



AN ACT REVISING THE MONTANA MORTGAGE ACT TO CLARIFY LICENSING REQUIREMENTS; REVISING DEFINITIONS; REMOVING EXEMPT COMPANY REGISTRATION; CLARIFYING PRELICENSING EDUCATION REQUIREMENTS; AMENDING EXPERIENCE REQUIREMENTS; CLARIFYING CONTROL PERSONS WHO MUST MEET LICENSING REQUIREMENTS; CLARIFYING THE RESPONSIBILITIES OF DESIGNATED MANAGERS; ALLOWING SURETY BONDS TO BE HELD BY THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY (NMLS) AND ALLOWING REPORTS AND NOTICES TO BE FILED AND DELIVERED THROUGH THE NMLS; ADOPTING NMLS FORMS AND POLICIES; ADDRESSING LICENSING OF LOAN PROCESSOR OR LOAN UNDERWRITER ENTITIES; ALLOWING THE DEPARTMENT TO SET SERVICING STANDARDS BY RULE; REVISING THE DEPARTMENT'S RULEMAKING AUTHORITY; AMENDING SECTIONS 32-9-102, 32-9-103, 32-9-104, 32-9-105, 32-9-107, 32-9-109, 32-9-112, 32-9-113, 32-9-122, 32-9-123, 32-9-129, 32-9-130, 32-9-166, 32-9-169, AND 32-9-170, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 32-9-102, MCA, is amended to read:

**"32-9-102. License requirement -- registration.** (1) Unless exempt under 32-9-104, a person may not regularly engage in the business of a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator with respect to any residential mortgage loan unless licensed or registered under the provisions of this part ~~or registered~~ through the NMLS ~~with a unique identifier assigned~~.

~~(2) A person regularly engaging in the business of a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator under this part is required to be licensed through, registered with, and maintain a valid unique identifier issued by the NMLS.~~

~~(3)~~(2) A mortgage broker or mortgage lender may not employ or contract with any person required to be licensed under this part if the person is not licensed. (See part compiler's comment regarding contingent suspension.)"

**Section 2.** 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 underwriting of a residential mortgage loan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) "Branch office" means a location at which a licensee conducts business other than a licensee's principal place of business. The location is considered a branch office if:

- (a) the address of the location appears on business cards, stationery, or advertising used by the entity;
- (b) the entity's name or advertising suggests that mortgages are made at the location;
- (c) 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) the location is controlled directly or indirectly by the entity.

(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.

~~(10)~~(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.

~~(11)~~(12) (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.

~~(12)~~(13) "Department" means the department of administration provided for in 2-15-1001, acting through its division of banking and financial institutions.

~~(13)~~(14) "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.

~~(14)~~(15) "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 as the individual responsible for the operation of a particular location that is under the designated manager's full management, supervision, and control.

~~(15)~~(16) "Dwelling" has the meaning provided in 15 U.S.C. 1602(w).

~~(16)~~(17) "Entity" means a business organization, including a sole proprietorship.

~~(17)~~(18) "Escrow account" means a depository account with a financial institution that provides deposit insurance and that is separate and distinct from any personal, business, or other account of the mortgage lender or mortgage servicer and is maintained solely for the holding and payment of escrow funds.

~~(18)~~(19) "Escrow funds" means funds entrusted to a mortgage lender or mortgage servicer by a borrower for payment of taxes, insurance, or other payments to be made in connection with the servicing of a loan.

~~(19)~~(20) "Expungement" means a court-ordered process that involves the destruction of documentation related to past arrests and convictions.

~~(20)~~(21) "Federal banking agency" means the board of governors of the federal reserve system, the comptroller of the currency, the national credit union administration, or the federal deposit insurance corporation.

~~(21)~~(22) "Housing finance agency" includes the Montana board of housing provided for in 2-15-1814.

~~(22)~~(23) "Independent contractor" means an individual who performs duties other than at the direction of and subject to the supervision and instruction of another individual who is licensed and registered in

accordance with this part or who is not required to be licensed in accordance with 32-9-104(1)(b), (1)(d), or (1)(g).

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

~~(23)~~(25) "Individual" means a natural person.

~~(24)~~(26) "Licensee" means a person authorized pursuant to this part to engage in activities regulated by this part. The term does not include an individual who is a registered mortgage loan originator.

~~(25)~~(27) "Loan commitment" means a statement transmitted in writing or electronically by a 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.

~~(26)~~(28) (a) "Loan processor or underwriter" means an individual who, with respect to the origination of a residential mortgage loan, performs ~~administrative or clerical tasks~~ 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 ~~(26)(a)~~ (28)(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.

~~(27)~~(29) "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.

~~(28)~~(30) (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 ~~(28)~~ (30), 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.

~~(29)~~(31) "Mortgage lender" means an entity that closes a residential mortgage loan, advances funds, offers to advance funds, ~~or~~ commits to advancing funds for a mortgage loan applicant, or holds itself out as being able to perform any of those functions.

~~(30)~~(32) (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).

~~(b)~~(c) The term does not include an individual:

- (i) engaged solely as a loan processor or underwriter, except as provided in ~~32-9-129~~ [Section 12]; or
- (ii) involved solely in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. 101(53D).

~~(31)~~(33) "Mortgage servicer" means an entity that:

(a) engages, for compensation or gain from another or on its own behalf, in the business of receiving any scheduled periodic payment from a borrower pursuant to the terms of a residential mortgage loan, residential mortgage servicing documents, or a residential mortgage servicing contract; ~~or~~

(b) meets the definition of servicer in 12 U.S.C. 2605(i)(2) with respect to residential mortgage loans;

or

(c) holds out to the public that the entity is able to comply with subsection (33)(a) or (33)(b).

~~(32)~~(34) "Nationwide mortgage licensing system and registry" or "NMLS" means a licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the registration and licensing of persons providing nondepository financial services.

~~(33)~~(35) "Nontraditional mortgage product" means any mortgage product other than a 30-year, fixed-rate mortgage.

~~(34)~~(36) "Person" means an individual, sole proprietorship, corporation, company, limited liability company, partnership, limited liability partnership, trust, or association.

~~(35)~~(37) "Real estate brokerage activities" means activities that involve offering or providing real estate brokerage services to the public, including:

- (a) acting as a real estate salesperson or real estate broker for a buyer, seller, lessor, or lessee of real property;

(b) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real 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 ~~(35)(a)~~ (37)(a) through ~~(35)(d)~~ (37)(d).

~~(36)~~(38) "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.

~~(37)~~(39) "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 ~~42~~ 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 ~~42~~ 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 ~~42~~ 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 ~~42~~ five residential mortgage loans in the current calendar year.

~~(38)~~(40) "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.

~~(39)~~(41) "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) "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.

~~(40)~~(43) "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.

~~(41)~~(44) "Unique identifier" means a number or other identifier assigned by protocols established by the NMLS. (See part compiler's comment regarding contingent suspension.)"

**Section 3.** 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~~ entity described in ~~32-9-103(36)(a)(i)~~ 32-9-103(38)(a)(i) through ~~(36)(a)(iii)~~ (38)(a)(iii);
- (d) a registered mortgage loan originator when acting for an ~~entity~~ entity described in ~~32-9-103(36)(a)(i)~~ 32-9-103(38)(a)(i) through ~~(36)(a)(iii)~~ (38)(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 ~~subsections~~ 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;

(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 if 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.

~~(4) A person who is exempt from licensure or is not required to be licensed or registered under this part may register on the NMLS as an exempt registrant for purposes of sponsoring a mortgage loan originator and~~

~~for purposes of satisfying the mortgage loan originator bonding requirements. (See part compiler's comment regarding contingent suspension.)"~~

**Section 4.** Section 32-9-105, MCA, is amended to read:

**"32-9-105. Nationwide mortgage licensing system for mortgage brokers, mortgage lenders, mortgage servicers, and mortgage loan originators.** (1) The department may participate in the NMLS and shall require mortgage brokers, mortgage lenders, mortgage servicers, and mortgage loan originators to apply for state licensure on applications approved by the NMLS.

(2) The department may establish requirements through rulemaking as necessary to comply with the NMLS, including requirements:

- (a) for payment of nonrefundable fees to apply for, maintain, and renew licenses through the NMLS;
- (b) for renewal or reporting dates;
- ~~(c) for procedures to amend or to surrender a license;~~ and
- ~~(d)~~(c) pertaining to any other activity necessary for participation in the NMLS.

(3) The department's portion of the licensing fees collected by the NMLS under this section must be deposited in the department's account in the state special revenue fund to be used for administering this part. (See part compiler's comment regarding contingent suspension.)"

**Section 5.** Section 32-9-107, MCA, is amended to read:

**"32-9-107. Prelicensing education requirements for mortgage loan originators.** (1) An individual seeking a mortgage loan originator's license shall complete at least 20 hours of approved education courses, which must include at least:

- (a) 3 hours of training on federal law and regulations;
- (b) 3 hours of training in ethics, including instruction on fraud, consumer protection, and fair lending issues; and
- (c) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

(2) In addition to the training required in ~~subsection~~ subsections (1)(a), (1)(b), and (1)(c), the department may require by rule that applicants complete additional hours of training that are specific to Montana residential mortgage statutes and rules.

(3) The prelicensing education courses that comply with the requirements of subsection (1) and that are approved by the NMLS for any other state must be accepted with respect to the completion of prelicensing education requirements in Montana. (See part compiler's comment regarding contingent suspension.)"

**Section 6.** Section 32-9-109, MCA, is amended to read:

**"32-9-109. Experience requirements.** (1) An individual may not act as a designated manager without a minimum of 3 years of experience working as a mortgage loan originator or in a related field.

(2) An individual may not act as a responsible individual without a minimum of 1 1/2 years of experience working as a mortgage loan originator or in a related field.

~~(2)~~(3) The department shall by rule establish what constitutes work in a related field. (See part compiler's comment regarding contingent suspension.)"

**Section 7.** Section 32-9-112, MCA, is amended to read:

**"32-9-112. Application for mortgage broker, mortgage lender, mortgage servicer, and mortgage loan originator license -- renewals.** (1) An applicant under this part shall apply for a state license or renewal of a license on a form the forms prescribed by the department that complies with the requirements of the NMLS. ~~Each form must contain content as set forth by the NMLS and may be changed or updated by the department as necessary to comply with the NMLS. The department shall use the NMLS forms and policies for all licensing actions.~~

(2) The department may establish relationships or contracts with the NMLS or other entities designated by the NMLS to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this part.

(3) An applicant for a license or license renewal shall furnish information to the NMLS concerning the applicant's identity, including but not limited to:

(a) fingerprints for submission to the federal bureau of investigation and any governmental agency or entity authorized to receive information for a state, national, and international criminal history background check; and

(b) personal history and experience in a form prescribed by the NMLS, including submission of authorization for the NMLS and the department to obtain:

(i) an independent credit report from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p); and

(ii) information related to administrative, civil, or criminal findings by a governmental jurisdiction.

(4) For the purposes of this section and to reduce the points of contact that the federal bureau of investigation may have to maintain for purposes of subsection (3), the department may use the NMLS as a channeling agent for requesting information from and distributing information to the United States department of justice or other governmental agencies.

(5) For the purposes of this section and to reduce the points of contact that the department may have to maintain for purposes of subsection (3), the department may use the NMLS as a channeling agent for requesting and distributing information to and from any source directed by the department. (See part compiler's comment regarding contingent suspension.)"

**Section 8.** Section 32-9-113, MCA, is amended to read:

**"32-9-113. Application Control persons -- application for license -- renewal.** ~~In order for~~ For the department to consider an entity ~~to be considered~~ for a state license or license renewal, each ~~of the following~~ person with control, as defined in 32-9-103, of the entity is required to independently meet the requirements established in 32-9-120(1)(a) through (1)(c) and (1)(g):

- ~~(1) ultimate equity owners of 25% or more of the applicant if the equity owners are individuals;~~
- ~~(2) control persons of the applicant if the control persons are individuals; and~~
- ~~(3) individuals that control, directly or indirectly, the election of 25% or more of the members of the board of directors of the entity.~~ (See part compiler's comment regarding contingent suspension.)"

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

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

(2) A mortgage broker or mortgage lender shall designate to the NMLS for each office that originates a residential mortgage loan an individual who is licensed as a mortgage loan originator as the designated

manager of the main office and shall designate a separate designated manager to serve each branch office that originates a residential mortgage loan.

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

(4) A designated manager is responsible for the operation of the business at the location under the designated manager's full charge, supervision, and control.

(5) A mortgage broker or mortgage lender is responsible for the conduct of its employees, including for violations of ~~federal laws and regulations that are applicable to the origination of residential mortgage loans, violations of this part, and violations of any administrative rule adopted pursuant to this part~~ federal or state laws, rules, or regulations.

(6) A designated manager is responsible for conduct that violates ~~federal laws and regulations that are applicable to the origination of residential mortgage loans, violations of this part, and violations of any administrative rule adopted pursuant to this part~~. The designated manager's responsibility includes conduct federal or state laws, rules, or regulations by the designated manager and each employee of the mortgage broker or mortgage lender at the 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 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 10.** Section 32-9-123, MCA, is amended to read:

**"32-9-123. Surety bond requirement -- notice of legal action.** (1) (a) A mortgage loan originator must be covered by a surety bond in accordance with this section. If a mortgage loan originator is an employee of a licensed mortgage lender or mortgage broker, the surety bond of the licensed mortgage lender or mortgage

broker may be used in lieu of a mortgage loan originator's surety bond.

(b) The bond must run to the state of Montana as obligee and must run first to the benefit of the borrower and then to the benefit of the state and any person who suffers loss by reason of the obligor's or its loan originator's violation of any provision of this part or rules adopted under this part. The department shall use the proceeds of the surety bonds to reimburse borrowers, the department, or bona fide third parties who successfully demonstrate a financial loss because of an act of a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator that violates any provision of this part.

(2) (a) An entity licensed as a mortgage broker, mortgage lender, and mortgage servicer is required to maintain one surety bond for each entity license.

(b) The amount of the required surety bond must be calculated by combining the annual loan production amounts for all persons originating residential mortgage loans and for all business locations of the mortgage broker or mortgage lender and must be in the following amount:

- (i) \$25,000 for a combined annual loan production that does not exceed \$50 million a year;
- (ii) \$50,000 for annual loan production of \$50 million but not exceeding \$100 million a year; or
- (iii) \$100,000 for annual loan production of more than \$100 million a year.

(c) The amount of the required surety bond for a mortgage servicer is \$100,000.

(3) A mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator shall give notice to the department by certified mail or through the NMLS within 15 days of the mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator obtaining knowledge of the initiation of an investigation or the entry of a judgment in a criminal or civil action. The notice must be given if the investigation or the legal action is in any state and involves a mortgage broker, a mortgage lender, a mortgage servicer, a mortgage loan originator, or anyone having an ownership interest in a mortgage broker entity, mortgage lender entity, or mortgage servicer entity. In the case of a legal action, the notice must include a copy of the criminal or civil judgment.

(4) (a) An obligor shall give written notice to the department through the NMLS of any action that may be brought against it by any creditor or borrower when the action:

- (i) is brought under this part;
- (ii) involves a claim against the bond filed with the department for the purposes of compliance with this section; or
- (iii) involves a claim for damages in excess of \$20,000 for a mortgage broker or mortgage loan originator

or \$200,000 for a mortgage lender or mortgage servicer.

(b) An obligor shall give written notice to the department through the NMLS of any judgment that may be entered against it by any creditor or any borrower or prospective borrower.

(c) The written notice must provide details sufficient to identify the action or judgment and must be submitted within 30 days after the commencement of any action or within 30 days after the entry of any judgment.

(5) A corporate surety shall, within 10 days after it pays any claim or judgment to any claimant, give written notice to the department of the payment with details sufficient to identify the claimant and the claim or judgment paid. Whenever the principal sum of a required bond is reduced by one or more recoveries or payments on the bond, the obligor shall furnish a new or additional bond so that the total or aggregate principal sum of the bond or bonds equals the sum required under this section or the obligor shall furnish an endorsement duly executed by the corporate surety reinstating the bond to the required principal sum.

(6) A bond filed with the department or with the NMLS for the purpose of compliance with this section may not be canceled by the obligor or the corporate surety except upon written notice to the department through the NMLS. The cancellation may not take effect until 30 days after receipt by the department of the notice. The cancellation is effective only with respect to any occurrence after the effective date of the cancellation. (See part compiler's comment regarding contingent suspension.)"

**Section 11.** Section 32-9-129, MCA, is amended to read:

**"32-9-129. Loan processors and underwriters.** ~~(1) A person engaging in loan processor or underwriter activities may not represent to the public, through advertising or other means of communication, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the person can or will perform any of the activities of a mortgage loan originator.~~

~~(2) An independent contractor may not engage in residential mortgage loan origination activities as a loan processor or underwriter with respect to any dwelling or residential real estate in this state unless the individual first registers as a mortgage loan originator through and obtains a unique identifier from the NMLS and obtains and maintains a valid mortgage loan originator license.~~

~~(3) For purposes of this section, "residential mortgage loan origination activities" means all activities related to residential mortgage loans 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. (See part~~

compiler's comment regarding contingent suspension.)"

**Section 12. Independent contractor entity -- responsible individual -- loan processor or underwriter.** (1) An independent contractor entity may not offer or engage in clerical or support duties with respect to any dwelling or residential real estate in this state unless the independent contractor entity obtains and maintains a valid mortgage broker license through the NMLS.

(2) An independent contractor entity shall apply for a mortgage broker license through the NMLS for its main office and for every branch office where clerical or support duties are conducted.

(3) An independent contractor entity shall designate a responsible individual for each main office and each branch office. The responsible individual must be an employee of the independent contractor entity.

(4) The responsible individual is responsible for the operation of the business at the responsible individual's place of employment under the responsible individual's full charge, supervision, and control.

(5) An independent contractor entity is responsible for the conduct and omissions of its employees, agents, and independent contractors, including for violations of federal or state laws, rules, or regulations.

(6) A responsible individual is responsible for conduct that violates federal or state laws, rules, or regulations. The responsible individual's responsibility includes conduct by the responsible individual and each employee and agent of the independent contractor entity at the location that the responsible individual manages.

(7) If the responsible individual ceases to act in that capacity, the independent contractor entity shall within 15 days designate as responsible individual another individual who is a licensed or registered mortgage loan originator and shall submit information to the NMLS establishing that the subsequent responsible individual is in compliance with the provisions of this part.

(8) If the employment of a responsible individual is terminated, the independent contractor entity shall remove the sponsorship of the responsible individual on the NMLS within 5 business days of the termination.

(9) An individual who is employed by an independent contractor entity and who performs only clerical or support duties and does so at the direction of and subject to the supervision and instruction of a responsible individual is not required to be licensed under this part.

**Section 13.** 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) prescribing forms for applications; and~~

~~(e)~~(d) establishing fees for license renewals.

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

(4) (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 or person subject to this part as often as necessary in order to carry out the purposes of this part.

(b) The commissioner 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 considers relevant to the inquiry.

(5) Each licensee 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, 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.

(6) (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.

(7) (a) The total cost for any examination or investigation 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. 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 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.

(8) (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 person 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 (8)(a)(i) of this section, the department shall treat all confidential criminal justice information as confidential unless otherwise required by law.

(9) Pursuant to section 1508(d) of the 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.

~~(10)(a) The department may, if the U.S. consumer financial protection bureau determines that a provision~~

~~of this part does not meet the requirements 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, or that additional persons are subject to this part, refrain from enforcing the provision that is determined to be noncompliant and shall by rule invalidate any noncompliant exemption to this part or require that additional persons be temporarily subject to this part to be compliant with federal law, including the provisions for licensure and registration with and maintenance of a valid unique identifier with the NMLS:~~

~~—— (b) The department shall propose to the regular session of the legislature that follows the determination by the U.S. consumer financial protection bureau legislation to address the incompatibility with federal law. The provisions that the U.S. consumer financial protection bureau determines to not be in compliance with the requirements of the Secure and Fair Enforcement for Mortgage Licensing Act, Public Law 110-289, must be amended in the correcting legislation:~~

~~—— (11) The department may be approved by the NMLS as a provider of educational courses. If the department chooses to become an approved provider of educational courses, it may charge fees to attendees. The amount of the fees must be set by rule and must be commensurate with the total course costs, including the costs of becoming an approved provider. 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 presenting education courses. (See part compiler's comment regarding contingent suspension.)"~~

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

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

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

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

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

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

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

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

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

(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; or

(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.

(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."

**Section 15.** Section 32-9-169, MCA, is amended to read:

**"32-9-169. Mortgage servicer prohibitions.** A mortgage servicer may not:

(1) fail to comply with the mortgage loan servicing transfer, escrow account administration, or borrower inquiry response requirements imposed by the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601, et seq., and regulations adopted under that act;

(2) fail to comply with applicable state and federal laws, rules, and regulations related to mortgage servicing;

(3) fail to provide written notice to a borrower upon taking action to place hazard, homeowner's, or flood insurance on the mortgaged property or to place the insurance when the mortgage servicer knows or has reason to know that there is insurance in effect;

(4) place hazard, homeowner's, or flood insurance on a mortgaged property for an amount that exceeds either the value of the insurable improvements or the last-known coverage amount of insurance;

(5) fail to provide to the borrower a refund of unearned premiums paid by a borrower or charged to the borrower for hazard, homeowner's, or flood insurance placed by a mortgage lender or mortgage servicer if the borrower provides reasonable proof that the borrower has obtained coverage so that the forced placement is no longer necessary and the property is insured. If the borrower provides reasonable proof within 12 months of the placement that no lapse in coverage occurred so that the forced placement was not necessary, the mortgage servicer shall refund the entire premium.

(6) fail to make all payments from any escrow account held for the borrower for insurance, taxes, and other charges with respect to the property in a timely manner so as to ensure that late penalties are not assessed or other negative consequences result regardless of whether the loan is delinquent unless there are not sufficient funds in the account to cover the payments and the mortgage servicer has a reasonable basis to believe that recovery of the funds will not be possible."

**Section 16.** Section 32-9-170, MCA, is amended to read:

**"32-9-170. Mortgage servicer duties.** In addition to any duties imposed by federal law or regulations or the common law, a mortgage servicer shall:

(1) safeguard and account for any money handled for the borrower;

(2) follow reasonable and lawful instructions from the borrower;

(3) act with reasonable skill, care, and diligence;

(4) comply with the servicing standards set by the department by rule;

~~(4)~~(5) file with the department a complete, current schedule of the ranges of costs and fees the mortgage servicer charges borrowers for servicing-related activities with the mortgage servicer's application and renewal and with any supplemental filings made from time to time;

~~(5)~~(6) file with the department upon request a report in a form and format set forth by the department by rule detailing the mortgage servicer's activities in this state;

~~(6)~~(7) at the time the mortgage servicer accepts assignment of servicing rights for a mortgage loan, disclose to the borrower:

(a) any notice required under federal law or regulation; and

(b) a schedule of the ranges and categories of the mortgage servicer's costs and fees for its servicing-related activities, which may not exceed those reported to the department; and

~~(7)~~(8) in the event of a delinquency or other act of default on the part of the borrower, act in good faith to inform the borrower of the facts concerning the loan and the nature and extent of the delinquency or default and, if the borrower replies, negotiate with the borrower, subject to the mortgage servicer's duties and obligations under the mortgage servicing contract, if any, to attempt a resolution or workout pertaining to the delinquency or default."

**Section 17. Codification instruction.** [Section 12] is intended to be codified as an integral part of Title 32, chapter 9, part 1, and the provisions of Title 32, chapter 9, part 1, apply to [section 12].

**Section 18. Effective date.** [This act] is effective October 1, 2015.

- END -

I hereby certify that the within bill,  
SB 0098, originated in the Senate.

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Secretary of the Senate

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2015.

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2015.

SENATE BILL NO. 98  
INTRODUCED BY T. FACEY  
BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

AN ACT REVISING THE MONTANA MORTGAGE ACT TO CLARIFY LICENSING REQUIREMENTS; REVISING DEFINITIONS; REMOVING EXEMPT COMPANY REGISTRATION; CLARIFYING PRELICENSING EDUCATION REQUIREMENTS; AMENDING EXPERIENCE REQUIREMENTS; CLARIFYING CONTROL PERSONS WHO MUST MEET LICENSING REQUIREMENTS; CLARIFYING THE RESPONSIBILITIES OF DESIGNATED MANAGERS; ALLOWING SURETY BONDS TO BE HELD BY THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY (NMLS) AND ALLOWING REPORTS AND NOTICES TO BE FILED AND DELIVERED THROUGH THE NMLS; ADOPTING NMLS FORMS AND POLICIES; ADDRESSING LICENSING OF LOAN PROCESSOR OR LOAN UNDERWRITER ENTITIES; ALLOWING THE DEPARTMENT TO SET SERVICING STANDARDS BY RULE; REVISING THE DEPARTMENT'S RULEMAKING AUTHORITY; AMENDING SECTIONS 32-9-102, 32-9-103, 32-9-104, 32-9-105, 32-9-107, 32-9-109, 32-9-112, 32-9-113, 32-9-122, 32-9-123, 32-9-129, 32-9-130, 32-9-166, 32-9-169, AND 32-9-170, MCA; AND PROVIDING AN EFFECTIVE DATE.