

HOUSE BILL NO. 30

INTRODUCED BY A. BUCKLEY

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING MONTANA MORTGAGE LAWS;
ADOPTING PRUDENTIAL STANDARDS FOR NONBANK MORTGAGE SERVICERS; PROVIDING FOR
APPLICABILITY AND EXCLUSIONS; PROVIDING FOR FINANCIAL CONDITIONS AND CORPORATE
GOVERNANCE OF SERVICERS; GRANTING AUTHORIZATION TO THE DEPARTMENT OF
ADMINISTRATION REGARDING SERVICERS; ALLOWING REMOTE WORK FOR A MORTGAGE
BUSINESS; PROVIDING RULEMAKING AUTHORITY; PROVIDING DEFINITIONS; AMENDING SECTIONS
32-9-103, 32-9-104, 32-9-120, 32-9-122, 32-9-130, 32-9-160, AND 32-9-166, MCA; ~~AND~~ REPEALING
SECTION 32-9-171, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 6], unless the context clearly
indicates otherwise, the following definitions apply:

(1) "Allowable assets for liquidity" means those assets that may be used to satisfy the liquidity
requirements in [sections 1 through 6], including unrestricted cash and cash equivalents and unencumbered
investment grade assets held for sale or trade.

(2) "Corporate governance" means the structure of the institution and how it is managed, including
the corporate rules, policies, processes, and practices used to oversee and manage the institution.

(3) "Covered institution" means a nonbank servicer:

(a) with servicing portfolios of 2,000 or more 1- to 4-unit residential mortgage loans serviced or
subserviced for others, excluding whole loans owned, and loans being interim serviced prior to sale as of the
most recent calendar year end, reported in the NMLS mortgage call report; and

(b) that operates in two or more states, districts, or territories of the United States either currently
or as of the prior calendar year end.

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- 2 (4) "Department" means the department of administration provided for in 2-15-1001, acting through
- 3 its division of banking and financial institutions.
- 4 (5) "External audit" means the formal report prepared by an independent certified public
- 5 accountant expressing an opinion on whether the financial statements are presented fairly in all material
- 6 aspects in accordance with the applicable financial reporting framework, and is inclusive of an evaluation of the
- 7 adequacy of a company's internal control structure.
- 8 (6) "GSE" means government-sponsored enterprises, the federal national mortgage association, or
- 9 the federal home loan mortgage corporation.
- 10 (7) "Interim serviced prior to sale" means the activity of collecting a limited number of contractual
- 11 mortgage payments immediately after origination on loans held for sale but prior to the loans being sold into the
- 12 secondary market.
- 13 (8) "Internal audit" means the internal activity of performing independent, objective assurance and
- 14 consulting to evaluate and improve the effectiveness of company operations, risk management, internal
- 15 controls, and governance processes.
- 16 (9) "Licensee" has the same meaning as provided in 32-9-103.
- 17 (10) "Mortgage" has the same meaning as provided in 32-9-103.
- 18 (11) "Mortgage call report" means the quarterly or annual report of residential real estate loan
- 19 origination, servicing, and financial information completed by companies licensed in NMLS.
- 20 (12) "Mortgage servicing rights" means the contractual right to service residential mortgage loans on
- 21 behalf of the owner of the associated mortgage in exchange for specified compensation in accordance with the
- 22 servicing contract.
- 23 (13) "Mortgage servicing rights investor" means entities that invest in and own mortgage servicing
- 24 rights and rely on subservicers to administer the loans on their behalf.
- 25 (14) "Mortgage-backed security" means financial instruments, often debt securities, collateralized by
- 26 residential mortgages.
- 27 (15) "Operating liquidity" means the funds necessary to perform normal business operations, such
- 28 as payment of rent, salaries, interest expense, and other typical expenses associated with operating the entity.

(16) "Residential mortgage loan" means a loan primarily for personal, family, or household use secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real estate located in Montana.

(17) "Residential mortgage loans serviced" means the 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.

(18) "Reverse mortgage" means a loan collateralized by real estate, typically made to borrowers over 55 years of age, that does not require contractual monthly payments and is typically repaid upon the death of the borrower through the sale of the home or refinance by the heirs.

(19) "Risk management" means the policies and procedures designed to identify, measure, monitor, and mitigate risk sufficient for the level of sophistication of the servicer.

(20) "Servicer" means the entity performing the routine administration of residential mortgage loans on behalf of the owner or owners of the related mortgages under the terms of a servicing contract.

(21) "Servicing liquidity" or "liquidity" means the financial resources necessary to manage liquidity risk arising from servicing functions required in acquiring and financing mortgage servicing rights, hedging costs, including 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.

(22) "Subservicer" means the entity performing the routine administration of residential mortgage loans as agent of a servicer or under the terms of a subservicing contract.

(23) "Subservicing for others" means the contractual activities performed by subservicers on behalf of a servicer or mortgage servicing rights investor.

(24) "Unencumbered investment grade assets held for sale or trade" means agency mortgage-backed securities, obligations of GSEs, and U.S. treasury obligations.

(25) "Whole loans" mean those loans for which a mortgage and the underlying credit risk is owned and held on balance sheet of the entity with all ownership rights.

NEW SECTION. Section 2. Applicability -- exclusions. (1) [Sections 1 through 6] are applicable to

covered institutions. For entities within a holding company or affiliated group of companies, applicability is at the covered institution level.

(2) The following exclusions apply:

(a) [Sections 1 through 6] do not apply to not-for-profit servicers or housing finance agencies.

(b) [Section 3] does not apply to servicers solely owning or conducting reverse mortgage servicing, or the reverse mortgage portfolio administered by covered institutions or the whole loan portion of portfolios.

(c) A servicer with 25 or fewer loans, a servicer that is wholly owned and controlled by one or more depository institutions regulated by a state or federal banking agency, or a servicer that is also licensed as an escrow business may apply to the department to waive or adjust one or more of the financial condition requirements in [section 3]. In considering such a request, the department will consider whether the servicer has a positive net worth and adequate operating reserves.

NEW SECTION. Section 3. Financial condition of servicers. (1) A covered institution shall maintain capital and liquidity in compliance with this section.

(2) For the purposes of complying with the capital and liquidity requirements of this section, all financial data must be determined in accordance with generally accepted accounting principles.

(3) A covered institution that meets the federal housing finance agency eligibility requirements for enterprise single-family seller/servicers for capital, net worth ratio, and liquidity, regardless of whether the servicer is approved for GSE servicing, meets the requirements of subsections (1) and (2).

(4) Covered institutions shall maintain written policies and procedures implementing the capital and servicing liquidity requirements as set by the department by rule.

(5) Covered institutions shall maintain sufficient allowable assets for liquidity, in addition to the amounts required for servicing liquidity, to cover normal business operations.

(6) Covered institutions shall have in place sound cash management and business operating plans as set by the department by rule.

(7) Covered institutions shall develop, establish, and implement plans, policies, and procedures for maintaining operating liquidity sufficient for the ongoing needs of the institution. The department shall set further requirements for operating liquidity by rule.

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NEW SECTION. **Section 4. Corporate governance of servicers.** Covered institutions shall

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establish and maintain corporate governance standards as set by the department by rule. The standards must

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include internal and external audits and risk management.

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NEW SECTION. **Section 5. Authority of department regarding servicers.** (1) If risk is determined

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by a formal review of a specific covered institution to be extremely high, the department may order or direct the

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institution to satisfy additional conditions necessary to ensure that the institution will continue to operate in a

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safe and sound manner and be able to continue to service loans in compliance with state and federal law and

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regulation.

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(2) If risk is determined by a formal review of a specific covered institution or institutions to be

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extremely low, the department may provide notice to the institution or institutions that all or part of [sections 1

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through 6] are not applicable to those covered institutions.

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(3) Whenever economic, environmental, or societal events are determined to be of such severity to

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warrant a temporary suspension of all or certain sections of [sections 1 through 6], the department may provide

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public notice by proclamation of a temporary suspension.

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NEW SECTION. **Section 6. Rulemaking.** The department shall adopt rules necessary to carry out

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the intent and purposes of [sections 1 through 6]. In adopting rules under [sections 1 through 6] the department

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shall use the final model state regulatory prudential standards for nonbank mortgage servicers in effect at the

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time of rulemaking as published by the conference of state bank supervisors.

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NEW SECTION. **Section 7. Requirements for remote work.** (1) Mortgage business may be

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conducted at a remote work location if:

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(a) the licensed mortgage entity's employees and independent contractors do not meet with the

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public at an unlicensed personal residence;

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(b) no physical or electronic business records are maintained at the remote location;

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(c) the licensed mortgage entity has written policies and procedures for working remotely and the

entity supervises and enforces the policies and procedures;

(d) no signage or advertising of the entity or the mortgage loan originator is displayed at any remote work location;

(e) the licensed mortgage entity maintains the computer system and customer information in accordance with the entity's information technology security plan and all state and federal laws;

(f) any device used to engage in mortgage business has appropriate security, encryption, and device management controls to ensure the security and confidentiality of customer information as required by rules and regulations adopted by the department;

(g) the licensed mortgage entity's employees and independent contractors take reasonable precautions to protect confidential information in accordance with state and federal laws;

(h) the NMLS record of a mortgage loan originator that works remotely designates a properly licensed location as the mortgage loan originator's official workstation and a designated manager as a supervisor; and

(i) the licensed mortgage entity annually reviews and certifies that the employees and independent contractors engaged in mortgage business at a remote location meet the requirements of this section. Upon request, a licensee shall provide written documentation of the licensee's review to the department.

(2) If the commissioner determines that the licensee does not provide reasonable and adequate supervision of the employee, the commissioner shall notify the licensee in writing and within 5 business days of receiving the notice the licensee shall terminate the employee's eligibility to work remotely as provided under this section.

(3) The department shall adopt rules to implement this section.

Section 8. Section 32-9-103, MCA, is amended to read:

"32-9-103. Definitions. As used in this part, the following definitions apply:

(1) "Administrative or clerical tasks" mean the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry, without performing any analysis of the information, and communication with a consumer to obtain information necessary for the processing or

1 underwriting of a residential mortgage loan.

2 (2) "Advertising" means a commercial message in any medium, including social media and
3 software, that promotes, either directly or indirectly, a residential mortgage loan transaction.

4 (3) "Application" means a request, in any form, for an offer of residential mortgage loan terms or a
5 response to a solicitation of an offer of residential mortgage loan terms and includes the information about the
6 borrower that is customary or necessary in a decision on whether to make such an offer.

7 (4) "Approved education course" means any course approved by the NMLS.

8 (5) "Approved test provider" means any test provider approved by the NMLS.

9 (6) "Bona fide not-for-profit entity" means an entity that:

10 (a) maintains tax-exempt status under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code,
11 26 U.S.C. 501(c)(3) or 501(c)(4);

12 (b) promotes affordable housing or provides homeownership education or similar services;

13 (c) conducts its activities in a manner that serves public or charitable purposes, rather than
14 commercial purposes;

15 (d) receives funding and revenue and charges fees in a manner that does not create incentives for
16 the entity or its employees to act other than in the best interests of its clients;

17 (e) compensates employees in a manner that does not create incentives for employees to act
18 other than in the best interests of clients;

19 (f) provides to or identifies for the borrower residential mortgage loans with terms that are
20 favorable to the borrower and comparable to mortgage loans and housing assistance provided under
21 government housing assistance programs. For purposes of this subsection (6)(f), for residential mortgage loans
22 to have terms that are favorable to the borrower, the department shall determine that the terms are consistent
23 with loan origination in a public or charitable context, rather than a commercial context.

24 (g) is either certified by the U.S. department of housing and urban development or has received a
25 community housing development organization designation as defined in 24 CFR 92.2.

26 (7) "Bona fide third party" means a person that provides services relative to the origination of a
27 residential mortgage loan. The term includes but is not limited to real estate appraisers and credit reporting
28 agencies.

(8) "Borrower" means a person seeking a residential mortgage loan or an obligor on a residential mortgage loan.

(9) (a) "Branch office" means a location at which a licensee conducts business other than a licensee's principal place of business.

(b) The location is considered a branch office if:

~~(a)~~(i) the address of the location appears on business cards, stationery, or advertising used by the entity;

~~(b)~~(ii) the entity's name or advertising suggests that mortgages are made at the location;

~~(c)~~(iii) the location is held out to the public as a licensee's place of business due to the actions of an employee or independent contractor of the entity; or

~~(d)~~(iv) the location is controlled directly or indirectly by the entity.

(c) A mortgage loan originator working from a remote location is not a branch office if the requirements of 32-9-122 and [section 7] are fully met.

(10) (a) "Clerical or support duties" includes:

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

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

(b) The term does not include:

(i) taking a residential mortgage loan application; or

(ii) offering or negotiating the terms of a residential mortgage loan.

(11) "Commercial context" means that an individual who acts as a mortgage loan originator does so for the purpose of obtaining profit for an entity or individual for which the individual acts, including a sole proprietorship or other entity that includes only the individual, rather than exclusively for public, charitable, or family purposes.

(12) "Confidential supervisory information" means:

(a) reports of examination, inspection, and visitation, nonpublic operating, condition, and

compliance reports, supervisory letters, or similar documents, and any information contained in, derived from, used to create, or related to the documents;

(b) any documents, materials, or records, including reports of examination, prepared by, or on behalf of, or for the use of the department or any state or federal financial services regulatory agency in the exercise of supervisory authority over a supervised entity, and any information derived from or used to prepare the documents, materials, or records;

(c) any communications between the department and a supervised entity or a state or federal financial services regulatory agency related to the department's supervision of the entity;

(d) any information received or generated by the department pursuant to 32-9-130;

(e) confidential criminal justice information, as defined in 44-5-103;

(f) personal information protected by an individual privacy interest; and

(g) information that is exempt from disclosure pursuant to 12 U.S.C. 5111.

~~(12)(13)~~ (a) "Control" means the power, directly or indirectly, to direct the management or policies of an entity, whether through ownership of securities, by contract, or otherwise.

(b) A person is presumed to control an entity if that person:

(i) is a director, general partner, or executive officer or is an individual that occupies a similar position or performs a similar function;

(ii) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities;

(iii) in the case of a limited liability company, is a managing member; or

(iv) in the case of a partnership, has the right to receive upon dissolution or has contributed 10% or more of the capital.

~~(13)(14)~~ "Department" means the department of administration provided for in 2-15-1001, acting through its division of banking and financial institutions.

~~(14)(15)~~ "Depository institution" has the meaning provided in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c), and includes any credit union.

~~(15)(16)~~ "Designated manager" means a mortgage loan originator with at least 3 years of experience as a mortgage loan originator or registered mortgage loan originator who is designated by an entity

Amendment - 1st Reading-white - Requested by: Denley Loge - (H) Business and Labor

68th Legislature

Drafter: Jameson Walker, 406-444-3722

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1 as the individual responsible for the operation of a particular location that is under the designated manager's full
2 management, supervision, and control.

3 ~~(46)~~(17) "Dwelling" has the meaning provided in 15 U.S.C. 1602(w).

4 ~~(47)~~(18) "Entity" means a business organization, including a sole proprietorship.

5 ~~(48)~~(19) "Escrow account" means a depository account with a financial institution that provides
6 deposit insurance and that is separate and distinct from any personal, business, or other account of the
7 mortgage lender or mortgage servicer and is maintained solely for the holding and payment of escrow funds.

8 ~~(49)~~(20) "Escrow funds" means funds entrusted to a mortgage lender or mortgage servicer by a
9 borrower for payment of taxes, insurance, or other payments to be made in connection with the servicing of a
10 loan.

11 ~~(20)~~(21) "Expungement" means a court-ordered process that involves the destruction of
12 documentation related to past arrests and convictions.

13 ~~(21)~~(22) "Federal banking agency" means the board of governors of the federal reserve system,
14 the comptroller of the currency, the national credit union administration, or the federal deposit insurance
15 corporation.

16 ~~(22)~~(23) "Housing finance agency" includes the Montana board of housing provided for in 2-15-
17 1814.

18 ~~(23)~~(24) "Independent contractor" means an individual who performs duties other than at the
19 direction of and subject to the supervision and instruction of another individual who is licensed and registered in
20 accordance with this part or who is not required to be licensed in accordance with 32-9-104(1)(b), (1)(d), or
21 (1)(g).

22 ~~(24)~~(25) "Independent contractor entity" means an entity that offers or provides clerical or
23 support duties for another person.

24 ~~(25)~~(26) "Individual" means a natural person.

25 ~~(26)~~(27) "Licensee" means a person authorized pursuant to this part to engage in activities
26 regulated by this part. The term does not include an individual who is a registered mortgage loan originator.

27 ~~(27)~~(28) "Loan commitment" means a statement transmitted in writing or electronically by a
28 mortgage lender setting forth the terms and conditions upon which the mortgage lender is willing to make a

particular residential mortgage loan to a particular borrower.

~~(28)~~(29) (a) "Loan processor or underwriter" means an individual who, with respect to the origination of a residential mortgage loan, performs clerical or support duties as an employee at the direction of and subject to the supervision of a licensed mortgage loan originator or registered mortgage loan originator.

(b) For the purposes of subsection ~~(28)~~(29)~~(a)~~ (a), "origination of a residential mortgage loan" means all activities related to a residential mortgage loan from the taking of a residential mortgage loan application through the completion of all required loan closing documents and funding of the residential mortgage loan.

~~(29)~~(30) "Mortgage" means a consensual interest in real property located in Montana, including improvements, securing a debt evidenced by a mortgage, trust indenture, deed of trust, or other lien on real property.

~~(30)~~(31) (a) "Mortgage broker" means an entity that obtains, attempts to obtain, or assists in obtaining a mortgage loan for a borrower from a mortgage lender in return for consideration or in anticipation of consideration or holds itself out as being able to assist a person in obtaining a mortgage loan.

(b) For purposes of this subsection ~~(30)~~ (31), attempting to obtain or assisting in obtaining a mortgage loan includes referring a borrower to a mortgage lender or mortgage broker, soliciting or offering to solicit a mortgage loan on behalf of a borrower, or negotiating or offering to negotiate the terms or conditions of a mortgage loan with a mortgage lender on behalf of a borrower.

~~(34)~~(32) "Mortgage lender" means an entity that closes a residential mortgage loan, advances funds, offers to advance funds, commits to advancing funds for a mortgage loan applicant, or holds itself out as being able to perform any of those functions.

~~(32)~~(33) (a) "Mortgage loan originator" means an individual who for compensation or gain or in the expectation of compensation or gain:

- (i) takes a residential mortgage loan application; or
- (ii) offers or negotiates terms of a residential mortgage loan.

(b) The term includes an individual who represents to the public that the individual can or will perform the services described in subsection ~~(32)~~(a) ~~(33)~~(a).

(c) The term does not include an individual:

- 1 (i) engaged solely as a loan processor or underwriter, except as provided in 32-9-135; or
- 2 (ii) involved solely in extensions of credit relating to timeshare plans, as that term is defined in 11
- 3 U.S.C. 101(53D).
- 4 ~~(33)~~(34) "Mortgage servicer" means an entity that:
- 5 (a) for forward mortgages:
- 6 ~~(a)~~(i) engages, for compensation or gain from another or on its own behalf, in the business of
- 7 receiving any scheduled periodic payment from a borrower pursuant to the terms of a residential mortgage
- 8 loan, residential mortgage servicing documents, or a residential mortgage servicing contract;
- 9 ~~(b)~~(ii) meets the definition of servicer in 12 U.S.C. 2605(i)(2) with respect to residential mortgage
- 10 loans; or
- 11 ~~(c)~~(iii) holds out to the public that the entity is able to comply with subsection ~~(33)(a)~~ (34)(a)(i) or
- 12 ~~(33)(b)~~ (34)(a)(ii)
- 13 (b) for a home equity conversion mortgage or a reverse mortgage, makes or holds out to the public
- 14 that the entity can make a payment to the borrower.
- 15 ~~(34)~~(35) "Nationwide mortgage licensing system and registry" or "NMLS" means a licensing
- 16 system developed and maintained by the conference of state bank supervisors and the American association of
- 17 residential mortgage regulators for the registration and licensing of persons providing nondepository financial
- 18 services.
- 19 ~~(35)~~(36) "Nontraditional mortgage product" means any mortgage product other than a 30-year,
- 20 fixed-rate mortgage.
- 21 ~~(36)~~(37) "Person" means an individual, sole proprietorship, corporation, company, limited
- 22 liability company, partnership, limited liability partnership, trust, or association.
- 23 ~~(37)~~(38) "Real estate brokerage activities" means activities that involve offering or providing real
- 24 estate brokerage services to the public, including:
- 25 (a) acting as a real estate salesperson or real estate broker for a buyer, seller, lessor, or lessee of
- 26 real property;
- 27 (b) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real
- 28 property;

(c) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property other than in connection with providing financing with respect to the transaction;

(d) engaging in any activity for which a person is required to be licensed as a real estate salesperson or real estate broker under Montana law; or

(e) offering to engage in any activity or act in any capacity described in subsections ~~(37)(a)~~ (38)(a) through ~~(37)(d)~~ (38)(d).

~~(38)~~(39) "Registered mortgage loan originator" means an individual who:

(a) meets the definition of mortgage loan originator and is an employee of:

(i) a depository institution;

(ii) a subsidiary that is wholly owned and controlled by a depository institution and regulated by a federal banking agency; or

(iii) an institution regulated by the farm credit administration; and

(b) is registered with and maintains a unique identifier through the NMLS.

~~(39)~~(40) "Regularly engage" means that a person:

(a) has engaged in the business of a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator on more than five residential mortgage loans in the previous calendar year or expects to engage in the business of a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator on more than five residential mortgage loans in the current calendar year; or

(b) has served as the prospective source of financing or performed other phases of loan originations on more than five residential mortgage loans in the previous calendar year or expects to serve as the prospective source of financing or perform some other phases of loan origination on more than five residential mortgage loans in the current calendar year.

~~(40)~~(41) "Residential mortgage loan" means a loan primarily for personal, family, or household use secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real estate located in Montana.

~~(41)~~(42) "Residential real estate" means any real property located in the state of Montana upon which is constructed a dwelling or upon which a dwelling is intended to be built within a 2-year period, subject to

24 CFR 3500.5(b)(4). The borrower's intent to construct a dwelling is presumed unless the borrower has submitted a written, signed statement to the contrary.

~~(42)~~(43) "Responsible individual" means a Montana-licensed mortgage loan originator with at least 1 1/2 years of experience as a mortgage loan originator or registered mortgage loan originator who is designated by an independent contractor entity as the individual responsible for the operation of a particular location that is under the responsible individual's full management, supervision, and control.

~~(43)~~(44) (a) "Service provider" means a person who performs activities relating to the business of mortgage origination, lending, or servicing on behalf of a licensee.

(b) Activities relating to the business of mortgage origination, lending, or servicing include:

(i) providing data processing services;

(ii) performing activities in the support of residential mortgage origination, lending, or servicing; and

(iii) providing internet-related services, including web services, processing electronic borrower payments, developing and maintaining mobile applications, system and software development and maintenance, and security monitoring.

(c) Activities relating to the business of mortgage origination, lending, or servicing do not include providing an interactive computer service or a general audience internet or communications platform, except to the extent that the service or platform is specially designed or adapted for the business of mortgage origination, lending, or servicing.

(d) Activities relating to the business of mortgage origination, lending, or servicing performed by a mortgage loan originator, lender, or servicer on its own behalf or as part of mortgage loan originating, lending, or servicing are considered mortgage loan originating, lending, or servicing.

~~(44)~~(45) "Ultimate equity owner" means an individual who, directly or indirectly, owns or controls an ownership interest in a corporation, a foreign corporation, an alien business organization, or any other form of business organization, regardless of whether the individual owns or controls an ownership interest, individually or in any combination, through one or more persons or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint-stock companies, or other entities or devices.

~~(45)~~(46) "Unique identifier" means a number or other identifier assigned by protocols

established by the NMLS. (See part compiler's comment regarding contingent suspension.)"

Section 9. Section 32-9-104, MCA, is amended to read:

"32-9-104. Exemptions -- proof of exemption. (1) The provisions of this part do not apply to:

(a) an entity that is an agency of the federal, state, tribal, or local government;

(b) an individual who is an employee of a federal, state, tribal, local government, or housing finance agency acting as a loan originator only pursuant to the individual's official duties as an employee of the federal, state, tribal, local government, or housing finance agency;

(c) an entity described in 32-9-103~~(38)(a)(i)(39)(a)(i)~~ through ~~(38)(a)(iii)(39)(a)(iii)~~;

(d) a registered mortgage loan originator when acting for an entity described in 32-9-103~~(38)(a)(i)(39)(a)(i)~~ through ~~(38)(a)(iii)(39)(a)(iii)~~;

(e) an individual who performs only administrative or clerical tasks at the direction of and subject to the supervision and instruction of an individual who:

(i) is a licensed and registered mortgage loan originator pursuant to this part; or

(ii) is not required to be licensed in accordance with subsection (1)(b), (1)(d), or (1)(g);

(f) an entity that is a bona fide not-for-profit entity;

(g) an employee of a bona fide not-for-profit entity who acts as a loan originator only with respect to work duties for the bona fide not-for-profit entity and who acts as a loan originator only with respect to residential mortgage loans with terms that are favorable to the borrower, or acts as a servicer with respect to work duties for the bona fide not-for-profit entity;

(h) a person that performs only real estate brokerage activities and is licensed or registered pursuant to 37-51-301 unless the person is compensated by a mortgage broker, a mortgage lender, or a mortgage loan originator or an agent of the mortgage broker, mortgage lender, or mortgage loan originator;

(i) a person regulated by the commissioner of insurance if that person's principal business is that of preparing abstracts or making searches of titles that are used as a basis for the issuance of any title insurance policy by a company doing business under the laws of this state relating to insurance companies;

(j) a Montana-licensed attorney performing activities that fall within the definition of a mortgage loan originator if the activities are:

(i) considered by the Montana supreme court to be part of the authorized practice of law within this state;

(ii) carried out within an attorney-client relationship; and

(iii) accomplished by the attorney in compliance with all applicable laws, rules, and standards; or

(k) an individual who is an employee of a retailer of manufactured or modular homes if the employee is performing only administrative or clerical tasks in connection with the sale or lease of a manufactured or modular home and if the individual receives no compensation or other gain from a mortgage lender or a mortgage broker for the performance of the administrative or clerical tasks.

(2) (a) To qualify for an exemption under subsection (1)(f), an entity shall certify, on a form prescribed by the department, that it is a bona fide not-for-profit entity and shall provide additional documentation as required by the department by rule. To maintain this exemption, the entity shall file the prescribed certification and accompanying documentation by December 31 of each year.

(b) In determining whether an entity is a bona fide not-for-profit entity, the department may rely on its receipt and review of:

(i) reports filed with federal, state, tribal, local government, or housing finance agencies and authorities; or

(ii) reports and attestations prescribed by the department.

(3) The burden of proving an exemption under this section is on the person claiming the exemption. (See part compiler's comment regarding contingent suspension.)"

Section 10. Section 32-9-120, MCA, is amended to read:

"32-9-120. Denial of mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator license application or license renewal. (1) The department may not issue or renew any mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator license if any of the following facts are found during the application procedure:

(a) the applicant has ever had a mortgage loan originator license or an equivalent license revoked in any governmental jurisdiction. A subsequent formal vacation of a revocation means that the revocation may not be considered a revocation. The department may by order vacate a revocation of a license and enter an

1 appropriate order.

2 (b) the applicant has been convicted of or ~~pled~~pleaded guilty or nolo contendere to a felony in a
3 domestic, foreign, or military court during the 7-year period preceding the date of the application for licensing or
4 renewal or at any time preceding the date of application if the felony involved an act of fraud, dishonesty, a
5 breach of trust, or money laundering. The pardon or expungement of a conviction is not a conviction for the
6 purposes of this subsection (1)(b). When determining the eligibility of the applicant for licensure under
7 subsection (1)(c) or this subsection (1)(b), the department may consider the underlying crime, facts, or
8 circumstances of a pardoned or expunged felony conviction.

9 (c) the applicant has failed to demonstrate financial responsibility, character, and general fitness to
10 command the confidence of the community and to warrant a determination that the mortgage broker, mortgage
11 lender, mortgage servicer, or mortgage loan originator will operate honestly, fairly, and efficiently within the
12 purposes of this section;

13 (d) the applicant has not provided and maintained the surety bond as required pursuant to 32-9-
14 123;

15 (e) the applicant has not completed the prelicensing education requirement described in 32-9-107;

16 (f) the applicant has not passed a written test that meets the test requirements described in 32-9-
17 110;

18 (g) the applicant made a material misstatement of fact or material omission of fact in the
19 application;

20 (h) the applicant has failed to meet the mortgage servicer capital requirements provided in ~~32-9-~~
21 ~~174~~ [section 3];

22 (i) the applicant has failed to meet the minimum mortgage lender net worth requirements provided
23 in 32-9-172; or

24 (j) the applicant has been found to have violated:

25 (i) any rule of conduct for persons taking the mortgage loan originator national or state test under
26 the federal Secure and Fair Enforcement for Mortgage Licensing Act; or

27 (ii) the nationwide multistate licensing system industry terms of use as they pertain to enrolling,
28 scheduling, or taking the mortgage loan originator national or state test under the Secure and Fair Enforcement

1 for Mortgage Licensing Act.

2 (2) The department may consider an application abandoned if an applicant fails to provide or
3 respond to a request for additional information within the time period specified by the department by rule.

4 (3) For purposes of subsection (1)(b), a pardoned or expunged felony conviction does not
5 necessitate denial of the license application. The department may consider the underlying crime, facts, or
6 circumstances of a pardoned or expunged felony conviction when determining the eligibility of an applicant for
7 licensure under subsection (1)(b) or (1)(c). Whether a particular crime is classified as a felony must be
8 determined by the law of the jurisdiction in which an individual is convicted. (See part compiler's comment
9 regarding contingent suspension.)"

10

11 **Section 11.** Section 32-9-122, MCA, is amended to read:

12 **"32-9-122. Designated manager and branch office license requirements.** (1) A mortgage broker,
13 mortgage lender, or mortgage servicer shall apply for a license for a main office and for every branch office
14 through the NMLS and maintain a unique identifier. All locations must be within the United States or a territory,
15 including Puerto Rico and the U.S. Virgin Islands.

16 (2) A mortgage broker or mortgage lender shall designate to the NMLS ~~for each office that~~
17 ~~originates a residential mortgage loan~~ an individual who is licensed as a mortgage loan originator as the
18 designated manager of the ~~main office and each branch office that originates a residential mortgage loan. A~~
19 ~~designated manager may be responsible for more than one location~~ entity. The designated manager is
20 responsible for the mortgage origination activity conducted ~~at each office to which the designated manager is~~
21 ~~assigned in the NMLS by all mortgage loan originators, employees, independent contractors, and agents~~
22 assigned to the entity.

23 (3) A designated manager must have 3 years of experience as either a mortgage loan originator or
24 a registered mortgage loan originator.

25 (4) A designated manager is responsible for the operation of the ~~business~~ entity ~~at each location~~
26 all physical and remote locations under the designated manager's full charge, supervision, and control.

27 (5) A mortgage broker or mortgage lender is responsible for the conduct of its employees,
28 including for violations of federal or state laws, rules, or regulations.

(6) A designated manager is responsible for conduct that violates federal or state laws, rules, or regulations by the designated manager and each employee of the mortgage broker or mortgage lender ~~at each location that the designated manager manages.~~

(7) If the designated manager ceases to act in that capacity, within 15 days the mortgage broker or mortgage lender shall designate another individual licensed as a mortgage loan originator as designated manager and shall submit information to the NMLS establishing that the subsequent designated manager ~~is in compliance with~~ complies with the provisions of this part.

(8) If the employment of a designated manager is terminated, the mortgage broker or mortgage lender shall remove the sponsorship of the designated manager on the NMLS within 5 business days of the termination.

(9) A mortgage servicer is responsible for the acts and omissions of its employees, agents, and independent contractors acting in the course and scope of their employment, agency, or contract. (See part compiler's comment regarding contingent suspension.)"

Section 12. Section 32-9-130, MCA, is amended to read:

"32-9-130. Department authority -- rulemaking. (1) The department shall adopt rules necessary to carry out the intent and purposes of this part. The rules adopted are binding on all licensees and enforceable as provided under this part.

(2) The rules must address:

- (a) revocation or suspension of licenses for cause;
- (b) investigation of applicants, licensees, and unlicensed persons alleged to have violated a provision of this part and handling of complaints made by any person in connection with any business transacted by a licensee;
- (c) (i) ensuring that all persons are informed of their right to contest a decision by the department under the Montana Administrative Procedure Act; and
(ii) holding contested case hearings pursuant to the Montana Administrative Procedure Act and issuing cease and desist orders, orders of restitution, and orders for the recovery of administrative costs; and
- (d) establishing fees for license renewals.

(3) The department may adopt rules:

~~(a) regarding the mortgage servicer capital requirements provided in 32-9-171 ; and~~

~~(b) defining supervisory requirements for designated managers.~~

(4) The department may seek a writ or order restraining or enjoining, temporarily or permanently, any act or practice violating any provision of this part.

(5) (a) For the purposes of investigating violations or complaints arising under this part or for the purposes of examination, the department may review, investigate, or examine any licensee, service provider, or person subject to this part as often as necessary in order to carry out the purposes of this part.

(b) The commissioner of banking and financial institutions may direct, subpoena, or order the attendance of and may examine under oath any person whose testimony may be required about the subject matter of any examination or investigation and may direct, subpoena, or order the person to produce books, accounts, records, files, and any other documents the commissioner of banking and financial institutions considers relevant to the inquiry.

(6) Each licensee, service provider, or person subject to this part shall make available to the department upon request the documents and records relating to the operations of the licensee or person. The department may access the documents and records and may interview the officers, principals, mortgage loan originators, employees, independent contractors, service providers, agents, or customers of the licensee or person concerning the business of the licensee or person or any other person having knowledge that the department considers relevant.

(7) (a) The department may conduct investigations and examinations for the purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation, or license termination or to determine compliance with this part.

(b) The department has the authority to access, receive, and use any books, accounts, records, files, documents, information, or evidence, including but not limited to:

(i) criminal, civil, and administrative history information, including confidential criminal justice information as defined in 44-5-103;

(ii) personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681,

et seq.; and

(iii) any other documents, information, or evidence the department considers relevant to an inquiry or investigation regardless of the location, possession, control, or custody of the documents, information, or evidence.

(8) (a) The total cost for any examination or investigation of a service provider or unlicensed entity must be in accordance with fees determined by the department by rule pursuant to this section and may include expenses for necessary travel outside the state for the purposes of conducting the examination or investigation. The fees set by the department must be commensurate with the cost of the examination or investigation of the entity. All fees collected under this section must be deposited in the department's account in the state special revenue fund to be used by the department to cover the department's cost of conducting examinations and investigations.

(b) The cost of an examination or investigation must be paid by the ~~licensee, unlicensed person or service provider, or person~~ within 30 days after the date of the invoice. ~~Failure to pay the cost of an examination or investigation when due must result in the suspension or revocation of a licensee's license~~ A person may not be licensed until the cost of examination or investigation is paid.

(9) (a) The department may:

(i) exchange information with federal and state regulatory agencies, the attorney general, the attorney general's consumer protection office, and the legislative auditor;

(ii) exchange information other than confidential information with the mortgage asset research institute, inc., and other similar organizations; and

(iii) refer any matter to the appropriate law enforcement agency for prosecution of a violation of this part.

(b) To carry out the purposes of this section, the department may:

(i) enter into agreements or relationships with other government officials or regulatory associations to improve efficiencies and reduce the regulatory burden by sharing resources, adopting standardized or uniform methods or procedures, and sharing documents, records, information, or evidence obtained under this part, including agreements to maintain the confidentiality of information under laws, rules, or evidentiary privileges of another state, the federal government, or this state;

(ii) retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

(iii) use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee or person subject to this part;

(iv) accept and rely on examination or investigation reports by other government officials, within or outside of this state, without the loss of any privileges or confidentiality protection afforded by state or federal laws, rules, or evidentiary privileges that cover those reports;

(v) accept audit reports made by an independent certified public accountant for the licensee or person subject to this part if the examination or investigation covers at least in part the same general subject matter as the audit report and may incorporate the audit report in the report of the examination, report of the investigation, or other writing of the department under this part; and

(vi) assess against the ~~licensee or~~ unlicensed person or service provider subject to this part the costs incurred by the department in conducting the examination or investigation.

(c) Except as provided in 32-9-160 and subsection (9)(a)(i) of this section, the department shall treat all confidential criminal justice information as confidential unless otherwise required by law.

(10) Pursuant to section 1508(d) of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, the department is authorized to:

(a) supervise and enforce the provisions of this part, including the suspension, termination, revocation, or nonrenewal of a license for violation of state or federal law;

(b) participate in the NMLS;

(c) ensure that all mortgage broker, mortgage lender, and mortgage loan originator applicants under this part apply for state licensure and pay any required nonrefundable fees to and maintain a valid unique identifier issued by the NMLS; and

(d) regularly report violations of state or federal law and enforcement actions to the NMLS. (See part compiler's comment regarding contingent suspension.)"

Section 13. Section 32-9-160, MCA, is amended to read:

1 **"32-9-160. Confidentiality.** (1) (a) Except as otherwise provided in section 1512 of the Secure and
2 Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008,
3 Public Law 110-289, the requirements under federal law, the Montana constitution, or Montana law regarding
4 the privacy or confidentiality of any information or material provided to the NMLS and any privilege arising
5 under federal or state law, including the rules of a federal or state court, pertaining to the information or material
6 continue to apply to the information or material after the information or material has been disclosed to the
7 NMLS.

8 (b) ~~Information~~ Confidential supervisory information and material may be shared with all state and
9 federal financial services regulatory agencies and with the board of governors of the federal reserve system
10 without the loss of confidentiality protections or the loss of privilege provided by federal law, the Montana
11 constitution, or Montana law.

12 (2) The department may disclose to a licensee information about a service provider of the licensee.

13 (3) The department may enter into agreements or sharing arrangements with other governmental
14 agencies, the conference of state bank supervisors, the American association of residential mortgage
15 regulators, or associations representing governmental agencies as established by rule of the department.

16 (4) Information or material subject to confidentiality or a privilege under subsection (1) is not
17 subject to:

18 (a) disclosure under a federal or state law governing disclosure to the public of information held by
19 an officer or an agency of the federal government or the respective state; or

20 (b) subpoena, discovery, or admission into evidence in any private civil action or administrative
21 process unless, with respect to any privilege held by the NMLS concerning the information or material, the
22 person to whom the information or material pertains waives, in whole or in part, that privilege.

23 (5) Montana law relating to the disclosure of confidential supervisory information or information or
24 material described in subsection (1) that is inconsistent with subsection (1) is superseded by the requirements
25 of section 1512 of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and
26 Economic Recovery Act of 2008, Public Law 110-289.

27 (6) ~~Examination reports, information contained in examination reports, and examiners' work papers~~
28 ~~are confidential material that retain their status as trade secrets or confidential proprietary information of the~~

1 ~~entities that are the subject of the reports despite having been compelled to be produced to the state for~~
2 ~~examination purposes. Confidential material~~ Confidential supervisory information is not subject to public
3 inspection, subpoena, or discovery. ~~To the extent that examination reports, work papers, and other confidential~~
4 ~~material contain personal financial information and personal identification information of individuals, those~~
5 ~~individuals retain a reasonable expectation of privacy in their personal financial or personal identification~~
6 ~~information, and although filed with the department as provided in this part, that information is not subject to~~
7 ~~public inspection, subpoena, or discovery except as directed by a court of law.~~

8 (7) This section does not apply to information or material relating to the employment history of and
9 publicly adjudicated disciplinary and enforcement actions against mortgage brokers, mortgage lenders,
10 mortgage servicers, and mortgage loan originators included in the NMLS that is available for public access.
11 (See part compiler's comment regarding contingent suspension.)"

12
13 **Section 14.** Section 32-9-166, MCA, is amended to read:

14 **"32-9-166. Reports.** (1) A licensee shall file a written report with the department through the NMLS
15 within 30 business days of any material change to the information provided in a licensee's application.

16 (2) A licensee shall file a written report with the department within 1 business day after the licensee
17 has reason to know of the occurrence of any of the following:

18 (a) the filing of a petition by or against the licensee under the United States Bankruptcy Code, 11
19 U.S.C. 101, et seq., for bankruptcy or reorganization;

20 (b) the filing of a petition by or against the licensee for receivership, the commencement of any
21 other judicial or administrative proceeding for the licensee's dissolution or reorganization, or the making of a
22 general assignment for the benefit of the licensee's creditors;

23 (c) the licensee's decision to cease doing business for any reason;

24 (d) the commencement of a proceeding to revoke or suspend the licensee's license in a state in
25 which the licensee engages in business or is licensed;

26 (e) the cancellation or other impairment of the licensee's or an exempt company's bond; or

27 (f) a felony conviction of the licensee, employee of a licensee, or control person of a licensee.

28 (3) A licensee shall file a written report with the department through the NMLS within 15 business

days after the licensee has reason to know of the occurrence of any of the following:

- (a) fraud, theft, or conversion by a borrower against the licensee;
 - (b) fraud, theft, or conversion by a licensee;
 - (c) fraud, theft, or conversion by an employee or independent contractor of a licensee;
 - (d) violation of a provision of 32-9-124;
 - (e) the discharge of any employee or termination of an independent contractor for dishonest or fraudulent acts; or
 - (f) any administrative, civil, or criminal action initiated against the licensee or any of its control persons by any government entity; or
 - (g) a cybersecurity incident that affects the licensee's ability to do business or involves access or potential access to a customer's personal information.
- (4) (a) In the absence of malice, fraud, or bad faith, a person may not be subjected to civil liability arising from the filing of a complaint with the department or furnishing of other information required by this section or required by the department under the authority granted in this section.
- (b) In the absence of malice, fraud, or bad faith, a civil cause of action of any nature may not be brought against a person for any information:
- (i) relating to suspected prohibited acts and furnished to or received from law enforcement officials, their agents, or employees or furnished to or received from other regulatory or licensing authorities;
 - (ii) furnished to or received from other persons subject to the provisions of this part; or
 - (iii) furnished in complaints filed with the department."

NEW SECTION. **Section 15. Repealer.** The following section of the Montana Code Annotated is repealed:

32-9-171. Mortgage servicer capital requirements.

NEW SECTION. **Section 16. Codification instruction.** (1) [Sections 1 through 6] are intended to be codified as an integral part of Title 32, chapter 9, and the provisions of Title 32, chapter 9, apply to [sections 1 through 6].

Amendment - 1st Reading-white - Requested by: Denley Loge - (H) Business and Labor

68th Legislature

Drafter: Jameson Walker, 406-444-3722

HB0030.001.001

1 (2) [Section 7] is intended to be codified as an integral part of Title 32, chapter 9, part 1, and the
2 provisions of Title 32, chapter 9, part 1, apply to [section 7].

3

4 NEW SECTION. **Section 17. Effective date.** [This act] is effective July 1, 2023.

5

- END -

AMENDED