapter, a rule under this subchapter, or an order of the commissioner.
  - (2) The civil penalty shall not exceed ten thousand dollars (\$10,000) for each violation under subdivision (b)(1) of this section by a mortgage broker, mortgage banker, mortgage servicer, loan officer, or transitional loan officer.

- (c)
  - (1) The commissioner by order may summarily postpone or suspend the license of a licensee pending final determination of any proceeding under this section.
  - (2) Upon entering the order, the commissioner shall promptly notify the applicant or licensee that the order has been entered and the reasons for issuing the order.
  - (3) The applicant or licensee may contest the order by delivering a written request for a hearing to the commissioner within thirty (30) days from the date on which notice of the order is sent by the commissioner to the address of the licensee on file with the commissioner by first class mail, postage prepaid.
  - (4) The commissioner shall schedule a hearing to be held within thirty (30) days after the commissioner receives a timely written request for a hearing, unless the hearing is postponed for a reasonable amount of time at the request of the licensee.
  - (5) If a licensee does not request a hearing and the commissioner does not order a hearing, the order will remain in effect until it is modified or vacated by the commissioner.
  - (6) If a hearing is requested or ordered by the commissioner, after notice of and opportunity for hearing, the commissioner may modify or vacate the order or extend it until final determination.
- (d) The commissioner by summary order may cancel a license or application if the commissioner finds that a licensee or applicant for a license:
  - (1) Is no longer in existence;
  - (2) Has ceased to do business as a loan officer, transitional loan officer, mortgage broker, mortgage banker, or mortgage servicer;
  - (3) Is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian; or
  - (4) Cannot be located after a reasonable search.
- (e)
  - (1) In addition to other powers under this subchapter, upon finding that any action of a person is in violation of this subchapter, the commissioner may summarily order the person to cease and desist from the prohibited action.
  - (2) (A) Upon entering the order under subdivision (e)(1) of this section, the commissioner shall promptly notify the person that the order has been entered and state the reasons for the order.

- (B) The person may contest the cease and desist order by delivering a written request for a hearing to the commissioner within thirty (30) days from the date on which notice of the order is sent by the commissioner to the last known address of the person by first class mail, postage prepaid.
  - (C) The commissioner shall schedule a hearing to be held within a reasonable amount of time after the commissioner receives a timely written request for a hearing.
  - (D) If the person does not request a hearing and the commissioner does not order a hearing, the order will remain in effect until it is modified or vacated by the commissioner.
  - (E) If a hearing is requested or ordered, after notice of and opportunity for hearing, the commissioner may modify or vacate the order or make it permanent.
- (3) (A) A person shall be subject to a civil penalty of up to twenty-five thousand dollars (\$25,000) for each violation of the commissioner's cease and desist order committed after entry of the order if:
- (i) The person subject to the cease and desist order fails to appeal the order in accordance with § 23-39-515 or if the person appeals and the appeal is denied or dismissed; and
  - (ii) The person continues to engage in the prohibited action in violation of the commissioner's order.
- (B) The commissioner may file an action requesting the civil penalty under subdivision (e)(3)(A) of this section with the Pulaski County Circuit Court or any other court of competent jurisdiction.
  - (C) The penalties of this section apply in addition to, but not in lieu of, any other provision of law applicable to a person for the person's failure to comply with an order of the commissioner.
- (f) Unless otherwise provided, any action, hearing, or other proceeding under this subchapter shall be governed by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.
- (g) If the commissioner has grounds to believe that any person has violated the provisions of this subchapter or that facts exist that would be the basis for an order against a licensee or other person, the commissioner or the commissioner's designee, at any time, may investigate or examine the loans and business of the licensee and examine the books, accounts, records, and files of any licensee or other person relating to the complaint or matter under investigation.

- (h) (1) The commissioner or the commissioner's designee may:
  - (A) Administer oaths and affirmations;
  - (B) Issue subpoenas to require the attendance of and to examine under oath all persons whose testimony the commissioner deems relevant to the person's business; and
  - (C) Issue subpoenas to require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records that the commissioner considers relevant or material to the inquiry.
- (2) (A) In case of contumacy by or refusal to obey a subpoena issued to any person, the Pulaski County Circuit Court, upon application by the commissioner, may issue an order requiring the person to appear before the commissioner or the officer designated by the commissioner, to produce documentary evidence if so ordered, or to give evidence touching the matter under investigation or in question.
- (B) Failure to obey the order of the court may be punished by the court as a contempt of court.
- (3) (A) The assertion that the testimony or evidence before the commissioner may tend to incriminate or subject a person to a penalty or forfeiture shall not excuse the person from:
  - (i) Attending and testifying;
  - (ii) Producing any document or record; or
  - (iii) Obeying the subpoena of the commissioner or any officer designated by the commissioner.
- (B) However, no person may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person is compelled, after claiming a privilege against self-incrimination, to testify or produce evidence, except that the person testifying is not exempt from prosecution and punishment for perjury or contempt committed while testifying.
- (i) (1) From time to time and with or without cause, the commissioner may conduct examinations of the books and records of any applicant or licensee in order to determine the compliance with this subchapter and any rules adopted under this subchapter.

- (2) The applicant or licensee shall pay a fee for each examination under subdivision (i)(1) of this section, not to exceed one hundred fifty dollars (\$150) per examiner for each day or part of a day during which an examination is conducted.
  - (3) In addition, the applicant or licensee may be required to pay the actual hotel and traveling expenses of the examiner traveling to and from the office of the commissioner while the examiner is conducting an examination under subdivision (i)(1) of this section.
- (j) If the commissioner finds that the managing principal, branch manager, loan officer, or transitional 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, loan officer, or transitional loan officer from serving as a managing principal, branch manager, loan officer, or transitional loan officer for any period of time the commissioner deems appropriate.
- (k) All orders shall contain written findings of fact and conclusions of law. Except for orders entered under subdivisions (c)(1) and (e)(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.
- (l) 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.
- (m)
  - (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 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 or order issued under this subchapter to the appropriate prosecuting attorney or regulatory agency, that 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 (e)(1)

of this section and apply to the Pulaski County Circuit Court to enjoin the act or practice and to enforce compliance with this subchapter or any rule or order issued under this subchapter, or both.

- (ii) However, without issuing a cease and desist order, the commissioner may apply directly to the Pulaski County Circuit Court for injunctive or other relief.
- (2) Upon proper showing, the court shall grant a permanent or temporary injunction, restraining order, or writ of mandamus.
- (3) The commissioner may also seek and upon proper showing the appropriate court shall grant any other ancillary relief that may be in the public interest, including:
  - (A) The appointment of a receiver, temporary receiver, or conservator;
  - (B) A declaratory judgment;
  - (C) An accounting;
  - (D) Disgorgement;
  - (E) Assessment of a fine in an amount of not more than ten thousand dollars (\$10,000) for each violation; and
  - (F) Any other relief as may be appropriate in the public interest.
- (4) The court may not require the commissioner to post a bond.

**History.** Acts 2003, No. 554, § 1; 2005, No. 1679, § 4; 2007, No. 748, §§ 9, 10; 2009, No. 731, §§ 26, 27; 2011, No. 894, § 16; 2013, No. 1167, § 6; 2019, No. 200, §§ 24-27; 2019, No. 315, § 2501; 2021, No. 531, § 12.

### **23-39-515. Review of order of the commissioner.**

- (a)
  - (1) Any person aggrieved by a final order of the Securities Commissioner may obtain a review of the order by filing in the Pulaski County Circuit Court within sixty (60) days after the entry of the order a written petition praying that the order be modified or set aside in whole or in part.
  - (2)
    - (A) A copy of the petition shall be served upon the commissioner, after which the commissioner shall certify and file in court a copy of the filing and evidence upon which the order was entered.
    - (B) When a petition under subdivision (a)(1) of this section has been filed, the court has exclusive jurisdiction to affirm, modify,

enforce, or set aside any order of the commissioner in whole or in part, except that a court may not set aside a summary order entered by the commissioner when the subject of the order has not requested a hearing before the commissioner as provided in § 23-39-514(c)(1) or (d)(1).

- (b)
  - (1) The findings of the commissioner as to the facts are conclusive if supported by competent, material, and substantial evidence.
  - (2) If either party applies to the court for leave to submit additional material evidence and shows to the satisfaction of the court that there were reasonable grounds for failure to submit the evidence in the hearing before the commissioner, the court may order the additional evidence to be taken before the commissioner and to be submitted upon the hearing before the commissioner in any manner and upon any condition as the court considers to be proper.
  - (3) After consideration of the additional evidence, the commissioner may modify his or her findings and order and shall file in the court the additional evidence together with any modified or new findings or order.
- (c) Unless specifically ordered by the court, the commencement of proceedings under subsection (a) of this section does not operate as a stay of the commissioner's order.

**History.** Acts 2003, No. 554, § 1.

**23-39-516. Criminal penalty.**

- (a) It is unlawful for any person to make or cause to be made in any document filed with the Securities Commissioner or in any proceeding under this subchapter any statement that is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.
- (b)
  - (1) A person is guilty of a Class B felony if he or she:
    - (A) Willfully violates any provision of this subchapter, except subsection (a) of this section;
    - (B) Willfully violates subsection (a) of this section knowing the statement to be false or misleading in any material respect; or
    - (C) Willfully violates any rule under this subchapter or any order of the commissioner.
  - (2) Each transaction involving the unlawful making or brokering of a mortgage loan is a separate offense.

- (c) No person may be imprisoned for violation of any order of the commissioner unless the person had actual knowledge of the order.
- (d) The commissioner may refer any available evidence concerning violations of this subchapter or any rule or order issued under this subchapter to the appropriate prosecuting authority who, with or without the reference, may institute the appropriate criminal proceedings under this subchapter.
- (e) This subchapter does not limit the power of the state to punish any person for any conduct that constitutes a crime under any statute or common law.

**History.** Acts 2003, No. 554, § 1.

**23-39-517. [Repealed.]**

**23-39-518. Cooperation with other regulatory agencies.**

- (a) The Securities Commissioner may:
  - (1) Enter into an arrangement, agreement, or other working relationship with federal, state, or self-regulatory authorities, the Conference of State Bank Supervisors, or a subsidiary of the Conference of State Bank Supervisors to file and maintain documents in a multistate automated licensing system or other central depository system;
  - (2) Waive or modify in whole or in part by rule or by order any requirement of this subchapter if necessary to implement this section; and
  - (3) Establish new requirements under this subchapter to carry out the purpose of this section.
- (b) It is the intent of this section that the commissioner be provided the authority to reduce duplication of filings, reduce administrative costs, and establish uniform procedures, forms, and administration with other states and federal authorities.
- (c)
  - (1) The commissioner may permit or require initial and renewal registration filings required under this subchapter to be filed with the Conference of State Bank Supervisors, a subsidiary entity owned by the Conference of State Bank Supervisors, the Financial Industry Regulatory Authority, or another entity maintaining or operating a multistate automated licensing system.
  - (2) The applicant or the licensee shall pay any fee charged for the applicant or the licensee to participate in the automated licensing system.
- (d) The commissioner may accept uniform procedures and forms designed to:

- (1) Implement a multistate automated licensing system;
  - (2) Implement a uniform national mortgage lending regulatory system; or
  - (3) Facilitate common practices and procedures among the states.
- (e)
- (1) If the State of Arkansas joins a multistate automated licensing system for mortgage industry participants pursuant to this section, the commissioner may require a criminal background investigation of each applicant seeking to become licensed under this subchapter as a mortgage broker, mortgage banker, mortgage servicer, loan officer, or transitional loan officer.
  - (2) The criminal background investigation may include a fingerprint examination and may be conducted by the Federal Bureau of Investigation, the Division of Arkansas State Police, or an equivalent state or federal law enforcement department or agency.
  - (3) The information obtained by the background investigation may be used by the commissioner to determine the applicant's eligibility for licensing under this subchapter.
  - (4) The fee required to perform the criminal background investigation shall be borne by the license applicant.
  - (5) Notwithstanding any other law to the contrary, information obtained or held by the commissioner under this subsection:
    - (A) May be disclosed when necessary in any proceeding under this subchapter;
    - (B) May be provided to other state agencies participating in the multistate automatic licensing system;
    - (C) Shall be considered privileged and confidential; and
    - (D) Shall not be available for examination except by the affected applicant for licensure or his or her authorized representative, or by the person whose license is subject to sanctions or his or her authorized representative.
  - (6) No record, file, or document shall be removed from the custody of the Identification Bureau of the Division of Arkansas State Police.
  - (7) Any information made available to the affected applicant for licensure or to the person whose license is subject to sanctions shall be information pertaining to that person only.
  - (8) Rights of privilege and confidentiality established in this section shall not extend to any document created for purposes other than the background check.

- (9) The commissioner may adopt rules to fully implement the provisions of this section.

**History.** Acts 2007, No. 748, § 11; 2009, No. 731, § 28; 2019, No. 200, § 28; 2019, No. 315, § 2502.

**23-39-519. Prudential standards for covered institution servicers — Financial condition.**

- (a) A covered institution servicer shall meet or exceed the minimum financial requirements of the Federal Housing Finance Agency's Eligibility Requirements for Enterprise Single-Family Seller/Servicers in order to maintain the capital and servicing liquidity as required by this section and § 23-39-505(q).
- (b) All financial data shall be determined according to generally accepted accounting principles or the international financial reporting standards promulgated by the International Financial Reporting Standards Foundation and the International Accounting Standards Board.
- (c) A covered institution servicer that meets the Federal Housing Finance Agency's Eligibility Requirements for Enterprise Single-Family Seller/Servicers for capital, net worth ratio, and servicing liquidity, whether or not the covered institution servicer is approved for government-sponsored enterprises servicing, or Federal National Mortgage Association servicing, or Federal Home Loan Mortgage Corporation servicing, satisfies the requirements of subsections (a) and (b) of this section.
- (d)
  - (1) A covered institution servicer shall maintain written policies and procedures implementing the capital and servicing liquidity requirements.
  - (2) The policies and procedures under subdivision (d)(1) of this section shall include a sustainable written methodology for satisfying the requirements of subsection (a) of this section and be available to the Securities Commissioner upon request.
- (e)
  - (1) A covered institution servicer under this subchapter shall:
    - (A) Maintain sufficient allowable assets for liquidity in addition to the amounts required for servicing liquidity to cover normal business operations; and
    - (B) Have in place sound cash management and business operating plans that match the size and sophistication of the covered institution servicer to ensure normal business operations.
  - (2)
    - (A) The management or key individual of a covered institution servicer shall develop, establish, and implement plans, policies, and

procedures for maintaining operating liquidity sufficient for the ongoing needs of the covered institution servicer.

- (B) The plans, policies, and procedures under subdivision (e)(2)(A) of this section shall:
  - (i) Contain sustainable, written methodologies for maintaining sufficient operating liquidity; and
  - (ii) Be available to the commissioner upon request.

**History.** Acts 2025, No. 262, § 8.

**23-39-520. Corporate governance for covered institution servicers.**

- (a) A covered institution servicer shall establish and maintain a board of directors who are responsible for the oversight of the covered institution servicer.
- (b) For a covered institution servicer that is not approved to service loans by a government-sponsored enterprise, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association, or when these federal agencies have granted approval for a board alternative, a covered institution servicer may establish a similar body constituted to exercise oversight and fulfill the board of directors' responsibilities under subsection (c) of this section.
- (c) The board of directors shall be responsible for:
  - (1) Establishing a written corporate governance framework, including appropriate internal controls designed to monitor corporate governance and assess compliance with the corporate governance framework, available to the Securities Commissioner upon request;
  - (2) Monitoring and ensuring the covered institution servicer's compliance with the corporate governance framework and this subchapter; and
  - (3) Accurate and timely regulatory reporting, including without limitation the requirements for filing the mortgage call report.
- (d)
  - (1) The board of directors shall establish internal audit requirements that are appropriate for the size, complexity, and risk profile of the covered institution servicer, with appropriate independence to provide a reliable evaluation of the covered institution servicer's internal control structure, risk management, and governance.
  - (2) Internal audit requirements established by the board of directors and the results of internal audits shall be made available to the commissioner upon request.

- (e) (1) A covered institution servicer shall receive an external audit, including audited financial statements and audit reports, conducted by an independent certified public accountant annually.
- (2) The external audit required under subdivision (e)(1) of this section shall:
  - (A) Be available to the commissioner upon request; and
  - (B) Include at a minimum:
    - (i) Annual financial statements including a balance sheet, statement of operations income statement and cash flows, notes, and supplemental schedules, prepared according to generally accepted accounting principles;
    - (ii) An assessment of the internal control structure;
    - (iii) A computation of tangible net worth;
    - (iv) Validation of mortgage servicing rights valuation and reserve methodology, if applicable;
    - (v) Verification of adequate fidelity and errors and omissions insurance; and
    - (vi) Testing of controls related to risk management activities, including compliance and stress testing, if applicable.
- (f) (1) A covered institution servicer shall establish a risk management program under the oversight of the board of directors that is available to the commissioner upon request that identifies, measures, monitors, and controls risk sufficient for the level of sophistication of the covered institution servicer.
- (2) The risk management program required under subdivision (f)(1) of this section shall:
  - (A) Have appropriate processes and models in place to measure, monitor, and mitigate financial risks and changes to the risk profile of the covered institution servicer and assets being serviced; and
  - (B) Be scaled to the complexity of the covered institution servicer, but be sufficiently robust to manage risks in several areas, including without limitation:
    - (i) Credit risk, including the potential that a borrower or counterparty will fail to perform on an obligation;
    - (ii) Servicing liquidity risk, including the potential that the covered institution servicer will be unable to meet the

covered institution servicer's obligations as the obligations come due because of an inability to liquidate assets or obtain adequate funding or that it cannot easily unwind or offset specific exposures;

- (iii) Operational risk, including the risk resulting from inadequate or failed internal processes, people, and systems or from external events;
  - (iv) Market risk, including the risk to the covered institution servicer's condition resulting from adverse movements in market rates or prices;
  - (v) Compliance risk, including the risk of regulatory sanctions, fines, penalties, or losses resulting from failure to comply with laws, rules, regulations, or other supervisory requirements applicable to a covered institution servicer;
  - (vi) Legal risk, including the potential that actions against the covered institution servicer that result in unenforceable contracts, lawsuits, legal sanctions, or adverse judgments can disrupt or otherwise negatively affect the operations or condition of the covered institution servicer; and
  - (vii) Reputation risk, including the risk to earnings and capital arising from negative publicity regarding the covered institution servicer's business practices.
- (g)
    - (1) A covered institution servicer shall conduct a risk management assessment on an annual basis concluding with a formal report to the board of directors and be available to the commissioner upon request.
    - (2) Evidence of risk management activities throughout the year shall be maintained and made part of the report, including findings of issues and the response to address the findings made in the report.

**History.** Acts 2025, No. 262, § 8.

**23-39-521. Standards for safeguarding customer information.**

- (a) A financial institution shall develop, implement, and maintain a comprehensive information security program.
- (b) The information security program under subsection (a) of this section shall:
  - (1) Be written in one (1) or more readily accessible parts; and

- (2) Contain administrative, technical, and physical safeguards that are appropriate to the financial institution's size and complexity, the nature and scope of the financial institution's activities, and the sensitivity of any customer information at issue.
- (c) The information security program shall include the information required under § 23-39-522.

**History.** Acts 2025, No. 262, § 8.

**23-39-522. Information security program required elements.**

- (a) In order for a financial institution to develop, implement, and maintain an information security program, the financial institution shall comply with this section.
- (b) (1) A financial institution shall designate a qualified individual responsible for overseeing and implementing the financial institution's information security program and enforcing an information security program.
  - (2) (A) The qualified individual may be employed by the financial institution, an affiliate, or a service provider.
  - (B) If a financial institution designates an individual employed by an affiliate or a service provider, the financial institution shall:
    - (i) Retain responsibility for compliance with this section;
    - (ii) Designate a senior member of the financial institution's personnel to be responsible for direction and oversight of the qualified individual; and
    - (iii) Require the service provider or affiliate to maintain an information security program that protects the financial institution in accordance with the requirements of this section.
- (c) (1) A financial institution shall base the financial institution's information security program on a risk assessment that:
  - (A) Identifies reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information that could result in the unauthorized disclosure, misuse, alteration, destruction, or other compromise of the customer information; and
  - (B) Assesses the sufficiency of any safeguards in place to control these risks.

- (2) The risk assessment shall be written and include:
  - (A) Criteria for the evaluation and categorization of identified security risks or threats the financial institution faces;
  - (B) Criteria for the assessment of the confidentiality, integrity, and availability of the financial institution's information systems and customer information, including the adequacy of the existing controls in the context of the identified risks or threats the financial institution faces; and
  - (C) Requirements describing how identified risks will be mitigated or accepted based on the risk assessment and how the information security program will address the risks.
- (3) A financial institution shall periodically perform additional risk assessments that:
  - (A) Reexamine the reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information that could result in the unauthorized disclosure, misuse, alteration, destruction, or other compromise of the customer information; and
  - (B) Reassess the sufficiency of any safeguards in place to control these risks.
- (d) A financial institution shall design and implement safeguards to control the risks the financial institution identifies through the risk assessment as required under subsection (c) of this section, including without limitation:
  - (1) Implementing and periodically reviewing access controls, including technical and, as appropriate, physical controls, to:
    - (A) Authenticate and permit access only to authorized users to protect against the unauthorized acquisition of customer information; and
    - (B) Limit authorized users' access only to customer information that the authorized user needs to perform the authorized user's duties and functions, or in the case of customers, to access the customer's own customer information;
  - (2) Identifying and managing the data, personnel, devices, systems, and facilities that enable the financial institution to achieve business purposes according to the financial institution's relative importance to business objectives and the financial institution's risk strategy;
  - (3) (A) Protecting by encryption all customer information held or transmitted by the financial institution both in transit over external networks and at rest.

- (B) To the extent the financial institution determines that encryption of customer information, either in transit over external networks or at rest, is infeasible, the financial institution may instead secure the customer information using effective alternative compensating controls reviewed and approved by the financial institution's qualified individual;
- (4) Adopting secure development practices for in-house developed applications utilized by the financial institution for transmitting, accessing, or storing customer information and procedures for evaluating, assessing, or testing the security of externally developed applications the financial institution utilizes to transmit, access, or store customer information;
- (5) Implementing multifactor authentication for an individual accessing an information system, unless the financial institution's qualified individual has approved in writing the use of reasonably equivalent or more secure access controls;
- (6) Developing, implementing, and maintaining procedures for the secure disposal of customer information in any format no later than two (2) years after the last date the customer information is used in connection with the provision of a financial product or service to the customer, unless:
  - (A) The customer information is:
    - (i) Necessary for business operations or for other legitimate business purposes; or
    - (ii) Otherwise required to be retained by state law or rule, or federal law or regulation; or
  - (B) Targeted disposal is not reasonably feasible due to the manner in which the customer information is maintained;
- (7) Periodically reviewing the financial institution's data retention policy to minimize the unnecessary retention of data;
- (8) Adopting procedures for change management; and
- (9) Implementing policies, procedures, and controls designed to monitor and log the activity of authorized users and detect unauthorized access or use of, or tampering with, customer information by these users.
- (e) (1) A financial institution shall regularly test or otherwise monitor the effectiveness of the safeguards key controls, systems, and procedures of the safeguards required under this section, including those to detect actual and attempted attacks on, or intrusions into, information systems.

- (2)
    - (A) For information systems, monitoring and testing shall include continuous monitoring or periodic penetration testing and vulnerability assessments.
    - (B) Absent effective continuous monitoring or other systems to detect, on an ongoing basis, changes in information systems that may create vulnerabilities, the financial institution shall conduct:
      - (i) Annual penetration testing of a financial institution's information systems determined each given year based on relevant identified risks according to the risk assessment; and
      - (ii) Vulnerability assessments, including a systemic scan or review of an information system reasonably designed to identify publicly known security vulnerabilities in the financial institution's information systems based on the risk assessment, at least every six (6) months, and whenever there are:
        - (a) Material changes to the financial institution's operations or business arrangements; and
        - (b) Circumstances the financial institution knows or has reason to know may have a material impact on the financial institution's information security program.
- (f) A financial institution shall implement policies and procedures to ensure that personnel are able to enact the financial institution's information security program by:
  - (1) Providing the financial institution's personnel with security awareness training that is updated as necessary to reflect risks identified by the risk assessment;
  - (2) Utilizing qualified information security personnel employed by the financial institution or an affiliate or a service provider sufficient to manage the financial institution's information security risks and to perform or oversee the information security program;
  - (3) Providing information security personnel with security updates and training sufficient to address relevant security risks; and
  - (4) Verifying that key information security personnel take steps to maintain current knowledge of changing information security threats and countermeasures.
- (g) A financial institution shall oversee service providers by:

- (1) Taking reasonable steps to select and retain service providers that are capable of maintaining appropriate safeguards for the customer information at issue;
  - (2) Requiring the financial institution's service providers by contract to implement and maintain the safeguards referenced under subdivision (g)(1) of this section; and
  - (3) Periodically assessing the financial institution's service providers based on the risk they present and the continued adequacy of their safeguards.
- (h) A financial institution shall evaluate and adjust the financial institution's information security program to reflect:
- (1) The results of the testing and monitoring required by subsection (e) of this section;
  - (2) Any material change to the financial institution's operations or business arrangements or other circumstances;
  - (3) The results of risk assessments performed under subdivision (c)(3) of this section; and
  - (4) Any other circumstances that the financial institution knows or has reason to know may have a material impact on the financial institution's information security program.
- (i) (1) A financial institution shall establish a written incident response plan designed to promptly respond to, and recover from, any security event materially affecting the confidentiality, integrity, or availability of customer information in the financial institution's control.
- (2) The incident response plan under subdivision (i)(1) of this section shall address:
- (A) The goals of the incident response plan;
  - (B) The internal processes for responding to a security event;
  - (C) The definition of clear roles, responsibilities, and levels of decision-making authority;
  - (D) External and internal communications and information sharing;
  - (E) Identification of requirements for the remediation of any identified weaknesses in information systems and associated controls;
  - (F) Documentation and reporting regarding security events and related incident response activities; and

- (G) The evaluation and revision as necessary of the incident response plan following a security event.
- (j)
  - (1) The financial institution's qualified individual shall report in writing at least annually to the financial institution's board of directors or equivalent governing body.
  - (2) If a board of directors or equivalent governing body does not exist, the report required under subdivision (j)(1) of this section shall be timely presented to a senior officer responsible for the financial institution's information security program.
  - (3) The report required under subdivision (j)(1) of this section shall include:
    - (A) The overall status of the information security program and the financial institution's compliance with this section and associated rules; and
    - (B) Material matters related to the information security program, addressing issues such as risk assessment, risk management and control decisions, service provider arrangements, results of testing, security events or violations and management's responses to security events or violations, and recommendations for changes in the information security program.
- (k) A financial institution shall provide notice to the Securities Commissioner about notification events according to subdivisions (l)(1) and (2) of this section.
- (l)
  - (1) Upon discovery of a notification event as described in subdivision (l)(3) of this section, if the notification event involves the information of any consumers in this state, the financial institution shall notify the commissioner as soon as possible and no later than forty-five (45) days after discovery of the notification event.
  - (2) The notice required under subdivision (l)(1) of this section shall:
    - (A) Be made in a format specified by the commissioner; and
    - (B) Include the following information:
      - (i) The name and contact information of the reporting financial institution;
      - (ii)
        - (a) A description of the types of information that were involved in the notification event.
        - (b) If the information is possible to determine under subdivision (l)(2)(B)(ii)(a) of this section, the notice required under subdivision (l)(1) of this section

shall contain the date or date range of the notification event;

- (iii) The number of consumers affected or potentially affected by the notification event;
  - (iv) A general description of the notification event; and
  - (v)
    - (a) Whether a law enforcement official has provided the financial institution with a written determination that notifying the public of the notification event would impede a criminal investigation or cause damage to national security, and a means for the commissioner to contact the law enforcement official.
    - (b) A law enforcement official under subdivision (l)(2)(B)(v)(a) of this section may request an initial delay of up to thirty (30) days following the date when notice was provided to the commissioner.
    - (c) The delay under subdivision (l)(2)(B)(v)(b) of this section may be extended for an additional period of up to sixty (60) days if the law enforcement official seeks an extension in writing.
    - (d) An additional delay beyond the delay under subdivision (l)(2)(B)(v)(b) of this section may be permitted only if the State Securities Department determines that public disclosure of a notification event continues to impede a criminal investigation or cause damage to national security.
- (3)
  - (A) A notification event under this section shall be treated as discovered as of the first day on which the notification event is known to the financial institution.
  - (B) The financial institution under subdivision (l)(3)(A) of this section shall be deemed to have knowledge of a notification event if the notification event is known to a person, other than the person committing the notification event, who is the financial institution's employee, officer, or other agent.
- (m) A financial institution shall establish a written plan addressing business continuity and disaster recovery.

**History.** Acts 2025, No. 262, § 8.

**23-39-523. Exceptions.**

This subchapter does not apply to a financial institution that maintains customer information concerning fewer than five thousand (5,000) consumers.

**History.** Acts 2025, No. 262, § 8.