

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
95th General Assembly
Regular Session, 2025

A Bill

HOUSE BILL 1466

By: Representative Achor

By: Senator J. Boyd

For An Act To Be Entitled

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

Subtitle

TO AMEND THE FAIR MORTGAGE LENDING ACT.

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

SECTION 1. Arkansas Code § 23-39-502 is amended to read as follows:
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;

~~(2)(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;

~~(3)(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;

~~(4)(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;

~~(5)(A)(10)(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;

~~(6)~~(11) "Control affiliate" means a partnership, corporation, trust, limited liability company, or other organization that directly or indirectly controls or is controlled by the applicant;

~~(7)~~(12) "Control person" means an individual who directly or indirectly exercises control over the applicant;

(13)(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;

(14)(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;

(15) "Customer" means a consumer who has a customer relationship with a financial institution;

(16) "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;

(17) "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;

~~(8)~~(18) "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;

(19) "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;

~~(9)(A)~~(20)(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, 2011~~ January 1, 2025;

(v) A real estate investment trust as defined in 26 U.S.C. § 856, as it existed on ~~January 1, 2011~~ 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, ~~Rural Development Housing and Community Facilities Programs~~ 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 (9)(B)(ix)(a)~~ subdivision (20)(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 ~~husband and wife~~ 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 (9)(B)(ii)-(xiv)~~ subdivisions (20)(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 (9)(B)(xvi)(b)(4)(A)~~ subdivision (20)(B)(xvi)(b)(4)(A) of this section, "loan terms" includes rates, fees, and other costs;

(21) "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;

(22) "Financial institution" means a mortgage broker, mortgage banker, or mortgage servicer licensed under this subchapter;

(23)(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;

(24) "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;

(25) "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 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;

(26) "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;

(27) "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;

(28)(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;

~~(10)~~(29) "Licensee" means a loan officer, transitional loan officer, mortgage broker, mortgage banker, or mortgage servicer that is licensed under this subchapter;

~~(11)(A)~~(30)(A) "Loan officer" means an individual other than an exempt person described in ~~subdivision (9)~~ subdivision (20) 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 (11)(A)~~ subdivision (30)(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, 2011~~ January 1, 2025;

~~(12)(31)~~ "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;

~~(13)(A)(32)(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;

~~(14)(33)~~ "Mortgage banker" means a person who engages in the business of making mortgage loans for compensation or other gain;

~~(15)(34)~~ "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;

(35) "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;

~~(16)~~(36)(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:

~~(A)~~(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, 2011~~ January 1, 2025; or

~~(B)~~(ii) Residential real estate upon which is constructed or intended to be constructed a dwelling.

(B) "Mortgage loan" includes a residential mortgage loan;

~~(17)~~(A)(37)(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~~ A person that receives or has the right to receive from or on behalf of a borrower:

~~(i)~~(a) Funds or credits in payment for a mortgage loan; or

~~(ii)~~(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;

(38) "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;

(39) "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;

(40)(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 (40)(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;

(41)(A) "Notification event" means acquisition of unencrypted customer information without the authorization of the customer to which the information pertains.

(B) For purposes of subdivision (41)(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;

(42) "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;

~~(18)~~(43) "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;

(44) "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;

~~(19)~~(45) "Person" means an individual, partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities, however organized;

(46)(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;

(20)(47) "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;

(48)(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 (48)(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 (48), 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 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;

(49) "Qualified individual" means an individual designated by a financial institution to oversee, implement, and enforce the financial institution's information security program;

(50) "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;

~~(21)~~(51) "Reverse mortgage" means a nonrecourse loan that pays a homeowner loan proceeds drawn from accumulated home equity;

(52) "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;

(53) "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;

(54) "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;

(55) "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;

(56) "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;

~~(22)~~(57) "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;

(58) "Tangible net worth" means the total equity less:

(A) The receivables due from related entities;

(B) Goodwill and other intangibles; and

(C) Pledged assets;

~~(23)~~(59) "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;

~~(24)~~(60) "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; ~~and~~

~~(25)~~(61) "Unique identifier" means a number or other identifier assigned by protocols established by the automated licensing system approved by the commissioner; and

(62) "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.

SECTION 2. Arkansas Code § 23-39-504 is amended to read as follows:
23-39-504. ~~Rulemaking authority~~ 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; ~~and~~

(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.

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

(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 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.

SECTION 4. Arkansas Code § 23-39-505(g), concerning audited financial statements under the Fair Mortgage Lending Act, is amended to read as follows:

(g)(1) An applicant filing for licensure as a mortgage banker ~~or mortgage 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 twenty-five thousand dollars (\$25,000) ~~and are:~~

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

~~(2) Prepared according to:~~

~~(A) Generally accepted accounting principles as promulgated by the Financial Accounting Standards Board; or~~

~~(B) International financial reporting standards promulgated by the International Financial Reporting Standards Foundation and the International Accounting Standards Board;~~

~~(3) Accompanied by an opinion acceptable to the commissioner;~~
and

(4) 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; and

(B) Accompanied by an opinion acceptable to the commissioner;

(C) Dated within fifteen (15) months preceding the date on which the application is filed.

SECTION 5. Arkansas Code § 23-39-505, concerning qualifications for a license under the Fair Mortgage Lending Act, is amended to add additional subsections to read as follows:

(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.

SECTION 6. Arkansas Code § 23-39-506(f), concerning audited financial statements under the Fair Mortgage Lending Act, is amended to read as follows:

(f)(1) A mortgage banker ~~or a mortgage servicer~~ shall submit audited financial statements to the commissioner within ninety (90) days after the end of the mortgage banker’s ~~or mortgage servicer’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 ~~or mortgage servicer~~

has a net worth of at least twenty-five thousand dollars (\$25,000); and

(B) Comply with the requirements of § 23-39-505(g)~~(1)~~~~(3)~~.

(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.

SECTION 7. Arkansas Code § 23-39-506, concerning license renewal under the Fair Mortgage Lending Act, is amended to add additional subsections to read as follows:

(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.

SECTION 8. Arkansas Code Title 23, Chapter 39, Subchapter 5, is amended to add additional sections to read as follows:

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 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 subsection (a) and subsection (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.

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.

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.

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 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 the customer information is:

(A) Necessary for business operations or for other legitimate business purposes;

(B) Otherwise required to be retained by state law or rule, or federal law or regulation; or

(C) Where targeted disposal is not reasonably feasible due to the manner in which the 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 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 (1)(2)(B)(ii)(a) of this section, the notice required under subdivision (1)(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 (1)(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 (1)(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 (1)(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 (1)(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.

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.