

1 State of Arkansas
2 95th General Assembly
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4

A Bill

HOUSE BILL 1466

5 By: Representative Achor
6 By: Senator J. Boyd
7

For An Act To Be Entitled

8 AN ACT TO AMEND THE FAIR MORTGAGE LENDING ACT; AND
9 FOR OTHER PURPOSES.
10
11

Subtitle

12 TO AMEND THE FAIR MORTGAGE LENDING ACT.
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16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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18 SECTION 1. Arkansas Code § 23-39-502 is amended to read as follows:
19 23-39-502. Definitions.

20 As used in this subchapter:

21 (1) "Affiliate" means a person that directly or indirectly
22 through one (1) or more intermediaries controls, is controlled by, or is
23 under common control with the person;

24 (2)(A) "Allowable assets for liquidity" means assets that may be
25 used to satisfy liquidity requirements under this subchapter.

26 (B) "Allowable assets for liquidity" includes without
27 limitation:

28 (i) Unrestricted cash and cash equivalents; and

29 (ii) Unencumbered investment-grade assets held for
30 sale or trade;

31 (3) "Applicant" means a person that has applied to become
32 licensed under this subchapter as a loan officer, transitional loan officer,
33 mortgage broker, mortgage banker, or mortgage servicer;

34 (4) "Authorized user" means an employee, contractor, agent, or
35 other person that participates in a financial institution's business
36 operations and is authorized to access and use a financial institution's



1 information systems and data;

2 (5) "Board of directors" means a formal body that is responsible
3 for corporate governance and compliance with this subchapter;

4 ~~(2)(6)~~ "Branch manager" means the individual who is in charge of
5 the business operations of one (1) or more branch offices of a mortgage
6 broker, mortgage banker, or mortgage servicer;

7 ~~(3)(7)~~ "Branch office" means a location that is separate and
8 distinct from the licensee's principal place of business and includes any
9 location from which business is conducted under the license or in the name of
10 the mortgage broker, mortgage banker, or mortgage servicer:

11 (A) The address of which appears on business cards,
12 stationery, or advertising used by the licensee in connection with business
13 conducted under this subchapter at the branch office;

14 (B) At which the licensee's name, advertising, promotional
15 materials, or signage suggests that mortgage loans are originated, solicited,
16 accepted, negotiated, funded, or serviced or from which mortgage loan
17 commitments or interest rate guarantee agreements are issued; or

18 (C) Which, due to the actions of any employee, associate,
19 loan officer, or transitional loan officer of the licensee, may be construed
20 by the public as a branch office of the licensee where mortgage loans are
21 originated, solicited, accepted, negotiated, funded, or serviced or from
22 which mortgage loan commitments or interest rate guarantee agreements are
23 issued;

24 ~~(4)(8)~~ "Commissioner" means the Securities Commissioner and
25 includes the commissioner's designees;

26 (9) "Consumer" means an individual or that individual's legal
27 representative who obtains or has obtained a financial product or service
28 from a financial institution that is to be used primarily for personal,
29 family, or household purposes;

30 ~~(5)(A)(10)(A)~~ "Control" means the power, directly or indirectly,
31 to direct the management or policies of a company, whether through ownership
32 of securities, by contract, or otherwise.

33 (B) A person is presumed to control a company if the
34 person:

35 (i) Is a director, general partner, or executive
36 officer of the company;

1 (ii) Directly or indirectly has the right to vote
 2 twenty-five percent (25%) or more of a class of a voting security of the
 3 company or has the power to sell or direct the sale of twenty-five percent
 4 (25%) or more of a class of voting securities of the company;

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

7 (iv) In the case of a partnership, has the right to
 8 receive upon dissolution or has contributed ten percent (10%) or more of the
 9 capital of the partnership;

10 ~~(6)~~(11) "Control affiliate" means a partnership, corporation,
 11 trust, limited liability company, or other organization that directly or
 12 indirectly controls or is controlled by the applicant;

13 ~~(7)~~(12) "Control person" means an individual who directly or
 14 indirectly exercises control over the applicant;

15 (13)(A) "Corporate governance" means the structure of and how
 16 the licensee is managed.

17 (B) "Corporate governance" includes the corporate rules,
 18 policies, processes, and practices used to oversee and manage a licensee;

19 (14)(A) "Covered institution servicer" means a nonbank mortgage
 20 servicer that:

21 (i) As reported in the mortgage call report,
 22 services:

23 (a) Portfolios of two thousand (2,000) or more
 24 of one (1) to four (4) unit residential mortgage loans serviced or
 25 subserviced for others, excluding whole loans owned; and

26 (b) Loans being interim serviced before sale
 27 as of the most recent calendar year end; and

28 (ii) Operates in two (2) or more states, districts,
 29 or territories of the United States either currently or as of the prior
 30 calendar year end.

31 (B) "Covered institution servicer" does not include:

32 (i) A person exempt from mortgage servicer licensing
 33 requirements under this subchapter;

34 (ii) A mortgage servicer that has the status of a
 35 tax-exempt organization under 26 U.S.C. § 501(c)(3), as in effect on January
 36 1, 2025; or

1 (iii) A mortgage servicer solely owning or conducting
2 reverse mortgage servicing, or both, or the reverse mortgage portfolio
3 administered by a large mortgage servicer;

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

6 (16) "Customer information" means a record containing nonpublic
7 personal information about a customer of a financial institution, whether in
8 paper, electronic, or other form, that is handled or maintained by or on
9 behalf of a financial institution or the financial institution's affiliates;

10 (17) "Customer relationship" means a continuing relationship
11 between a consumer and a financial institution under which the financial
12 institution provides to the consumer one (1) or more financial products or
13 services that are used primarily for personal, family, or household purposes;

14 ~~(8)~~(18) "Employee" means an individual who is licensed with or
15 employed by a mortgage broker, mortgage banker, or mortgage servicer, whether
16 by employment contract, agency, or other arrangement and regardless of
17 whether the individual is treated as an employee for purposes of compliance
18 with the federal income tax laws;

19 (19) "Encryption" means the transformation of data into a form
20 that results in a low probability of assigning meaning without the use of a
21 protective process or key, consistent with current cryptographic standards
22 and accompanied by appropriate safeguards for cryptographic key material;

23 ~~(9)(A)~~(20)(A) "Exempt person" means a person not required to be
24 licensed as a mortgage broker, mortgage banker, mortgage servicer, loan
25 officer, or transitional loan officer under this subchapter.

26 (B) "Exempt person" includes any of the following:

27 (i) An employee of a licensee whose responsibilities
28 are limited to clerical and administrative tasks for his or her employer and
29 who does not solicit borrowers, accept applications, or negotiate the terms
30 of loans on behalf of the employer;

31 (ii) An agency or corporate instrumentality of the
32 federal government or any state, county, or municipal government granting
33 mortgage loans under specific authority of the laws of any state or of the
34 United States;

35 (iii) A trust company or industrial loan company
36 chartered under the laws of Arkansas;

1 (iv) A small-business investment corporation licensed
 2 under the Small Business Investment Act of 1958, 15 U.S.C. § 661 et seq., as
 3 it existed on ~~January 1, 2011~~ January 1, 2025;

4 (v) A real estate investment trust as defined in 26
 5 U.S.C. § 856, as it existed on ~~January 1, 2011~~ January 1, 2025;

6 (vi) A state or federally chartered bank, an
 7 operating subsidiary of a state-chartered bank regulated by the State Bank
 8 Department, a savings bank, a savings and loan association, or a credit
 9 union, the accounts of which are insured by the Federal Deposit Insurance
 10 Corporation or the National Credit Union Administration;

11 (vii) An agricultural loan organization that is
 12 subject to licensing, supervision, or auditing by the United States Farm
 13 Service Agency, Commodity Credit Corporation, ~~Rural Development Housing and~~
 14 ~~Community Facilities Programs~~ United States Department of Agriculture Rural
 15 Development, United States Farm Credit Administration, or the United States
 16 Department of Agriculture;

17 (viii) A nonprofit corporation that:

18 (a) Qualifies as a nonprofit entity under §
 19 501(c)(3) of the Internal Revenue Code;

20 (b) Is not primarily in the business of
 21 soliciting or brokering mortgage loans; and

22 (c) Makes or services mortgage loans to
 23 promote home ownership or home improvements for the disadvantaged;

24 (ix)(a) A licensed real estate agent or broker who
 25 is performing those activities subject to the regulation of the Arkansas Real
 26 Estate Commission.

27 (b) Notwithstanding ~~subdivision (9)(B)(ix)(a)~~
 28 subdivision (20)(B)(ix)(a) of this section, "exempt person" does not include
 29 a real estate agent or broker who receives compensation of any kind in
 30 connection with the referral, placement, or origination of a mortgage loan;

31 (x) A person who engages in seller-financed
 32 transactions or who as a seller of real property receives mortgages, deeds of
 33 trust, or other security instruments on real estate as security for a
 34 purchase money obligation if:

35 (a) The person does not receive from or hold
 36 on behalf of the borrower any funds for the payment of insurance or taxes on

1 the real property; and

2 (b) The seller does not sell the liens or
 3 mortgages in the secondary market other than to affiliated or subsidiary
 4 persons;

5 (xi) An individual or ~~husband and wife~~ married
 6 couple who provide funds for investment in loans secured by a lien on real
 7 property on his or her or their own account and who do not:

8 (a) Charge a fee or cause a fee to be paid for
 9 any service other than the normal and scheduled rates for escrow, title
 10 insurance, and recording services; and

11 (b) Collect funds to be used for the payment
 12 of any taxes or insurance premiums on the property securing the loans;

13 (xii) An attorney licensed in Arkansas rendering
 14 legal services to his or her client, when the conduct that would subject the
 15 attorney to the jurisdiction of this subchapter is ancillary to the provision
 16 of the legal services offered;

17 (xiii) A person performing any act under order of
 18 any court;

19 (xiv) A person acting as a mortgage broker, mortgage
 20 banker, or mortgage servicer for any person located in Arkansas, if the
 21 mortgage broker, mortgage banker, or mortgage servicer has no office or
 22 employee in Arkansas and the real property that is the subject of the
 23 mortgage is located outside of Arkansas;

24 (xv) An officer or employee of an exempt person
 25 described in ~~subdivisions (9)(B)(ii)-(xiv)~~ subdivisions (20)(B)(ii)-(xiv) of
 26 this section if acting in the scope of employment for the exempt person; and

27 (xvi) A manufactured or modular home retailer and
 28 its employees if:

29 (a) The manufactured or modular home retailer
 30 or its employees perform only administrative or clerical tasks on behalf of a
 31 person required to be licensed under this subchapter; or

32 (b) The manufactured or modular home retailer
 33 and its employees:

34 (1) Do not receive compensation or
 35 financial gain for engaging in loan officer activities that exceeds the
 36 amount of compensation or financial gain that could be received in a

1 comparable cash transaction for a manufactured home;

2 (2) Disclose to the consumer in writing
3 any corporate affiliation with a mortgage banker;

4 (3) Provide referral information for at
5 least one (1) unaffiliated creditor if the manufactured or modular home
6 retailer has a corporate affiliation with a mortgage banker and the mortgage
7 banker offers a recommendation; and

8 (4)(A) Do not directly negotiate loan
9 terms with the consumer or lender.

10 (B) As used in ~~subdivision~~
11 ~~(9)(B)(xvi)(b)(4)(A)~~ subdivision (20)(B)(xvi)(b)(4)(A) of this section, "loan
12 terms" includes rates, fees, and other costs;

13 (21) "External audit" means a formal report prepared by an
14 independent certified public accountant expressing an opinion on whether
15 financial statements are:

16 (A) Presented fairly, in all material aspects, according
17 to the applicable financial reporting framework; and

18 (B) Inclusive of an evaluation of the adequacy of a
19 company's internal control structure;

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

22 (23)(A) "Financial product or service" means a product or
23 service that a financial holding company could offer by engaging in a
24 financial activity under section 4(k) of the Bank Holding Company Act of
25 1956, 12 U.S.C. § 1843(k), as it existed on January 1, 2025.

26 (B) "Financial product or service" includes a financial
27 institution's evaluation or brokerage of information that a financial
28 institution collects in connection with a request or an application from a
29 consumer for a financial product or service;

30 (24) "Information security program" means the administrative,
31 technical, or physical safeguards a financial institution uses to access,
32 collect, distribute, process, protect, store, use, transmit, dispose of, or
33 otherwise handle customer information;

34 (25) "Information system" means a discrete set of electronic
35 information resources organized for the collection, processing, maintenance,
36 use, sharing, dissemination, or disposition of electronic information,

1 including any specialized system, such as industrial controls system or a
 2 process controls system, a telephone switching and private branch exchange
 3 system, and an environmental control system, that contain customer
 4 information or that is connected to a system that contains customer
 5 information;

6 (26) "Interim serviced before sale" means the activity of
 7 collecting a limited number of contractual mortgage payments immediately
 8 after origination on loans held for sale but before the loans have been sold
 9 into the secondary market;

10 (27) "Internal audit" means the internal activity of performing
 11 independent, objective assurance, and consulting to evaluate and improve the
 12 effectiveness of company operations, risk management, internal controls, and
 13 governance processes;

14 (28)(A) "Key individual" means an individual who is ultimately
 15 responsible for establishing or directing policies and procedures of a
 16 licensee.

17 (B) "Key individual" includes without limitation:

- 18 (i) An executive officer;
- 19 (ii) A manager;
- 20 (iii) A director;
- 21 (iv) A trustee; or
- 22 (v) A control person;

23 ~~(10)~~(29) "Licensee" means a loan officer, transitional loan
 24 officer, mortgage broker, mortgage banker, or mortgage servicer that is
 25 licensed under this subchapter;

26 ~~(11)(A)~~(30)(A) "Loan officer" means an individual other than an
 27 exempt person described in ~~subdivision (9)~~ subdivision (20) of this section
 28 who in exchange for compensation as an employee of or who otherwise receives
 29 compensation or remuneration from a mortgage broker or a mortgage banker:

- 30 (i) Solicits or offers to solicit an application for
 31 a mortgage loan;
- 32 (ii) Accepts or offers to accept an application for
 33 a mortgage loan;
- 34 (iii) Negotiates or offers to negotiate the terms or
 35 conditions of a mortgage loan;
- 36 (iv) Issues or offers to issue a mortgage loan

1 commitment or interest rate guarantee agreement; or

2 (v) Provides or offers to provide modification of a
3 mortgage loan.

4 (B) "Loan officer" does not include:

5 (i) An individual who performs clerical or
6 administrative tasks in the processing of a mortgage loan at the direction of
7 and subject to the supervision and instruction of a licensed loan officer;

8 (ii) An underwriter if the individual performs no
9 activities under ~~subdivision (11)(A)~~ subdivision (30)(A) of this section; or

10 (iii) An individual who is solely involved in
11 extensions of credit relating to timeshare plans, as that term is defined in
12 11 U.S.C. § 101(53D), as it existed on ~~January 1, 2011~~ January 1, 2025;

13 ~~(12)(31)~~ "Make a mortgage loan" means to close a mortgage loan,
14 to advance funds, to offer to advance funds, or to make a commitment to
15 advance funds to a borrower under a mortgage loan;

16 ~~(13)(A)(32)(A)~~ "Managing principal" means a person who meets the
17 requirements of § 23-39-508 and who agrees to be primarily responsible for
18 the operations of a licensed mortgage broker, mortgage banker, or mortgage
19 servicer.

20 (B) "Managing principal" includes a qualifying individual;

21 ~~(14)(33)~~ "Mortgage banker" means a person who engages in the
22 business of making mortgage loans for compensation or other gain;

23 ~~(15)(34)~~ "Mortgage broker" means a person who for compensation
24 or other gain or in the expectation of compensation or other gain and,
25 regardless of whether the acts are done directly or indirectly, through
26 contact by telephone, by electronic means, by mail, or in person with the
27 borrowers or potential borrowers:

28 (A) Accepts or offers to accept an application for a
29 mortgage loan;

30 (B) Solicits or offers to solicit an application for a
31 mortgage loan;

32 (C) Negotiates or offers to negotiate the terms or
33 conditions of a mortgage loan; or

34 (D) Issues or offers to issue mortgage loan commitments or
35 interest rate guarantee agreements to borrowers;

36 (35) "Mortgage call report" means a quarterly or annual report

1 of residential real estate loan origination, servicing, and financial
 2 information completed by a company licensed through the Nationwide Multistate
 3 Licensing System and Registry;

4 ~~(16)~~(36)(A) "Mortgage loan" means a loan primarily for personal,
 5 family, or household use that is secured by a mortgage, deed of trust,
 6 reverse mortgage, or other equivalent consensual security interest
 7 encumbering:

8 ~~(A)~~(i) A dwelling as defined in section 1602(w) of
 9 the Truth in Lending Act, 15 U.S.C. § 1601 et seq., as it existed on ~~January~~
 10 ~~1, 2011~~ January 1, 2025; or

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

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

14 ~~(17)~~(A)(37)(A) "Mortgage servicer" means:

15 (i) An entity performing the routine administration
 16 of a residential mortgage loan on behalf of an owner of the related mortgage
 17 under the terms of a servicing contract; or

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

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

22 ~~(ii)~~(b) The taxes or insurance associated with
 23 a mortgage loan.

24 (B) In the case of a home equity conversion mortgage or a
 25 reverse mortgage, "mortgage servicer" includes a person that makes a payment
 26 to the borrower;

27 (38) "Mortgage servicing rights" means the contractual right to
 28 service residential mortgage loans on behalf of the owner of the associated
 29 mortgage in exchange for specified compensation according to a servicing
 30 contract;

31 (39) "Multifactor authentication" means authentication through
 32 verification of at least two (2) of the following types of authentication
 33 factors:

34 (A) Knowledge factors, including without limitation a
 35 password;

36 (B) Possession factors, including without limitation a

1 token; or

2 (C) Inherence factors, including without limitation
 3 biometric characteristics;

4 (40)(A) "Nonpublic personal information" means:

5 (i) Personally identifiable financial information;

6 and

7 (ii) A list, description, or other grouping of
 8 consumers, and publicly available information pertaining to a consumer, that
 9 is derived using personally identifiable financial information that is not
 10 publicly available.

11 (B) "Nonpublic personal information" includes without
 12 limitation a list of individuals' names and street addresses that is derived
 13 in whole or in part using personally identifiable financial information that
 14 is not publicly available.

15 (C) "Nonpublic personal information" does not include:

16 (i) Publicly available information except as
 17 included on a list described in subdivision (40)(A)(ii) of this section;

18 (ii) A list, description, or other grouping of
 19 consumers, and publicly available information pertaining to the list,
 20 description, or other grouping of consumers, that is derived without using
 21 personally identifiable financial information that is not publicly available;
 22 or

23 (iii) A list of individuals' names and addresses
 24 that contains only publicly available information and is not:

25 (a) Derived, in whole or in part, using
 26 personally identifiable financial information that is not publicly available;
 27 and

28 (b) Disclosed in a manner that indicates that
 29 any of the individuals on the list is a consumer of a financial institution;

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

33 (B) For purposes of subdivision (41)(A) of this section:

34 (i) Customer information is considered unencrypted
 35 if the encryption key was accessed by an unauthorized person; and

36 (ii) Unauthorized acquisition is presumed to include

1 unauthorized access to unencrypted customer information unless a financial
2 institution has reliable evidence showing that there has not been, or could
3 not reasonably have been, unauthorized acquisition of the customer
4 information;

5 (42) "Operating liquidity" means the funds necessary to perform
6 normal business operations, including payment of rent, salaries, interest
7 expense, and other typical expenses associated with operating an entity;

8 ~~(18)~~(43) "Operating subsidiary" means a separate corporation,
9 limited liability company, or similar entity in which a national or state
10 bank, savings and loan association, or credit union, the accounts of which
11 are insured by the Federal Deposit Insurance Corporation or the National
12 Credit Union Administration, maintains more than fifty percent (50%) voting
13 rights, a controlling interest, or otherwise controls the subsidiary and no
14 other party controls more than fifty percent (50%) of the voting rights or a
15 controlling interest in the subsidiary;

16 (44) "Penetration testing" means a test methodology in which
17 assessors attempt to circumvent or defeat the security features of an
18 information system by attempting penetration of databases or controls from
19 outside or inside a financial institution's information system;

20 ~~(19)~~(45) "Person" means an individual, partnership, limited
21 liability company, limited partnership, corporation, association, or other
22 group engaged in joint business activities, however organized;

23 (46)(A) "Personally identifiable financial information" means
24 information:

25 (i) A consumer provides to a financial institution
26 to obtain a financial product or service from a financial institution;

27 (ii) About a consumer resulting from a transaction
28 involving a financial product or service between a financial institution and
29 a consumer; or

30 (iii) A financial institution otherwise obtains
31 about a consumer in connection with providing a financial product or service
32 to that consumer.

33 (B) "Personally identifiable financial information"
34 includes:

35 (i) Information a consumer provides to a financial
36 institution on an application to obtain a loan, credit card, or other

1 financial product or service;

2 (ii) Account balance information, payment history,
3 overdraft history, and credit or debit card purchase information;

4 (iii) The fact that an individual is or has been a
5 financial institution's customer or has obtained a financial product or
6 service from a financial institution;

7 (iv) Information about a financial institution's
8 consumer if the information is disclosed in a manner that indicates that the
9 individual is or has been the financial institution's consumer;

10 (v) Information that a consumer provides to a
11 financial institution or that a financial institution or a financial
12 institution's agent otherwise obtains in connection with collecting on or
13 servicing a credit account;

14 (vi) Information a financial institution collects
15 through an internet cookie or an information collecting device from a
16 computer server; and

17 (vii) Information from a consumer report.

18 (C) "Personally identifiable financial information" does
19 not include:

20 (i) A list of names and addresses of customers of an
21 entity that is not a financial institution; and

22 (ii) Information that does not identify a consumer,
23 including aggregate information or blind data that does not contain personal
24 identifiers such as account numbers, names, or addresses;

25 ~~(20)(47)~~ "Principal place of business" means a stationary
26 construction consisting of at least one (1) enclosed room or building in
27 which negotiations of mortgage loan transactions of others may be conducted
28 in private or in which the primary business functions of the licensee are
29 conducted;

30 (48)(A) "Publicly available information" means information that
31 a financial institution has a reasonable basis to believe is lawfully made
32 available to the public from:

33 (i) Federal, state, or local government records;

34 (ii) Widely distributed media; or

35 (iii) Disclosures to the public that are required to
36 be made by federal, state, or local law.

1 (B) "Publicly available information" includes without
 2 limitation:

3 (i) Information in government records, including
 4 information in government real estate records and security interest filings;
 5 and

6 (ii)(a) Information from widely distributed media,
 7 including information from a telephone book, television or radio program,
 8 newspaper, or website that is available to the public on an unrestricted
 9 basis.

10 (b) A website is not restricted under
 11 subdivision (48)(B)(ii)(a) of this section merely because an internet service
 12 provider or a site operator requires a fee or a password, so long as access
 13 is available to the public.

14 (C) For purposes of this subdivision (48), a financial
 15 institution has a reasonable basis to believe that:

16 (i) Information is lawfully made available to the
 17 public if the financial institution has taken steps to determine:

18 (a) That the information is of the type that
 19 is available to the public; and

20 (b) Whether an individual can direct that the
 21 information not be made available to the public and, if so, that the
 22 financial institution's consumer has not directed that the information not be
 23 made available to the public;

24 (ii) Mortgage information is lawfully made available
 25 to the public if the financial institution determines that the information is
 26 of the type included on the public record in the jurisdiction where the
 27 mortgage would be recorded; and

28 (iii) An individual's telephone number is lawfully
 29 made available to the public if the financial institution has located the
 30 telephone number in a telephone directory or the consumer has informed the
 31 financial institution that the telephone number is not unlisted;

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

35 (50) "Residential mortgage loans serviced" means a specific
 36 portfolio or portfolios of residential mortgage loans for which a licensee is

1 contractually responsible to the owner or owners of the mortgage loans for
2 the defined servicing activities;

3 ~~(21)~~(51) "Reverse mortgage" means a nonrecourse loan that pays a
4 homeowner loan proceeds drawn from accumulated home equity;

5 (52) "Risk management assessment" means the functional
6 evaluations performed under the risk management program and reports provided
7 to a board of directors under a relevant governance protocol;

8 (53) "Risk management program" means the policies and procedures
9 designed to identify, measure, monitor, and mitigate risk sufficient for the
10 level of sophistication of a covered institution servicer;

11 (54) "Security event" means an event resulting in unauthorized
12 access to, or disruption or misuse of:

13 (A) An information system or information stored on the
14 information system; or

15 (B) Customer information held in physical form;

16 (55) "Service provider" means a person or entity that receives,
17 maintains, processes, or otherwise is permitted access to customer
18 information through its provision of services directly to a financial
19 institution that is subject to this subchapter;

20 (56) "Servicing liquidity" means the financial resources
21 necessary to manage liquidity risk arising from servicing functions required
22 in acquiring and financing mortgage servicing rights, hedging costs, and
23 margin calls associated with the mortgage servicing rights asset and
24 financing facilities and advances or costs of advance financing for
25 principal, interest, taxes, insurance, and any other servicing related
26 advances;

27 ~~(22)~~(57) "Sponsor" means a mortgage broker or mortgage banker
28 licensed under this subchapter that has assumed the responsibility for and
29 agrees to supervise the actions of a loan officer or transitional loan
30 officer;

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

32 (A) The receivables due from related entities;

33 (B) Goodwill and other intangibles; and

34 (C) Pledged assets;

35 ~~(23)~~(59) "Transitional loan officer" means an individual who, in
36 exchange for compensation as an employee of, or who otherwise receives

1 compensation or remuneration from, a mortgage broker or a mortgage banker, is
 2 authorized to act as a loan officer subject to a transitional loan officer
 3 license;

4 ~~(24)~~(60) "Transitional loan officer license" means a license
 5 that:

6 (A) Is issued to an individual who is employed and
 7 sponsored by a mortgage banker or mortgage broker licensed under this
 8 subchapter;

9 (B) Is limited to a term of no more than one hundred
 10 twenty (120) days; and

11 (C) Is not subject to reapplication, renewal, or extension
 12 by the commissioner; ~~and~~

13 ~~(25)~~(61) "Unique identifier" means a number or other identifier
 14 assigned by protocols established by the automated licensing system approved
 15 by the commissioner; and

16 (62) "Whole loans" mean those loans in which a mortgage and the
 17 underlying credit risk is owned and held on the balance sheet of an entity
 18 with all ownership rights.

19
 20 SECTION 2. Arkansas Code § 23-39-504 is amended to read as follows:

21 23-39-504. ~~Rulemaking authority~~ Authority.

22 (a) The Securities Commissioner may adopt any rules that he or she
 23 deems necessary to:

24 (1) Carry out the provisions of this subchapter;
 25 (2) Provide for the protection of the borrowing public; ~~and~~
 26 (3) Provide any requirements necessary for the State of Arkansas
 27 to participate in a multistate automated licensing system; and

28 (4) Instruct mortgage brokers, mortgage bankers, mortgage
 29 servicers, loan officers, and transitional loan officers in interpreting this
 30 subchapter.

31 (b) The commissioner may:

32 (1) If risk is determined by a formal review of a specific
 33 covered institution servicer to be extremely high, order or direct the
 34 covered institution servicer to satisfy additional conditions necessary to
 35 ensure that the covered institution servicer will continue to operate in a
 36 safe and sound manner and be able to continue to service loans in compliance

1 with state law or rule and federal law or regulations;

2 (2) If risk is determined by a formal review of a specific
 3 covered institution servicer to be extremely low, provide notice that all or
 4 part of this subchapter is not applicable to the covered institution
 5 servicer; and

6 (3) If economic, environmental, or societal events are
 7 determined to be of severity to warrant a temporary suspension of all or
 8 certain sections of this subchapter, provide public notice of the temporary
 9 suspension.

10
 11 SECTION 3. Arkansas Code § 23-39-505(f), concerning the surety bond
 12 under the Fair Mortgage Lending Act, is amended to read as follows:

13 (f)(1) Each mortgage broker, mortgage banker, and mortgage servicer
 14 shall post a surety bond in an amount:

- 15 (A) Based upon loan activity during the previous year;
- 16 (B) Not less than one hundred thousand dollars (\$100,000);

17 and

- 18 (C) As prescribed by rule or order of the commissioner.

19 (2) The surety bond shall:

- 20 (A) ~~be~~ Be in a form satisfactory to the commissioner; and
- 21 (B) Run to the State of Arkansas for benefit of a claimant
 22 against the licensee to secure the faithful performance of the obligations of
 23 the licensee under this subchapter.

24 (3)(A) A party having a claim against a licensee may bring suit
 25 directly on the surety bond of the licensee under this subsection or the
 26 commissioner may bring suit on behalf of a claimant in one (1) action or in
 27 successive actions.

28 (B) A consumer claim shall be given priority in recovering
 29 from the surety bond.

30 (C) Every bond shall provide for suit on the bond by any
 31 person who has a cause of action under this subchapter.

32 (4) The aggregate liability of the surety shall not exceed the
 33 principal sum of the bond.

34 (5) A surety bond shall cover claims for at least five (5) years
 35 after the licensee ceases to provide mortgage services in this state or
 36 longer if required by the commissioner.

1 (6)(A) A surety bond shall remain in effect until cancellation.

2 (B) The cancellation of a surety bond shall occur only
 3 after sixty (60) days' written notice to the commissioner.

4 (C) The cancellation of a surety bond shall not affect
 5 liability incurred or accrued during the sixty-day period under subdivision
 6 (f)(6)(B) of this section.

7 (7)(A) If an action is commenced on a licensee's surety bond,
 8 the commissioner may require the filing of a new surety bond.

9 (B) If a new surety bond is required under subdivision
 10 (f)(7)(A) of this section, the licensee shall file a replacement surety bond
 11 in the required amount specified under subdivision (f)(1)(B) of this section
 12 within thirty (30) days.

13 (C) Immediately upon recovery of an action on the surety
 14 bond, the licensee shall file a new surety bond.

15
 16 SECTION 4. Arkansas Code § 23-39-505(g), concerning audited financial
 17 statements under the Fair Mortgage Lending Act, is amended to read as
 18 follows:

19 (g)(1) An applicant filing for licensure as a mortgage banker or
 20 mortgage servicer shall file with the commissioner as part of his or her
 21 application audited financial statements that reflect that the applicant has
 22 a net worth of at least twenty-five thousand dollars (\$25,000) and are:

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

24 ~~(2) Prepared according to:~~

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

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

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

32 (4) For purposes of complying with subdivision (g)(1) of this
 33 section, the financial statement shall be:

34 (A) Determined according to:

35 (i) Generally accepted accounting principles as
 36 promulgated by the Financial Accounting Standards Board; or

1 (ii) The international financial reporting standards
2 promulgated by the International Financial Reporting Standards Foundation and
3 the International Accounting Standards Board; and

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

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

8
9 SECTION 5. Arkansas Code § 23-39-505, concerning qualifications for a
10 license under the Fair Mortgage Lending Act, is amended to add additional
11 subsections to read as follows:

12 (p)(1) An applicant filing for licensure as a mortgage servicer but
13 that does not operate as a covered institution servicer shall file with the
14 commissioner as part of his or her application audited financial statements
15 that reflect that the applicant has a net worth of at least one hundred
16 thousand dollars (\$100,000).

17 (2) For the purposes of complying with subdivision (p)(1) of
18 this section, the financial statement shall be:

19 (A) Determined according to:

20 (i) Generally accepted accounting principles as
21 promulgated by the Financial Accounting Standards Board; or

22 (ii) The international financial reporting standards
23 promulgated by the International Financial Reporting Standards Foundation and
24 the International Accounting Standards Board;

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

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

29 (3)(A) An applicant applying to service Arkansas residential
30 mortgage loans may apply to the commissioner to waive or adjust one (1) or
31 more of the net worth requirements under subdivision (p)(1) or subdivision
32 (p)(2) of this section.

33 (B)(i) In reviewing a request to waive or adjust one (1)
34 or more of the net worth requirements under subdivision (p)(1) or subdivision
35 (p)(2) of this section, the commissioner may consider the number and types of
36 loans being serviced and whether the licensee has a positive net worth and

1 adequate operating reserves.

2 (ii) As used in this subdivision (p)(3)(B),
 3 “operating reserves” means the funds set aside in anticipation of future
 4 payments or obligations and are included in servicing liquidity.

5 (q)(1) An applicant filing for licensure as a mortgage servicer that
 6 operates as a covered institution servicer shall file with the commissioner
 7 as part of his or her application proof that the applicant is in compliance
 8 with:

9 (A) The Federal Housing Finance Agency’s Eligibility
 10 Requirements for Enterprise Single-Family Seller/Servicers for minimum
 11 capital ratio; and

12 (B) The net worth and servicing liquidity requirements,
 13 whether or not the mortgage servicer is approved for government-sponsored
 14 enterprise servicing.

15 (2) For the purposes of complying with subdivision (q)(1) of
 16 this section, the financial data shall be:

17 (A) Determined according to:

18 (i) Generally accepted accounting principles as
 19 promulgated by the Financial Accounting Standards Board; or

20 (ii) The international financial reporting standards
 21 promulgated by the International Financial Reporting Standards Foundation and
 22 the International Accounting Standards Board;

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

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

27
 28 SECTION 6. Arkansas Code § 23-39-506(f), concerning audited financial
 29 statements under the Fair Mortgage Lending Act, is amended to read as
 30 follows:

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

34 (2) The audited financial statements submitted to the
 35 commissioner under subdivision (f)(1) of this section shall:

36 (A) Reflect that the mortgage banker ~~or mortgage servicer~~

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

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

3 (3)(A) Failure to timely submit audited financial statements to
4 the commissioner shall result in a late fee of two hundred fifty dollars
5 (\$250).

6 (B) All or part of the late fee may be waived by the
7 commissioner for good cause.

8
9 SECTION 7. Arkansas Code § 23-39-506, concerning license renewal under
10 the Fair Mortgage Lending Act, is amended to add additional subsections to
11 read as follows:

12 (g)(1) A mortgage servicer subject to § 23-39-505(p) or § 23-39-505(q)
13 shall submit audited financial statements to the commissioner within ninety
14 (90) days after the end of the mortgage servicer's fiscal year.

15 (2) The audited financial statements submitted to the
16 commissioner under subdivision (g)(1) of this section shall reflect that the
17 mortgage servicer has a net worth that remains in compliance with § 23-39-
18 505(p) or § 23-39-505(q), as applicable.

19 (3)(A) A licensee servicing Arkansas residential mortgage loans,
20 other than a covered institution servicer, may apply to the commissioner to
21 wave or adjust one (1) or more of the net worth requirements.

22 (B) In considering a request to waive or adjust one (1) or
23 more of the net worth requirements, the commissioner shall consider the
24 number and types of loans being serviced and whether the licensee has a
25 positive net worth and adequate operating reserves.

26 (C) For purposes of this section, "operating reserves"
27 means the funds set aside in anticipation of future payments or obligations
28 and are included in liquidity.

29 (4)(A) Failure to timely submit audited financial statements to
30 the commissioner shall result in a late fee of two hundred fifty dollars
31 (\$250).

32 (B) All or part of the late fee may be waived by the
33 commissioner for good cause.

34 (h) A covered institution servicer shall remain in compliance with the
35 requirements of § 23-39-505(q) and § 23-39-519.

36

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

3 23-39-519. Prudential standards for covered institution servicers –
4 Financial condition.

5 (a) A covered institution servicer shall meet or exceed the minimum
6 financial requirements of the Federal Housing Finance Agency’s Eligibility
7 Requirements for Enterprise Single-Family Seller/Servicers in order to
8 maintain the capital and servicing liquidity as required by this section and
9 § 23-39-505(q).

10 (b) All financial data shall be determined according to generally
11 accepted accounting principles or the international financial reporting
12 standards promulgated by the International Financial Reporting Standards
13 Foundation and the International Accounting Standards Board.

14 (c) A covered institution servicer that meets the Federal Housing
15 Finance Agency’s Eligibility Requirements for Enterprise Single-Family
16 Seller/Servicers for capital, net worth ratio, and servicing liquidity,
17 whether or not the servicer is approved for government-sponsored enterprises
18 servicing, or Federal National Mortgage Association servicing, or Federal
19 Home Loan Mortgage Corporation servicing, satisfies the requirements of
20 subsection (a) and subsection (b) of this section.

21 (d)(1) A covered institution servicer shall maintain written policies
22 and procedures implementing the capital and servicing liquidity requirements.

23 (2) The policies and procedures under subdivision (d)(1) of this
24 section shall include a sustainable written methodology for satisfying the
25 requirements of subsection (a) of this section and be available to the
26 Securities Commissioner upon request.

27 (e)(1) A covered institution servicer under this subchapter shall:

28 (A) Maintain sufficient allowable assets for liquidity in
29 addition to the amounts required for servicing liquidity to cover normal
30 business operations; and

31 (B) Have in place sound cash management and business
32 operating plans that match the size and sophistication of the covered
33 institution servicer to ensure normal business operations.

34 (2)(A) The management or key individual of a covered institution
35 servicer shall develop, establish, and implement plans, policies, and
36 procedures for maintaining operating liquidity sufficient for the ongoing

1 needs of the covered institution servicer.

2 (B) The plans, policies, and procedures under subdivision
3 (e)(2)(A) of this section shall:

4 (i) Contain sustainable, written methodologies for
5 maintaining sufficient operating liquidity; and

6 (ii) Be available to the commissioner upon request.

7
8 23-39-520. Corporate governance for covered institution servicers.

9 (a) A covered institution servicer shall establish and maintain a
10 board of directors who are responsible for the oversight of the covered
11 institution servicer.

12 (b) For a covered institution servicer that is not approved to service
13 loans by a government-sponsored enterprise, the Federal National Mortgage
14 Association and the Federal Home Loan Mortgage Corporation, or the Government
15 National Mortgage Association, or when these federal agencies have granted
16 approval for a board alternative, a covered institution servicer may
17 establish a similar body constituted to exercise oversight and fulfill the
18 board of directors' responsibilities under subsection (c) of this section.

19 (c) The board of directors shall be responsible for:

20 (1) Establishing a written corporate governance framework,
21 including appropriate internal controls designed to monitor corporate
22 governance and assess compliance with the corporate governance framework,
23 available to the Securities Commissioner upon request;

24 (2) Monitoring and ensuring the covered institution servicer's
25 compliance with the corporate governance framework and this subchapter; and

26 (3) Accurate and timely regulatory reporting, including without
27 limitation the requirements for filing the mortgage call report.

28 (d)(1) The board of directors shall establish internal audit
29 requirements that are appropriate for the size, complexity, and risk profile
30 of the covered institution servicer, with appropriate independence to provide
31 a reliable evaluation of the covered institution servicer's internal control
32 structure, risk management, and governance.

33 (2) Internal audit requirements established by the board of
34 directors and the results of internal audits shall be made available to the
35 commissioner upon request.

36 (e)(1) A covered institution servicer shall receive an external audit,

1 including audited financial statements and audit reports, conducted by an
2 independent certified public accountant annually.

3 (2) The external audit required under subdivision (e)(1) of this
4 section shall:

5 (A) Be available to the commissioner upon request; and

6 (B) Include at a minimum:

7 (i) Annual financial statements including a balance
8 sheet, statement of operations income statement and cash flows, notes, and
9 supplemental schedules, prepared according to generally accepted accounting
10 principles;

11 (ii) An assessment of the internal control
12 structure;

13 (iii) A computation of tangible net worth;

14 (iv) Validation of mortgage servicing rights
15 valuation and reserve methodology, if applicable;

16 (v) Verification of adequate fidelity and errors and
17 omissions insurance; and

18 (vi) Testing of controls related to risk management
19 activities, including compliance and stress testing, if applicable.

20 (f)(1) A covered institution servicer shall establish a risk
21 management program under the oversight of the board of directors that is
22 available to the commissioner upon request that identifies, measures,
23 monitors, and controls risk sufficient for the level of sophistication of the
24 covered institution servicer.

25 (2) The risk management program required under subdivision
26 (f)(1) of this section shall:

27 (A) Have appropriate processes and models in place to
28 measure, monitor, and mitigate financial risks and changes to the risk
29 profile of the covered institution servicer and assets being serviced; and

30 (B) Be scaled to the complexity of the covered institution
31 servicer, but be sufficiently robust to manage risks in several areas,
32 including without limitation:

33 (i) Credit risk, including the potential that a
34 borrower or counterparty will fail to perform on an obligation;

35 (ii) Servicing liquidity risk, including the
36 potential that the covered institution servicer will be unable to meet the

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

4 (iii) Operational risk, including the risk resulting
5 from inadequate or failed internal processes, people, and systems or from
6 external events;

7 (iv) Market risk, including the risk to the covered
8 institution servicer's condition resulting from adverse movements in market
9 rates or prices;

10 (v) Compliance risk, including the risk of
11 regulatory sanctions, fines, penalties, or losses resulting from failure to
12 comply with laws, rules, regulations, or other supervisory requirements
13 applicable to a covered institution servicer;

14 (vi) Legal risk, including the potential that
15 actions against the covered institution servicer that result in unenforceable
16 contracts, lawsuits, legal sanctions, or adverse judgments can disrupt or
17 otherwise negatively affect the operations or condition of the covered
18 institution servicer; and

19 (vii) Reputation risk, including the risk to
20 earnings and capital arising from negative publicity regarding the covered
21 institution servicer's business practices.

22 (g)(1) A covered institution servicer shall conduct a risk management
23 assessment on an annual basis concluding with a formal report to the board of
24 directors and be available to the commissioner upon request.

25 (2) Evidence of risk management activities throughout the year
26 shall be maintained and made part of the report, including findings of issues
27 and the response to address the findings made in the report.

28
29 23-39-521. Standards for safeguarding customer information.

30 (a) A financial institution shall develop, implement, and maintain a
31 comprehensive information security program.

32 (b) The information security program under subsection (a) of this
33 section shall:

34 (1) Be written in one (1) or more readily accessible parts; and

35 (2) Contain administrative, technical, and physical safeguards
36 that are appropriate to the financial institution's size and complexity, the

1 nature and scope of the financial institution's activities, and the
2 sensitivity of any customer information at issue.

3 (c) The information security program shall include the information
4 required under § 23-39-522.

5
6 23-39-522. Information security program required elements.

7 (a) In order for a financial institution to develop, implement, and
8 maintain an information security program, the financial institution shall
9 comply with this section.

10 (b)(1) A financial institution shall designate a qualified individual
11 responsible for overseeing and implementing the financial institution's
12 information security program and enforcing an information security program.

13 (2)(A) The qualified individual may be employed by the financial
14 institution, an affiliate, or a service provider.

15 (B) If a financial institution designates an individual
16 employed by an affiliate or a service provider, the financial institution
17 shall:

18 (i) Retain responsibility for compliance with this
19 section;

20 (ii) Designate a senior member of the financial
21 institution's personnel to be responsible for direction and oversight of the
22 qualified individual; and

23 (iii) Require the service provider or affiliate to
24 maintain an information security program that protects the financial
25 institution in accordance with the requirements of this section.

26 (c)(1) A financial institution shall base the financial institution's
27 information security program on a risk assessment that:

28 (A) Identifies reasonably foreseeable internal and
29 external risks to the security, confidentiality, and integrity of customer
30 information that could result in the unauthorized disclosure, misuse,
31 alteration, destruction, or other compromise of the information; and

32 (B) Assesses the sufficiency of any safeguards in place to
33 control these risks.

34 (2) The risk assessment shall be written and include:

35 (A) Criteria for the evaluation and categorization of
36 identified security risks or threats the financial institution faces;

1 (B) Criteria for the assessment of the confidentiality,
2 integrity, and availability of the financial institution's information
3 systems and customer information, including the adequacy of the existing
4 controls in the context of the identified risks or threats the financial
5 institution faces; and

6 (C) Requirements describing how identified risks will be
7 mitigated or accepted based on the risk assessment and how the information
8 security program will address the risks.

9 (3) A financial institution shall periodically perform
10 additional risk assessments that:

11 (A) Reexamine the reasonably foreseeable internal and
12 external risks to the security, confidentiality, and integrity of customer
13 information that could result in the unauthorized disclosure, misuse,
14 alteration, destruction, or other compromise of the customer information; and

15 (B) Reassess the sufficiency of any safeguards in place to
16 control these risks.

17 (d) A financial institution shall design and implement safeguards to
18 control the risks the financial institution identifies through the risk
19 assessment as required under subsection (c) of this section, including
20 without limitation:

21 (1) Implementing and periodically reviewing access controls,
22 including technical and, as appropriate, physical controls, to:

23 (A) Authenticate and permit access only to authorized
24 users to protect against the unauthorized acquisition of customer
25 information; and

26 (B) Limit authorized users' access only to customer
27 information that the authorized user needs to perform the authorized user's
28 duties and functions, or in the case of customers, to access the customer's
29 own customer information;

30 (2) Identifying and managing the data, personnel, devices,
31 systems, and facilities that enable the financial institution to achieve
32 business purposes according to the financial institution's relative
33 importance to business objectives and the financial institution's risk
34 strategy;

35 (3)(A) Protecting by encryption all customer information held or
36 transmitted by the financial institution both in transit over external

1 networks and at rest.

2 (B) To the extent the financial institution determines
3 that encryption of customer information, either in transit over external
4 networks or at rest, is infeasible, the financial institution may instead
5 secure the customer information using effective alternative compensating
6 controls reviewed and approved by the financial institution's qualified
7 individual;

8 (4) Adopting secure development practices for in-house developed
9 applications utilized by the financial institution for transmitting,
10 accessing, or storing customer information and procedures for evaluating,
11 assessing, or testing the security of externally developed applications the
12 financial institution utilizes to transmit, access, or store customer
13 information;

14 (5) Implementing multifactor authentication for an individual
15 accessing an information system, unless the financial institution's qualified
16 individual has approved in writing the use of reasonably equivalent or more
17 secure access controls;

18 (6) Developing, implementing, and maintaining procedures for the
19 secure disposal of customer information in any format no later than two (2)
20 years after the last date the customer information is used in connection with
21 the provision of a financial product or service to the customer, unless the
22 customer information is:

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

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

27 (C) Where targeted disposal is not reasonably feasible due
28 to the manner in which the information is maintained;

29 (7) Periodically reviewing the financial institution's data
30 retention policy to minimize the unnecessary retention of data;

31 (8) Adopting procedures for change management; and

32 (9) Implementing policies, procedures, and controls designed to
33 monitor and log the activity of authorized users and detect unauthorized
34 access or use of, or tampering with, customer information by these users.

35 (e)(1) A financial institution shall regularly test or otherwise
36 monitor the effectiveness of the safeguards' key controls, systems, and

1 procedures of the safeguards' required under this section, including those to
2 detect actual and attempted attacks on, or intrusions into, information
3 systems.

4 (2)(A) For information systems, monitoring and testing shall
5 include continuous monitoring or periodic penetration testing and
6 vulnerability assessments.

7 (B) Absent effective continuous monitoring or other
8 systems to detect, on an ongoing basis, changes in information systems that
9 may create vulnerabilities, the financial institution shall conduct:

10 (i) Annual penetration testing of a financial
11 institution's information systems determined each given year based on
12 relevant identified risks according to the risk assessment; and

13 (ii) Vulnerability assessments, including a systemic
14 scan or review of an information system reasonably designed to identify
15 publicly known security vulnerabilities in the financial institution's
16 information systems based on the risk assessment, at least every six (6)
17 months, and whenever there are:

18 (a) Material changes to the financial
19 institution's operations or business arrangements; and

20 (b) Circumstances the financial institution
21 knows or has reason to know may have a material impact on the financial
22 institution's information security program.

23 (f) A financial institution shall implement policies and procedures to
24 ensure that personnel are able to enact the financial institution's
25 information security program by:

26 (1) Providing the financial institution's personnel with
27 security awareness training that is updated as necessary to reflect risks
28 identified by the risk assessment;

29 (2) Utilizing qualified information security personnel employed
30 by the financial institution or an affiliate or a service provider sufficient
31 to manage the financial institution's information security risks and to
32 perform or oversee the information security program;

33 (3) Providing information security personnel with security
34 updates and training sufficient to address relevant security risks; and

35 (4) Verifying that key information security personnel take steps
36 to maintain current knowledge of changing information security threats and

1 countermeasures.

2 (g) A financial institution shall oversee service providers by:

3 (1) Taking reasonable steps to select and retain service
4 providers that are capable of maintaining appropriate safeguards for the
5 customer information at issue;

6 (2) Requiring the financial institution's service providers by
7 contract to implement and maintain the safeguards referenced under
8 subdivision (g)(1) of this section; and

9 (3) Periodically assessing the financial institution's service
10 providers based on the risk they present and the continued adequacy of their
11 safeguards.

12 (h) A financial institution shall evaluate and adjust the financial
13 institution's information security program to reflect:

14 (1) The results of the testing and monitoring required by
15 subsection (e) of this section;

16 (2) Any material change to the financial institution's
17 operations or business arrangements or other circumstances;

18 (3) The results of risk assessments performed under subdivision
19 (c)(3) of this section; and

20 (4) Any other circumstances that the financial institution knows
21 or has reason to know may have a material impact on the financial
22 institution's information security program.

23 (i)(1) A financial institution shall establish a written incident
24 response plan designed to promptly respond to, and recover from, any security
25 event materially affecting the confidentiality, integrity, or availability of
26 customer information in the financial institution's control.

27 (2) The incident response plan under subdivision (i)(1) of this
28 section shall address:

29 (A) The goals of the incident response plan;

30 (B) The internal processes for responding to a security
31 event;

32 (C) The definition of clear roles, responsibilities, and
33 levels of decision-making authority;

34 (D) External and internal communications and information
35 sharing;

36 (E) Identification of requirements for the remediation of

1 any identified weaknesses in information systems and associated controls;

2 (F) Documentation and reporting regarding security events
3 and related incident response activities; and

4 (G) The evaluation and revision as necessary of the
5 incident response plan following a security event.

6 (j)(1) The financial institution's qualified individual shall report
7 in writing at least annually, to the financial institution's board of
8 directors or equivalent governing body.

9 (2) If a board of directors or equivalent governing body does
10 not exist, the report required under subdivision (j)(1) of this section shall
11 be timely presented to a senior officer responsible for the financial
12 institution's information security program.

13 (3) The report required under subdivision (j)(1) of this section
14 shall include:

15 (A) The overall status of the information security program
16 and the financial institution's compliance with this section and associated
17 rules; and

18 (B) Material matters related to the information security
19 program, addressing issues such as risk assessment, risk management and
20 control decisions, service provider arrangements, results of testing,
21 security events or violations and management's responses to security events
22 or violations, and recommendations for changes in the information security
23 program.

24 (k) A financial institution shall provide notice to the Securities
25 Commissioner about notification events according to subdivisions (l)(1) and
26 (2) of this section.

27 (l)(1) Upon discovery of a notification event as described in
28 subdivision (l)(3) of this section, if the notification event involves the
29 information of any consumers in this state, the financial institution shall
30 notify the commissioner as soon as possible and no later forty-five (45) days
31 after discovery of the notification event.

32 (2) The notice required under subdivision (l)(1) of this section
33 shall:

34 (A) Be made in a format specified by the commissioner; and

35 (B) Include the following information:

36 (i) The name and contact information of the

1 reporting financial institution;

2 (ii)(a) A description of the types of information
3 that were involved in the notification event.

4 (b) If the information is possible to
5 determine under subdivision (1)(2)(B)(ii)(a) of this section, the notice
6 required under subdivision (1)(1) of this section shall contain the date or
7 date range of the notification event;

8 (iii) The number of consumers affected or
9 potentially affected by the notification event;

10 (iv) A general description of the notification
11 event; and

12 (v)(a) Whether a law enforcement official has
13 provided the financial institution with a written determination that
14 notifying the public of the notification event would impede a criminal
15 investigation or cause damage to national security, and a means for the
16 commissioner to contact the law enforcement official.

17 (b) A law enforcement official under
18 subdivision (1)(2)(B)(v)(a) of this section may request an initial delay of
19 up to thirty (30) days following the date when notice was provided to the
20 commissioner.

21 (c) The delay under subdivision
22 (1)(2)(B)(v)(b) of this section may be extended for an additional period of
23 up to sixty (60) days if the law enforcement official seeks an extension in
24 writing.

25 (d) An additional delay beyond the delay under
26 subdivision (1)(2)(B)(v)(b) of this section may be permitted only if the
27 State Securities Department determines that public disclosure of a
28 notification event continues to impede a criminal investigation or cause
29 damage to national security.

30 (3)(A) A notification event under this section shall be treated
31 as discovered as of the first day on which the notification event is known to
32 the financial institution.

33 (B) The financial institution under subdivision (1)(3)(A)
34 of this section shall be deemed to have knowledge of a notification event if
35 the notification event is known to a person, other than the person committing
36 the notification event, who is the financial institution's employee, officer,

1 or other agent.

2 (m) A financial institution shall establish a written plan addressing
3 business continuity and disaster recovery.

4

5 23-39-523. Exceptions.

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

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