

HOUSE BILL NO. 107

INTRODUCED BY S. MORIGEAU

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA MORTGAGE ACT;
6 ADDING CAPITAL REQUIREMENTS FOR MORTGAGE SERVICERS; ADDING NET WORTH REQUIREMENTS
7 FOR MORTGAGE LENDERS; REVISING DESIGNATED MANAGER AND BRANCH OFFICE REQUIREMENTS;
8 REVISING SURETY BOND REQUIREMENTS; ALLOWING SERVICE BY COMMON COURIER WITH
9 TRACKING CAPABILITY; PROVIDING RULEMAKING AUTHORITY REGARDING FALSE, DECEPTIVE, AND
10 MISLEADING ADVERTISING, INTERNET AND ELECTRONIC ADVERTISING, MORTGAGE SERVICER
11 CAPITAL REQUIREMENTS, AND DESIGNATED MANAGER SUPERVISORY REQUIREMENTS; PROVIDING
12 FOR PENALTIES AND RESTITUTION FROM SERVICE PROVIDERS; AUTHORIZING INVESTIGATION OF
13 SERVICE PROVIDERS; ALLOWING THE DEPARTMENT TO DISCLOSE INFORMATION ABOUT SERVICE
14 PROVIDERS TO LICENSEES; AMENDING MORTGAGE SERVICER COSTS AND FEE SCHEDULE FILING
15 REQUIREMENTS; AND AMENDING SECTIONS 32-9-103, 32-9-120, 32-9-122, 32-9-123, 32-9-128, 32-9-130,
16 32-9-133, 32-9-141, 32-9-149, 32-9-160, AND 32-9-170, MCA."

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19
20 NEW SECTION. **Section 1. Mortgage servicer capital requirements.** (1) The following definitions
21 apply to this section:

22 (a) "Liquidity" means unrestricted cash and cash equivalents, investment grade securities that are
23 available for sale or held for trade, and unused and available portion of committed servicing advance lines.

24 (b) "Operating reserves" are funds set aside in anticipation of future payments or obligations and are
25 included in liquidity.

26 (c) "Tangible net worth" means total equity minus receivables due from affiliated entities, minus goodwill
27 and other intangible assets, and minus the carrying value of pledged assets net of the associated liabilities of the
28 pledged assets. Tangible net worth does not include money held in borrower escrow accounts.

29 (2) A mortgage servicer operating as an approved servicer by a government sponsored enterprise must
30 maintain liquidity, operating reserves, and tangible net worth that meet the standards set by the government



1 sponsored enterprise. If approved by more than one government sponsored enterprise, the mortgage servicer
2 must meet the highest standard of the government sponsored enterprises for which it is approved. The
3 department may define by rule the list of government sponsored enterprises.

4 (3) (a) A mortgage servicer with a portfolio of only nongovernment sponsored enterprise loans must
5 maintain a minimum tangible net worth of \$1 million or maintain a \$1 million surety bond.

6 (b) A mortgage servicer with a portfolio of nongovernment sponsored enterprise loans must maintain
7 liquidity, including operating reserves, of 0.00035 times the unpaid principal balance of the portfolio.

8 (4) A mortgage servicer with 25 or fewer loans, A MORTGAGE SERVICER THAT IS WHOLLY OWNED AND
9 CONTROLLED BY ONE OR MORE DEPOSITORY INSTITUTIONS REGULATED BY A STATE OR FEDERAL BANKING AGENCY, or
10 a mortgage servicer that is also licensed as an escrow business may apply to the department to waive or adjust
11 one or more of the capital requirements in subsections (2) and (3). In considering such a request, the department
12 will consider whether the mortgage servicer has a positive net worth and adequate operating reserves.

13 (5) The continuous maintenance of the minimum liquidity, operating reserves, and tangible net worth
14 required under this section is necessary for continued licensure under this part. Failure to meet or maintain these
15 minimum standards may constitute grounds for denial of an application, issuance of a cease and desist order,
16 license suspension, or license revocation.

17
18 NEW SECTION. Section 2. Mortgage lender net worth requirement. (1) A mortgage lender must
19 continuously maintain the minimum net worth required by this section.

20 (2) A mortgage lender must have a minimum net worth of \$250,000 and submit evidence that establishes
21 compliance with this section. Evidence of net worth must include submission of recent financial statements
22 accompanied by a written statement by an independent certified public accountant attesting that the accountant
23 has reviewed the financial statements in accordance with generally accepted accounting principles.

24 (3) If the net worth of a mortgage lender falls below the minimum net worth set forth in subsection (2),
25 the licensee shall provide a plan, subject to approval of the department, to increase the licensee's net worth to
26 an amount in conformance with this section. Submission of a plan under this section must be made within 30
27 business days of service of a notice from the department that the licensee is not in compliance with subsection
28 (2). A plan that is not timely submitted or that is not approved by the department may result in denial of the
29 application, issuance of a cease and desist order, license suspension, or license revocation.

30 (4) Maintenance of the minimum net worth specified under this section is a requirement for continued

1 licensure. Failure to meet or maintain the minimum net worth standards under this part may constitute grounds
2 for the denial of an application, issuance of a cease and desist order, license suspension, or license revocation.

3

4 **Section 3.** Section 32-9-103, MCA, is amended to read:

5 **"32-9-103. Definitions.** As used in this part, the following definitions apply:

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

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

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

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

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

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

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

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

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

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

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

27 (f) provides to or identifies for the borrower residential mortgage loans with terms that are favorable to
28 the borrower and comparable to mortgage loans and housing assistance provided under government housing
29 assistance programs. For purposes of this subsection (6)(f), for residential mortgage loans to have terms that are
30 favorable to the borrower, the department shall determine that the terms are consistent with loan origination in

1 a public or charitable context, rather than a commercial context.

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

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

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

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

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

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

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

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

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

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

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

21 (b) The term does not include:

22 (i) taking a residential mortgage loan application; or

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

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

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

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

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

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

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

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

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

10 (14) "Depository institution" has the meaning provided in section 3 of the Federal Deposit Insurance Act,
11 12 U.S.C. 1813(c), and includes any credit union.

12 (15) "Designated manager" means a mortgage loan originator with at least 3 years of experience as a
13 mortgage loan originator or registered mortgage loan originator who is designated by an entity as the individual
14 responsible for the operation of a particular location that is under the designated manager's full management,
15 supervision, and control.

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

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

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

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

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

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

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

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

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

3 (25) "Individual" means a natural person.

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

6 (27) "Loan commitment" means a statement transmitted in writing or electronically by a mortgage lender
7 setting forth the terms and conditions upon which the mortgage lender is willing to make a particular residential
8 mortgage loan to a particular borrower.

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

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

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

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

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

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

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

30 (i) takes a residential mortgage loan application; or

- 1 (ii) offers or negotiates terms of a residential mortgage loan.
- 2 (b) The term includes an individual who represents to the public that the individual can or will perform
3 the services described in subsection (32)(a).
- 4 (c) The term does not include an individual:
- 5 (i) engaged solely as a loan processor or underwriter, except as provided in 32-9-135; or
6 (ii) involved solely in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C.
7 101(53D).
- 8 (33) "Mortgage servicer" means an entity that:
- 9 (a) engages, for compensation or gain from another or on its own behalf, in the business of receiving
10 any scheduled periodic payment from a borrower pursuant to the terms of a residential mortgage loan, residential
11 mortgage servicing documents, or a residential mortgage servicing contract;
- 12 (b) meets the definition of servicer in 12 U.S.C. 2605(i)(2) with respect to residential mortgage loans; or
13 (c) holds out to the public that the entity is able to comply with subsection (33)(a) or (33)(b).
- 14 (34) "Nationwide mortgage licensing system and registry" or "NMLS" means a licensing system
15 developed and maintained by the conference of state bank supervisors and the American association of
16 residential mortgage regulators for the registration and licensing of persons providing nondepository financial
17 services.
- 18 (35) "Nontraditional mortgage product" means any mortgage product other than a 30-year, fixed-rate
19 mortgage.
- 20 (36) "Person" means an individual, sole proprietorship, corporation, company, limited liability company,
21 partnership, limited liability partnership, trust, or association.
- 22 (37) "Real estate brokerage activities" means activities that involve offering or providing real estate
23 brokerage services to the public, including:
- 24 (a) acting as a real estate salesperson or real estate broker for a buyer, seller, lessor, or lessee of real
25 property;
- 26 (b) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;
- 27 (c) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease,
28 rental, or exchange of real property other than in connection with providing financing with respect to the
29 transaction;
- 30 (d) engaging in any activity for which a person is required to be licensed as a real estate salesperson

1 or real estate broker under Montana law; or

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

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

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

6 (i) a depository institution;

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

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

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

11 (39) "Regularly engage" means that a person:

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

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

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

23 (41) "Residential real estate" means any real property located in the state of Montana upon which is
24 constructed a dwelling or upon which a dwelling is intended to be built within a 2-year period, subject to 24 CFR
25 3500.5(b)(4). The borrower's intent to construct a dwelling is presumed unless the borrower has submitted a
26 written, signed statement to the contrary.

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

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

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

4 (i) providing data processing services;

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

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

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

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

16 ~~(43)~~(44) "Ultimate equity owner" means an individual who, directly or indirectly, owns or controls an
 17 ownership interest in a corporation, a foreign corporation, an alien business organization, or any other form of
 18 business organization, regardless of whether the individual owns or controls an ownership interest, individually
 19 or in any combination, through one or more persons or one or more proxies, powers of attorney, nominees,
 20 corporations, associations, partnerships, trusts, joint-stock companies, or other entities or devices.

21 ~~(44)~~(45) "Unique identifier" means a number or other identifier assigned by protocols established by the
 22 NMLS. (See part compiler's comment regarding contingent suspension.)"

23

24 **Section 4.** Section 32-9-120, MCA, is amended to read:

25 **"32-9-120. Denial of mortgage broker, mortgage lender, mortgage servicer, or mortgage loan**
 26 **originator license application or license renewal.** (1) The department may not issue or renew any mortgage
 27 broker, mortgage lender, mortgage servicer, or mortgage loan originator license if any of the following facts are
 28 found during the application procedure:

29 (a) the applicant has ever had a mortgage loan originator license or an equivalent license revoked in any
 30 governmental jurisdiction. A subsequent formal vacation of a revocation means that the revocation may not be

1 considered a revocation. The department may by order vacate a revocation of a license and enter an appropriate
2 order.

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

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

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

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

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

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

18 (h) the applicant has failed to meet the mortgage servicer capital requirements provided in [section 1];

19 (i) the applicant has failed to meet the minimum mortgage lender net worth requirements provided in

20 [section 2]; or

21 ~~(h)(j)~~ (j) the applicant has been found to have violated:

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

24 (ii) the nationwide multistate licensing system industry terms of use as they pertain to enrolling,
25 scheduling, or taking the mortgage loan originator national or state test under the Secure and Fair Enforcement
26 for Mortgage Licensing Act.

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

29 (3) For purposes of subsection (1)(b), a pardoned or expunged felony conviction does not necessitate
30 denial of the license application. The department may consider the underlying crime, facts, or circumstances of

1 a pardoned or expunged felony conviction when determining the eligibility of an applicant for licensure under
2 subsection (1)(b) or (1)(c). Whether a particular crime is classified as a felony must be determined by the law of
3 the jurisdiction in which an individual is convicted. (See part compiler's comment regarding contingent
4 suspension.)"

5

6 **Section 5.** Section 32-9-122, MCA, is amended to read:

7 **"32-9-122. Designated manager and branch office license requirements.** (1) A mortgage broker,
8 mortgage lender, or mortgage servicer shall apply for a license for a main office and for every branch office
9 through the NMLS and maintain a unique identifier. All locations must be within the United States or a territory,
10 including Puerto Rico and the U.S. Virgin Islands.

11 (2) A mortgage broker or mortgage lender shall designate to the NMLS for each office that originates
12 a residential mortgage loan an individual who is licensed as a mortgage loan originator as the designated
13 manager of the main office and ~~shall designate a separate designated manager to serve~~ each branch office that
14 originates a residential mortgage loan. A designated manager may be responsible for more than one location.
15 The designated manager is responsible for the mortgage origination activity conducted at each office to which
16 the designated manager is assigned in the NMLS.

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

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

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

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

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

30 (8) If the employment of a designated manager is terminated, the mortgage broker or mortgage lender

1 shall remove the sponsorship of the designated manager on the NMLS within 5 business days of the termination.

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

5

6 **Section 6.** Section 32-9-123, MCA, is amended to read:

7 **"32-9-123. Surety bond requirement -- notice of legal action.** (1) (a) A mortgage loan originator must
 8 be covered by a surety bond in accordance with this section. If a mortgage loan originator is an employee of a
 9 licensed mortgage lender or mortgage broker, the surety bond of the licensed mortgage lender or mortgage
 10 broker may be used in lieu of a mortgage loan originator's surety bond.

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

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

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

22 (i) \$25,000 for a combined annual loan production that does not exceed \$50 million a year;

23 (ii) \$50,000 for annual loan production of more than \$50 million but not exceeding \$100 million a year;

24 or

25 (iii) \$100,000 for annual loan production of more than \$100 million a year.

26 (c) The amount of the required surety bond for a mortgage servicer ~~is \$100,000~~ must be calculated on
 27 the mortgage servicer's total unpaid principal balance of residential mortgage loans as of December 31. The
 28 amount of the surety bond must be in the following amount:

29 (i) \$75,000 for an unpaid principal balance that does not exceed \$25 million a year;

30 (ii) \$150,000 for an unpaid principal balance of more than \$25 million but not exceeding \$100 million a

1 year;

2 (iii) \$250,000 for an unpaid principal balance of more than \$100 million but not exceeding \$500 million

3 a year; or

4 (iv) \$350,000 for an unpaid principal balance of more than \$500 million a year.

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

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

14 (i) is brought under this part;

15 (ii) involves a claim against the bond filed with the department for the purposes of compliance with this
16 section; or

17 (iii) involves a claim for damages in excess of \$20,000 for a mortgage broker or mortgage loan originator
18 or \$200,000 for a mortgage lender or mortgage servicer.

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

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

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

29 (6) A bond filed with the department or with the NMLS for the purpose of compliance with this section
30 may not be canceled by the obligor or the corporate surety except upon written notice to the department through

1 the NMLS. The cancellation may not take effect until 30 days after receipt by the department of the notice. The
2 cancellation is effective only with respect to any occurrence after the effective date of the cancellation. (See part
3 compiler's comment regarding contingent suspension.)"

4

5 **Section 7.** Section 32-9-128, MCA, is amended to read:

6 **"32-9-128. Registration and registered agent of foreign entities -- service of process -- venue.** (1)

7 A foreign mortgage broker, mortgage lender, or mortgage servicer shall register to do business in this state as
8 a foreign corporation, limited liability company, limited liability partnership, or limited partnership with the secretary
9 of state.

10 (2) A foreign mortgage broker, mortgage lender, or mortgage servicer shall provide the name and
11 address of its registered agent for service of process to the department in order to be licensed in this state and
12 shall notify the department in writing within 5 days of a change in the licensee's registered agent's name or
13 address.

14 (3) For purposes of this part, the department is considered to have complied with the requirements of
15 law concerning service of process upon ~~mailing by certified mail~~ sending by common courier with tracking
16 capability any notice required or permitted to a licensee under this part, postage prepaid and addressed to the
17 last-known address of the licensee's registered agent for service of process on file with the department, the
18 last-known address of the licensee on file with the department for an in-state licensee, or in the case of an
19 unlicensed person, the last-known address of the person.

20 (4) In a judicial action, suit, or proceeding arising under this part or any administrative rule adopted
21 pursuant to this part between the department and a licensee who does not maintain a physical office in this state,
22 venue must be exclusively in Lewis and Clark County. (See part compiler's comment regarding contingent
23 suspension.)"

24

25 **Section 8.** Section 32-9-130, MCA, is amended to read:

26 **"32-9-130. Department authority -- rulemaking.** (1) The department shall adopt rules necessary to
27 carry out the intent and purposes of this part. The rules adopted are binding on all licensees and enforceable as
28 provided under this part.

29 (2) The rules must address:

30 (a) revocation or suspension of licenses for cause;

1 (b) investigation of applicants, licensees, and unlicensed persons alleged to have violated a provision
2 of this part and handling of complaints made by any person in connection with any business transacted by a
3 licensee;

4 (c) (i) ensuring that all persons are informed of their right to contest a decision by the department under
5 the Montana Administrative Procedure Act; and

6 (ii) holding contested case hearings pursuant to the Montana Administrative Procedure Act and issuing
7 cease and desist orders, orders of restitution, and orders for the recovery of administrative costs; and

8 (d) establishing fees for license renewals.

9 (3) The department may adopt rules:

10 (a) regarding the mortgage servicer capital requirements provided in [section 1]; and

11 (b) defining supervisory requirements for designated managers.

12 ~~(3)~~(4) The department may seek a writ or order restraining or enjoining, temporarily or permanently, any
13 act or practice violating any provision of this part.

14 ~~(4)~~(5) (a) For the purposes of investigating violations or complaints arising under this part or for the
15 purposes of examination, the department may review, investigate, or examine any licensee, service provider, or
16 person subject to this part as often as necessary in order to carry out the purposes of this part.

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

22 ~~(5)~~(6) Each licensee, service provider, or person subject to this part shall make available to the
23 department upon request the documents and records relating to the operations of the licensee or person. The
24 department may access the documents and records and may interview the officers, principals, mortgage loan
25 originators, employees, independent contractors, service providers, agents, or customers of the licensee or
26 person concerning the business of the licensee or person or any other person having knowledge that the
27 department considers relevant.

28 ~~(6)~~(7) (a) The department may conduct investigations and examinations for the purposes of initial
29 licensing, license renewal, license suspension, license conditioning, license revocation, or license termination
30 or to determine compliance with this part.

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

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

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

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

11 ~~(7)~~(8) (a) The total cost for any examination or investigation must be in accordance with fees determined
12 by the department by rule pursuant to this section and may include expenses for necessary travel outside the
13 state for the purposes of conducting the examination or investigation. The fees set by the department must be
14 commensurate with the cost of the examination or investigation. All fees collected under this section must be
15 deposited in the department's account in the state special revenue fund to be used by the department to cover
16 the department's cost of conducting examinations and investigations.

17 (b) The cost of an examination or investigation must be paid by the licensee, service provider, or person
18 within 30 days after the date of the invoice. Failure to pay the cost of an examination or investigation when due
19 must result in the suspension or revocation of a licensee's license.

20 ~~(8)~~(9) (a) The department may:

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

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

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

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

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

1 another state, the federal government, or this state;

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

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

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

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

13 (vi) assess against the licensee or person subject to this part the costs incurred by the department in
14 conducting the examination or investigation.

15 (c) Except as provided in 32-9-160 and subsection ~~(8)(a)(i)~~ (9)(a)(i) of this section, the department shall
16 treat all confidential criminal justice information as confidential unless otherwise required by law.

17 ~~(9)(10)~~ Pursuant to section 1508(d) of the Secure and Fair Enforcement for Mortgage Licensing Act, Title
18 V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, the department is authorized to:

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

21 (b) participate in the NMLS;

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

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

27

28 **Section 9.** Section 32-9-133, MCA, is amended to read:

29 **"32-9-133. Penalties -- restitution.** (1) If the department finds, after providing a 14-day written notice
30 that includes a statement of alleged violations and a hearing or an opportunity for hearing, as provided in the

1 Montana Administrative Procedure Act, that any person, licensee, service provider, or officer, agent, employee,
 2 or representative of the person or licensee, whether licensed or unlicensed, has violated any of the provisions
 3 of this part, has failed to comply with the rules, instructions, or orders promulgated by the department, has failed
 4 or refused to make required reports to the department, has furnished false information to the department, or has
 5 operated without a required license, the department may impose a civil penalty not to exceed \$5,000 for the first
 6 violation and not to exceed \$10,000 for each subsequent violation.

7 (2) The department may issue an order:

8 (a) requiring restitution;

9 (b) requiring reimbursement of the department's cost in bringing the administrative action; and

10 (c) revoking, conditioning, or suspending the right of the person or licensee, directly or through ~~an~~ a
 11 service provider, officer, agent, employee, or representative, to do business in this state as a licensee or to
 12 engage in the mortgage broker, mortgage lender, mortgage servicer, or mortgage loan origination business.

13 (3) Any person who directly or indirectly controls an entity liable under subsection (1), any partner, officer,
 14 director, or person occupying a similar status or performing similar functions of the entity, and any person who
 15 participates or materially aids in the violation is liable jointly and severally with and to the same extent as the
 16 person committing the violation. In addition, each person committing the violation or aiding in the violation is jointly
 17 and severally liable if the person committing the violation or aiding in the violation knew or in the exercise of
 18 reasonable care should have known of the existence of the facts by reason of which the liability is alleged to exist.
 19 There must be contribution between or among the severally liable persons.

20 (4) The fines must be deposited in the department's account in the state special revenue fund and used
 21 to administer the provisions of this part. (See part compiler's comment regarding contingent suspension.)"

22

23 **Section 10.** Section 32-9-141, MCA, is amended to read:

24 **"32-9-141. Investigations by department -- subpoenas -- oaths -- examination of witnesses and**
 25 **evidence.** (1) For the purposes of this part, the department or the department's authorized representatives must
 26 be given free access to the offices and places of business and files of all licensees and their service providers.
 27 The department may investigate any matter, upon complaint or otherwise, if it appears that a person has engaged
 28 in or offered to engage in any act or practice that is in violation of any provision of this part or any rule adopted
 29 or order issued by the department pursuant to this part.

30 (2) The department may issue subpoenas to compel the attendance of witnesses and the production

1 of documents, papers, books, records, and other evidence before it in any matter over which it has jurisdiction,
2 control, or supervision pertaining to this part. The department may administer oaths and affirmations to a person
3 whose testimony is required.

4 (3) If a person refuses to obey a subpoena or to give testimony or produce evidence as required by the
5 subpoena, a judge of the district court of Lewis and Clark County or the county in which the licensed premises
6 are located may, upon application and proof of the refusal, issue a subpoena or subpoena duces tecum for the
7 witness to appear before the department to give testimony and produce evidence as may be required. The clerk
8 of court shall then issue the subpoena, as directed, under the seal of the court, requiring the person to whom it
9 is directed to appear at the time and place designated in the subpoena.

10 (4) If a person served with a subpoena refuses to obey the subpoena or to give testimony or produce
11 evidence as required by the subpoena, the department may proceed under the contempt provisions of Title 3,
12 chapter 1, part 5.

13 (5) Failure to comply with the requirements of a court-ordered subpoena is punishable pursuant to
14 45-7-309."

15

16 **Section 11.** Section 32-9-149, MCA, is amended to read:

17 **"32-9-149. Use of name -- advertising.** (1) A licensee engaged in a business regulated by this part may
18 not operate under a name other than the name licensed by the department.

19 (2) A licensee may not:

20 (a) advertise that an applicant has unqualified access to credit without disclosing that material limitations
21 on the availability of credit may exist, such as the percentage required as a down payment, that a higher interest
22 rate or points could be required, or that restrictions as to the maximum principal amount of the mortgage loan
23 offered could apply;

24 (b) advertise a mortgage loan with a prevailing interest rate indicated in the advertisement unless the
25 advertisement specifically states that the interest rate could change or not be available at the time of commitment
26 or closing;

27 (c) advertise mortgage loans, including interest rates, margins, discounts, points, fees, commissions,
28 or other material information, including material limitations on the mortgage loans, unless the licensee is able to
29 make or broker the offered mortgage loans to a reasonable number of qualified applicants;

30 (d) engage in false, deceptive, or misleading advertising; or

1 (e) falsely advertise or misuse names in violation of 18 U.S.C. 709.

2 (3) The department may adopt rules to define false, deceptive, or misleading advertising.

3 ~~(3)~~(4) In any printed, published, e-mail, or internet advertisement for the provision of services, the
4 following information must be included:

5 (a) a name and unique identifier for a mortgage loan originator advertising as an individual; or

6 (b) the name and unique identifier only of the licensed entity when the licensed entity is advertising on
7 its own behalf or as an entity with one or more mortgage loan originators listed.

8 (5) The department may adopt rules to establish requirements for licensee advertising using the internet
9 or any electronic format."

10

11 **Section 12.** Section 32-9-160, MCA, is amended to read:

12 **"32-9-160. Confidentiality.** (1) (a) Except as otherwise provided in section 1512 of the Secure and Fair
13 Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law
14 110-289, the requirements under federal law, the Montana constitution, or Montana law regarding the privacy or
15 confidentiality of any information or material provided to the NMLS and any privilege arising under federal or state
16 law, including the rules of a federal or state court, pertaining to the information or material continue to apply to
17 the information or material after the information or material has been disclosed to the NMLS.

18 (b) Information and material may be shared with all state and federal financial services regulatory
19 agencies and with the board of governors of the federal reserve system without the loss of confidentiality
20 protections or the loss of privilege provided by federal law, the Montana constitution, or Montana law.

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

22 ~~(2)~~(3) The department may enter into agreements or sharing arrangements with other governmental
23 agencies, the conference of state bank supervisors, the American association of residential mortgage regulators,
24 or associations representing governmental agencies as established by rule of the department.

25 ~~(3)~~(4) Information or material subject to confidentiality or a privilege under subsection (1) is not subject
26 to:

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

29 (b) subpoena, discovery, or admission into evidence in any private civil action or administrative process
30 unless, with respect to any privilege held by the NMLS concerning the information or material, the person to

1 whom the information or material pertains waives, in whole or in part, that privilege.

2 ~~(4)~~(5) Montana law relating to the disclosure of confidential supervisory information or information or
3 material described in subsection (1) that is inconsistent with subsection (1) is superseded by the requirements
4 of section 1512 of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and
5 Economic Recovery Act of 2008, Public Law 110-289.

6 ~~(5)~~(6) Examination reports, information contained in examination reports, and examiners' work papers
7 are confidential material that retain their status as trade secrets or confidential proprietary information of the
8 entities that are the subject of the reports despite having been compelled to be produced to the state for
9 examination purposes. Confidential material is not subject to public inspection, subpoena, or discovery. To the
10 extent that examination reports, work papers, and other confidential material contain personal financial
11 information and personal identification information of individuals, those individuals retain a reasonable expectation
12 of privacy in their personal financial or personal identification information, and although filed with the department
13 as provided in this part, that information is not subject to public inspection, subpoena, or discovery except as
14 directed by a court of law.

15 ~~(6)~~(7) This section does not apply to information or material relating to the employment history of and
16 publicly adjudicated disciplinary and enforcement actions against mortgage brokers, mortgage lenders, mortgage
17 servicers, and mortgage loan originators included in the NMLS that is available for public access. (See part
18 compiler's comment regarding contingent suspension.)"

19

20 **Section 13.** Section 32-9-170, MCA, is amended to read:

21 **"32-9-170. Mortgage servicer duties.** In addition to any duties imposed by federal law or regulations
22 or the common law, a mortgage servicer shall:

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

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

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

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

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

30 (6) file with the department upon request a report in a form and format set forth by the department by

1 rule detailing the mortgage servicer's activities in this state;

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

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

5 ~~— (b) a schedule of the ranges and categories of the mortgage servicer's costs and fees for its
6 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
8 inform the borrower of the facts concerning the loan and the nature and extent of the delinquency or default and,
9 if the borrower replies, negotiate with the borrower, subject to the mortgage servicer's duties and obligations
10 under the mortgage servicing contract, if any, to attempt a resolution or workout pertaining to the delinquency or
11 default."

12
13 NEW SECTION. **Section 14. Codification instruction.** [Sections 1 and 2] are intended to be codified
14 as an integral part of Title 32, chapter 9, part 1, and the provisions of Title 32, chapter 9, part 1, apply to [sections
15 1 and 2].

16 - END -