STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

HOUSE BILL 1828 By: Armes

AS INTRODUCED

An Act relating to professions and occupations; amending 59 O.S. 2011, Sections 2095.2, 2095.4, 2095.5, 2095.6, 2095.7, 2095.13, 2095.14, 2095.17, 2095.19, 2095.23, which relate to the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act; modifying definition; modifying identifier of certain licensee; modifying license requirement; modifying duration of certain license; modifying certain findings for issuance of license; providing for additional findings for issuance of license; providing for minimum standards for license renewal; authorizing Administrator of Consumer Credit to adopt certain procedures; modifying penalties; providing for venue of certain action; modifying authority to conduct investigations; requiring travel costs; authorizing participation in certain examinations; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 59 O.S. 2011, Section 2095.2, is amended to read as follows:

Section 2095.2 As used in the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act:

1. "Administrator" means the Administrator of Consumer Credit;

2. “Affiliate” means an entity which directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the entity specified;

3. “Borrower” means any individual who consults with or retains a mortgage broker or mortgage loan originator in an effort to obtain or seek advice or information on obtaining or applying to obtain or modify a residential mortgage loan for himself, herself, or individuals including himself or herself, regardless of whether the individual actually obtains or modifies such a loan;

4. “Commission” means the Commission on Consumer Credit;

5. “Compensation” means anything of value or any benefit including points, commissions, bonuses, referral fees and loan origination fees;

6. “Depository institution” has the same meaning as in Section 3 of the Federal Deposit Insurance Act and includes any credit union;

7. “Entity” means a corporation, company, limited liability company, partnership or association;

8. “Federal banking agencies” means the Board of Governors of the Federal Reserve System, the Comptroller of the currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration and the Federal Deposit Insurance Corporation;

9. "Immediate family member" means a spouse, child, sibling, parent, grandparent or grandchild and includes stepparents, stepchildren, stepsiblings and adoptive relationships;

10. "Individual" means a natural person and also includes a sole proprietorship;

11. a. "Loan processor or underwriter" means an entity or individual who performs support duties as an employee at the direction of and subject to the supervision and instruction of an entity or individual licensed or exempt from licensing as provided in Section ~~6~~ 2095.3 of this ~~act~~ title.

b. For purposes of this paragraph, the term "clerical or support duties" may include subsequent to the receipt of an application, the receipt collection, distribution and analysis of information necessary for the processing or underwriting or modification of a loan, to the extent that such communication does not include offering or negotiating or modifying loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

c. An entity or individual engaging solely in loan processor or underwriter activities shall not represent to the public through advertising or other means of communicating or providing information,

including the use of business cards, stationery, brochures, signs, rate lists or other promotional items, that such entity or individual can or will perform any of the activities of a mortgage broker or mortgage loan originator;

12. a. "Mortgage broker" means an entity who for compensation or gain or in the expectation of compensation or gain:

(1) takes a residential mortgage loan application, or

(2) offers, negotiates or modifies the terms of a residential mortgage loan.

b. Mortgage broker does not include:

(1) an entity engaged solely as a loan processor or underwriter except as otherwise provided in Section ~~8~~ 2095.5 of this ~~act~~ title,

(2) an entity that only performs real estate brokerage activities and is licensed or registered in accordance with Oklahoma law, unless the entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker or other mortgage loan originator, and

(3) an entity solely involved in extensions of credit relating to timeshare plans, as that term is

defined in 11 U.S.C., Section 101(53D) United States Code;

13. "Mortgage lender" means an entity that takes an application for a residential mortgage loan, makes a residential mortgage loan or services a residential mortgage loan and is an approved or authorized:

a. mortgagee with direct endorsement underwriting authority granted by the United States Department of Housing and Urban Development,

b. seller or servicer of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, or

c. issuer for the Government National Mortgage Association;

14. a. "Mortgage loan originator" means an individual who for compensation or gain or in the expectation of compensation or gain:

(1) takes a residential mortgage loan application, or

(2) offers or negotiates or modifies the terms of a residential mortgage loan.

b. Mortgage loan originator does not include:

(1) an individual engaged solely as a loan processor or underwriter except as otherwise provided in Section ~~8~~ 2095.5 of this ~~act~~ title,

(2) an individual that only performs real estate brokerage activities and is licensed or registered in accordance with Oklahoma law, unless the individual is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator, and

(3) an individual solely involved in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C., Section 101(53D);

~~14.~~ 15. "Nationwide Mortgage Licensing System and Registry" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage brokers and mortgage loan originators;

~~15.~~ 16. "Nontraditional mortgage product" means any mortgage product other than a thirty-year fixed rate mortgage;

~~16.~~ 17. "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

a. acting as a real estate agent or real estate broker for a buyer, seller, lessor or lessee of real property,

b. bringing together parties interested in the sale, purchase, lease, rental or exchange of real property,

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

d. engaging in any activity for which an entity engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law, and

e. offering to engage in any activity or act in any capacity, described in this paragraph;

~~17.~~ 18. "Registered mortgage loan originator" means any individual who:

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

(1) a depository institution,

(2) a subsidiary that:

(a) is owned and controlled by a depository institution, and

(b) is regulated by a federal banking agency, or

(3) an institution regulated by the Farm Credit Administration, and

b. is registered with and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry;

~~18.~~ 19. "Residential mortgage loan" means any loan primarily for personal, family or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling as defined in Section 103(v) of the Truth in Lending Act or residential real estate upon which is constructed or intended to be constructed such a dwelling;

~~19.~~ 20. "Residential real estate" means any real property located in this state upon which is constructed or intended to be constructed a dwelling as defined in paragraph ~~18~~ 19 of this section; and

~~20.~~ 21. "Unique identifier" means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

SECTION 2. AMENDATORY 59 O.S. 2011, Section 2095.4, is amended to read as follows:

Section 2095.4 The unique identifier of any licensed mortgage broker, mortgage lender or licensed mortgage loan originator shall be clearly shown on all residential mortgage loan application forms, solicitations or advertisements, including business cards or websites, and any other documents as established by rule.

SECTION 3. AMENDATORY 59 O.S. 2011, Section 2095.5, is amended to read as follows:

Section 2095.5 A. 1. An entity or individual, unless specifically exempted from the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act, as provided in Section 2095.3 of this title, shall not engage in the business of a mortgage broker, mortgage lender or mortgage loan originator with respect to any dwelling located in this state without first obtaining and maintaining annually a license under the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act. Each licensed mortgage broker, mortgage lender and mortgage loan originator must register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

2. In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the effective date for licensing all entities and individuals as provided in this subsection, including those currently licensed as mortgage brokers or mortgage loan originators, shall be July 31, 2010, or such later date approved by the Secretary of the U.S. Department of Housing and Urban Development, pursuant to the authority granted under 12 U.S.C., Section 5107.

B. A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless such independent contractor loan processor or

underwriter obtains and maintains a license as required by the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act. Each independent contractor loan processor or underwriter licensed as a mortgage broker or mortgage loan originator must have and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

C. For the purposes of implementing an orderly and efficient licensing process, the Administrator of Consumer Credit may establish licensing rules, upon approval by the Commission, and the Administrator may establish interim procedures for licensing and acceptance of applications. For previously registered or licensed entities or individuals, the Administrator may establish expedited review and licensing procedures.

SECTION 4. AMENDATORY 59 O.S. 2011, Section 2095.6, is amended to read as follows:

Section 2095.6 A. Applicants for a license shall apply on a form as prescribed by the Administrator of Consumer Credit.

B. In order to fulfill the purposes of the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act, the Administrator is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other entities or individuals

subject to the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act.

C. In connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity including:

1. Fingerprints for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive such information for a state, national and international criminal history background check; and

2. Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry and the Administrator to obtain:

a. an independent credit report obtained from a consumer reporting agency defined in 15 U.S.C., Section 1681a(p), and

b. information related to any administrative, civil or criminal findings by any governmental jurisdiction.

D. In connection with an application for licensing as a mortgage broker <u>or mortgage lender</u>, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning each owner, officer, director or partner, as applicable including:

1. Fingerprints for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive such information for a state, national and international criminal history background check; and

2. Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry and the Administrator to obtain:

a. an independent credit report obtained from a consumer reporting agency described in 15 U.S.C., Section 1681a(p), and

b. information related to any administrative, civil or criminal findings by any governmental jurisdiction.

E. For purposes of this section and~~,~~ in order to reduce points of contact which the Federal Bureau of Investigation may have to maintain for purposes of paragraph 1 and subparagraph b of paragraph 2 of subsection D of this section, the Administrator may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency.

F. For the purposes of this section and in order to reduce the points of contact which the Administrator may have to maintain for purposes of subparagraphs a and b of paragraph 2 of subsection D of this section, the Administrator may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting

and distributing information to and from any source so directed by the Administrator.

G. A license issued under the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act shall be valid for a period of one (1) year, unless otherwise revoked or suspended by the Administrator as provided in the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act.

H. The Administrator, on determining that the applicant is qualified and upon payment of the fees by the applicant, shall issue a license to the applicant. An applicant who has been denied a license may not reapply for the license for sixty (60) days from the date of the previous application. A new license issued on or after November 1 shall be effective through December 31 of the following calendar year.

I. A licensee shall pay the renewal fee on or before December 1. If the license is not renewed by December 1, the licensee shall pay a late renewal fee ~~that is double the amount of the license~~ as prescribed by rule of the Commission on Consumer Credit. Licenses not renewed by December 31 shall expire and the licensee shall not act as a mortgage broker, mortgage lender or mortgage loan originator until a new license is issued pursuant to the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act. A license shall not be granted to the holder of an expired license except as

provided in the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act for the issuance of an original license.

J. On or before December 31, a licensee may request inactive status for the following license year and the license shall be placed on inactive status after payment to the Administrator of the inactive status renewal fee prescribed in this section and the surrender of the license to the Administrator. During inactive status, an inactive license shall not act as a mortgage broker, mortgage lender or mortgage loan originator. A licensee may not be on inactive status for more than two (2) consecutive years, nor for more than four (4) years in any ten-year period. The license is deemed expired for violation of any of the limitations of this subsection.

K. An inactive licensee may return to active status notwithstanding the requirements of this section by making a request in writing to the Administrator for reactivation and paying the prorated portion of the annual fee that would have been charged to the licensee to maintain normal active status. The licensee shall also provide the Administrator with proof that the licensee meets all of the other requirements for acting as a mortgage broker or mortgage loan originator, including any applicable education and testing requirements.

L. A licensee shall prominently display the mortgage broker, mortgage lender or mortgage loan originator license in the office of

the mortgage broker, mortgage lender or mortgage loan originator and any branch office of the mortgage broker or mortgage lender.

M. 1. Initial and renewal license fees shall be as prescribed by rule of the Commission on Consumer Credit;

2. A late renewal fee shall be as prescribed by rule of the Commission on Consumer Credit;

3. Branch office fees shall be as prescribed by rule of the Commission on Consumer Credit for each year;

4. Inactive status fees shall be as prescribed by rule of the Commission on Consumer Credit for each year;

5. A fee as prescribed by rule of the Commission on Consumer Credit shall be charged for each license change, duplicate license or returned check;

6. A fee as prescribed by rule of the Commission on Consumer Credit shall be paid by applicants and licensees into the Oklahoma Mortgage Broker and Mortgage Loan Originator Recovery Fund as provided for in Section 2095.20 of this title for each initial application and each renewal application;

7. An examination fee shall be as prescribed by rule of the Commission on Consumer Credit; and

8. An application fee shall be as prescribed by rule of the Commission on Consumer Credit.

SECTION 5. AMENDATORY 59 O.S. 2011, Section 2095.7, is amended to read as follows:

Section 2095.7 The Administrator of Consumer Credit shall not issue a mortgage loan originator license unless the Administrator makes at a minimum the following findings:

1. The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of such revocation shall not be deemed a revocation;

2. The applicant has not been convicted of, or pled guilty or nolo contendere to a felony in a domestic, foreign or military court:

a. during the seven-year period preceding the date of the application for licensing and registration, or

b. at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, a breach of trust or money laundering.

Provided, that any pardon of a conviction shall not be a conviction for purposes of this paragraph;

3. The applicant has demonstrated financial responsibility, character and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly and efficiently within the purposes of the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act. For purposes of this paragraph, an individual has shown that he or she is not financially responsible when he or she

has shown a disregard in the management of his or her own financial condition. A determination that an individual has not shown financial responsibility may include, but not be limited to:

a. current outstanding judgments, except judgments solely as a result of medical expenses,

b. current outstanding tax liens or other government liens and filings,

c. foreclosures within the past three (3) years, or

d. pattern of seriously delinquent accounts within the past three (3) years;

4. The applicant has completed the prelicensing education requirement described in Section 2095.8 of this title;

5. The applicant has passed a written test that meets the test requirement described in Section 2095.9 of this title;

6. The applicant has paid into the Oklahoma Mortgage Broker and Mortgage Loan Originator Recovery Fund as required by paragraph 6 of subsection M of Section 2095.6 of this title; and

7. The applicant is sponsored by a licensed mortgage broker <u>or mortgage lender. The Administrator of Consumer Credit may authorize an entity exempt from the requirements of this act to sponsor an applicant that is an independent contractor of the exempt entity</u>. The Administrator of Consumer Credit may promulgate administrative rules, subject to approval of the Commission on Consumer Credit, to implement sponsorship procedures and requirements.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2095.11.1 of Title 59, unless there is created a duplication in numbering, reads as follows:

The Administrator of Consumer Credit shall not issue a mortgage lender license unless the Administrator makes at a minimum the following findings:

1. The applicant or any owner, officer, director or partner has never had a mortgage lender, mortgage broker or mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of such revocation shall not be deemed a revocation;

2. Any owner, officer, director or partner of the applicant has not been convicted of, or pled guilty or nolo contendere to a felony in a domestic, foreign or military court:

a. during the seven-year period preceding the date of the application for licensing and registration, or

b. at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, a breach of trust or money laundering.

Provided, that any pardon of a conviction shall not be a conviction for purposes of this paragraph;

3. The applicant and the applicant's owners, officers, directors or partners have demonstrated financial responsibility, character and general fitness such as to command the confidence of

the community and to warrant a determination that the mortgage lender will operate honestly, fairly and efficiently within the purposes of this act. For purposes of this paragraph, an applicant's owners, officers, directors or partners have shown they are not financially responsible when they have shown a disregard in the management of their own financial condition. A determination that an owner, officer, director or partner has not shown financial responsibility may include, but not be limited to:

a. current outstanding judgments, except judgments solely as a result of medical expenses,

b. current outstanding tax liens or other government liens and filings,

c. foreclosures within the past three (3) years, or

d. a pattern of seriously delinquent accounts within the past three (3) years;

4. The applicant has filed a bond in the amount of One Hundred Thousand Dollars ($100,000.00) securing the applicant's or licensee's faithful performance of all duties and obligations of a licensee. The bond shall meet the following requirements:

a. the bond shall be in a form acceptable to the Administrator,

b. the bond shall be issued by an insurance company authorized to conduct business in the State of Oklahoma,

c. the bond shall be payable to the Oklahoma Department of Consumer Credit,

d. the bond is continuous in nature and shall be maintained at all times as a condition of licensure,

e. the bond may not be terminated without thirty (30) days prior written notice to the Administrator and approval of the Administrator,

f. the bond shall be available for the recovery of expenses, civil penalties and fees assessed pursuant to the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act and for losses or damages which are determined by the Administrator to have been incurred by any borrower or consumer as a result of the applicant's or licensee's failure to comply with the requirements of the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act,

g. when an action is commenced on a licensee's bond, the Administrator may require the filing of a new bond, and

h. whenever the principal sum of the bond is reduced by one or more recoveries or payments thereon, the licensee shall furnish a new or additional bond so that the total or aggregate principal sum of such bond or such bonds shall equal One Hundred Thousand Dollars

($100,000.00) or shall furnish an endorsement duly executed by the corporate surety reinstating the bond to the required principal sum;

5. The applicant has a net worth of at least Twenty-five Thousand Dollars ($25,000.00) as reflected by an audited financial statement prepared by a certified public accountant in accordance with generally accepted accounting principles that is accompanied by an opinion acceptable to the Administrator and is dated within fifteen (15) months of the date of application;

6. The applicant has paid all required fees for issuance of the license. The license fees for a mortgage lender shall be in the same amount as license fees applicable to a mortgage broker;

7. Each mortgage lender applicant shall designate and maintain a principal place of business for the transaction of business. If the mortgage lender applicant engages in activity that satisfies the definition of a mortgage broker, the mortgage lender shall designate a licensed mortgage loan originator to oversee the mortgage loan origination operations of the principal place of business and any branch office location where the mortgage lender applicant engages in activity that satisfies the definition of a mortgage broker. If an applicant wishes to maintain one or more locations for the transaction of business in addition to a principal place of business, the applicant shall first obtain a branch office license from the Administrator. The applicant shall submit a fee as set

forth in paragraph 3 of subsection M of Section 2095.6 of Title 59 of the Oklahoma Statutes for each branch office license issued. If the Administrator of Consumer Credit determines that the applicant is qualified, the Administrator shall issue a branch office license indicating the address of the branch office. If the address of the principal place of business or of any branch office is changed, the licensee shall immediately notify the Administrator of the change and the Administrator shall endorse the change of address on the license for a fee as prescribed in paragraph 5 of subsection M of Section 2095.6 of Title 59 of the Oklahoma Statutes; and

8. A separate mortgage broker license is not required for a mortgage lender that engages in activity that satisfies the definition of a mortgage broker as provided in the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act. A mortgage lender that engages in activity that satisfies the definition of a mortgage broker shall comply with all requirements of the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act regarding mortgage brokers.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2095.12.1 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The minimum standards for license renewal for mortgage lenders shall include the following:

1. The mortgage lender continues to meet the minimum standards for license issuance under this act; and

2. The mortgage lender has paid all required fees for renewal of the license.

B. The license of a mortgage lender failing to satisfy the minimum standards for license renewal shall expire. The Administrator of Consumer Credit may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the Nationwide Mortgage Licensing System and Registry.

SECTION 8. AMENDATORY 59 O.S. 2011, Section 2095.13, is amended to read as follows:

Section 2095.13 In addition to any other duties imposed upon the Administrator of Consumer Credit by law, the Administrator shall require mortgage brokers, mortgage lenders and mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement, the Administrator is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the Administrator, upon approval of the Commission, may establish requirements by rule as necessary and consistent with this act, including but not limited to:

1. Background checks for:

a. criminal history through fingerprint or other databases,

b. civil or administrative records,

c. credit history, or

d. any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry;

2. The payment of fees to apply for or renew licenses through the Nationwide Mortgage Licensing System and Registry;

3. The setting or resetting as necessary of renewal or reporting dates; and

4. Requirements for amending or surrendering a license or any other such activities as the Administrator deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

SECTION 9. AMENDATORY 59 O.S. 2011, Section 2095.14, is amended to read as follows:

Section 2095.14 The Administrator of Consumer Credit shall, upon approval by the Commission on Consumer Credit, establish by rule a process whereby mortgage brokers, mortgage lenders and mortgage loan originators may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the Administrator.

SECTION 10. AMENDATORY 59 O.S. 2011, Section 2095.17, is amended to read as follows:

Section 2095.17 A. In order to ensure the effective supervision and enforcement of the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act, the Administrator of Consumer Credit may, after notice and hearing pursuant to Article II of the Administrative Procedures Act, impose any or any combination of the following penalties:

1. Deny, suspend, revoke, censure, place on probation or decline to renew a license for a violation of the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act, any rules promulgated pursuant to the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act and any order of the Administrator or an independent hearing examiner issued pursuant to the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act;

2. Deny, suspend, revoke, censure, place on probation or decline to renew a license if an applicant or licensee fails at any time to meet the requirements of the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act or withholds information or makes a material misstatement in an application for a license or renewal of a license;

3. Order restitution against entities or individuals subject to the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act for violations of the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act; or

4. Issue orders or directives under the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act as follows:

a. order or direct entities or individuals subject to the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act to cease and desist from conducting business, including immediate temporary orders to cease and desist,

b. order or direct entities or individuals subject to the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act to cease any harmful activities or violations of the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act, including immediate temporary orders to cease and desist,

c. enter immediate temporary orders to cease business under a license issued pursuant to the authority of the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act if the Administrator or an independent hearing examiner determines that such license was erroneously granted or the licensee is currently in violation of the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act,

d. order or direct such other affirmative action as the Administrator or an independent hearing examiner deems necessary, or

e. impose a civil penalty of not less than One Hundred Dollars ($100.00) nor more than Two Thousand Five Hundred Dollars ($2,500.00) for each violation of the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act against a licensee or any other entity or individual subject to the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act, not to exceed Five Thousand Dollars ($5,000.00) for all violations resulting from a single incident or transaction.

B. Any immediate temporary order to cease and desist issued pursuant to the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act shall comply with the requirements for emergency orders under Article II of the Administrative Procedures Act.

C. Any administrative order or settlement agreement imposing a civil penalty pursuant to this section may be enforced in the same manner as civil judgments in this state. The Administrator may file an application to enforce an administrative order or settlement agreement ~~imposing a civil penalty~~ in the district court of Oklahoma County.

D. The Administrator shall appoint an independent hearing examiner to conduct all administrative hearings involving alleged violations of the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act. The independent hearing examiner shall have authority to exercise all powers granted by Article II of the

Administrative Procedures Act in conducting hearings. The independent hearing examiner shall have authority to recommend penalties authorized by the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act and issue proposed orders, with proposed findings of fact and proposed conclusions of law, to the Administrator pursuant to Article II of the Administrative Procedures Act. The Administrator shall review the proposed order and issue a final agency order in accordance with Article II of the Administrative Procedures Act. ~~A~~ Any person aggrieved by a final agency order ~~issued by~~ of the Administrator ~~shall be appealable by all parties to an Oklahoma district court as provided in Article II of the~~ may obtain judicial review in accordance with the Oklahoma Administrative Procedures Act. The venue of any such action shall be in the district court of Oklahoma County. The costs of the hearing examiner may be assessed ~~by the hearing examiner~~ against the respondent, unless the respondent is the prevailing party.

SECTION 11. AMENDATORY 59 O.S. 2011, Section 2095.19, is amended to read as follows:

Section 2095.19 A. In addition to any other penalties provided by law, any entity or individual without a license as required by the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act who engages in the business of a mortgage broker, mortgage lender or mortgage loan originator or who willingly and knowingly violates any provision of the Oklahoma Secure and Fair Enforcement for Mortgage

Licensing Act, upon conviction, shall be guilty of a misdemeanor which shall be punishable by a fine of not more than One Thousand Dollars ($1,000.00) for each violation. Each violation shall be a separate offense under this section.

B. In addition to any civil or criminal actions authorized by law, the Administrator of Consumer Credit, the Attorney General, or the district attorney may apply to the district court in the county in which a violation of the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act has allegedly occurred for an order enjoining or restraining the entity or individual from continuing the acts specified in the complaint. The court may grant any temporary or permanent injunction or restraining order, without bond, as it deems just and proper.

SECTION 12. AMENDATORY 59 O.S. 2011, Section 2095.23, is amended to read as follows:

Section 2095.23 A. In addition to any authority allowed under the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act, the Administrator of Consumer Credit shall have the authority to conduct investigations and examinations of the following:

1. Criminal, civil and administrative history information, including nonconviction data;

2. Personal history and experience information including independent credit reports obtained from a consumer reporting agency described in 15 U.S.C., Section 1681a(p); ~~and~~

3. The financial condition and internal management policies and procedures of any entity licensed or required to be licensed as a mortgage lender for purposes of determining that the entity is operating honestly, fairly and efficiently within the purposes of this act; and

4. Any other documents, information or evidence the Administrator deems relevant to the inquiry or investigation regardless of the location, possession, control or custody of such documents, information or evidence.

B. For the purposes of investigating violations or complaints arising under the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act or for the purposes of examination, the Administrator may review, investigate or examine any licensee or entity or individual subject to the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act, as often as necessary in order to carry out the purposes of the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act. The Administrator may direct, subpoena or order the attendance of and examine under oath all individuals whose testimony may be required about the loans or the business or subject matter of any such examination or investigation and may direct, subpoena or order such individual to produce books, accounts, records, files and any other documents the Administrator deems relevant to the inquiry. Any examination or investigation report and any information obtained during an examination or investigation

shall not be subject to disclosure under the Oklahoma Open Records Act. However, any examination or investigation report and any information obtained during an examination or investigation shall be subject to disclosure pursuant to a court order and may also be disclosed in an individual proceeding and any order issued pursuant to the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act.

C. The Administrator may require payment of an examination fee either at the time of initial application, renewal of the license or after an examination has been conducted. The examination fee shall be prescribed by rule of the Commission on Consumer Credit. <u>The Administrator shall require a licensee or an entity or individual subject to the requirements of this act to pay travel costs for conducting examinations or investigations outside of the State of Oklahoma.</u>

D. Each licensee or entities or individuals subject to the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act shall make available to the Administrator, upon request, any books and records relating to the requirements of the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act. The Administrator shall have access to such books and records and interview the officers, principals, mortgage loan originators, employees, independent contractors, agents and customers of the licensee, entity or individual subject to the Oklahoma Secure and Fair

Enforcement for Mortgage Licensing Act concerning the requirements of the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act. Books and records shall be maintained for a period of time required by rule of the Administrator.

E. Each licensee or entity or individual subject to the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act shall make or compile reports or prepare other information as directed by the Administrator in order to carry out the purposes of this section including, but not limited to:

1. Accounting compilations;

2. Information lists and data concerning loan transactions in a format prescribed by the Administrator; or

3. Such other information deemed necessary to carry out the purposes of this section.

F. In making any examination or investigation authorized by the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act, the Administrator may control access to any documents and records of the licensee or entity or individual under examination or investigation. The Administrator may take possession of the documents and records or place an entity or individual in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no entity or individual shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the Administrator.

Unless the Administrator has reasonable grounds to believe the documents or records of the licensee have been, or are at risk of being altered or destroyed for purposes of concealing a violation of the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act, the licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

G. In order to carry out the purposes of this section, the Administrator may:

1. Retain attorneys, accountants, or other professionals and specialists as examiners, auditors or investigators to conduct or assist in the conduct of examinations or investigations;

2. Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures and documents, records, information or evidence obtained under this section;

3. Use, hire, contract or employ public or privately available analytical systems, methods or software to examine or investigate the licensee, entity or individual subject to the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act;

4. Accept and rely on examination or investigation reports made by other government officials, within or without this state; ~~or~~

5. Accept audit reports made by an independent certified public accountant for the licensee or entity or individual subject to the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation or other writing of the Administrator; or

6. Participate in multistate mortgage examinations as scheduled by the Multi-State Mortgage Committee established by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators.

H. The authority of this section shall remain in effect, whether such a licensee or entity or individual subject to the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act acts or claims to act under any licensing or registration law of this state or claims to act without such authority.

I. No licensee or entity or individual subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy or secrete any books, records, computer records or other information.

SECTION 13. This act shall become effective November 1, 2013.

54-1-5839 LRB 01/10/13