

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 SENATE BILL 377

By: Newberry

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5
6 AS INTRODUCED

7 An Act relating to the Oklahoma Mortgage Secure and
8 Fair Enforcement Licensing Act; amending 59 O.S.
9 2011, Sections 2095.1, 2095.2, as amended by Section
10 1, Chapter 98, O.S.L. 2013, 2095.3, 2095.6, as
11 amended by Section 4, Chapter 98, O.S.L. 2013, 2095.8
12 and 2095.21, as amended by Section 12, Chapter 98,
13 O.S.L. 2013 (59 O.S. Supp. 2014, Section 2095.2,
14 2095.6 and 2095.21), which relate to legislative
15 findings, definitions, exemptions, licensing,
16 education requirements, and loan originators;
17 modifying language and reference; adding loan
18 servicing; modifying certain definition; deleting
19 certain provision for inactive status; expanding
20 certain education requirement; removing certain
21 continuing education for loan originator; and
22 providing an effective date.

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

24 SECTION 1. AMENDATORY 59 O.S. 2011, Section 2095.1, is
25 amended to read as follows:

26 Section 2095.1. The activities of mortgage brokers, mortgage
27 lenders, and mortgage loan originators and the origination ~~of~~,
28 offering, servicing or modification of financing for residential
29 real property have a direct, valuable, and immediate impact upon
30 Oklahoma's consumers, the Oklahoma economy, the neighborhoods and

1 communities of Oklahoma, and the housing and real estate industry.
2 Therefore, the Legislature finds that accessibility to mortgage
3 credit is vital to the state's citizens. The Legislature also finds
4 that it is essential for the protection of the citizens of Oklahoma
5 and the stability of the Oklahoma economy that reasonable standards
6 for licensing and regulation of the business practices of mortgage
7 brokers, mortgage lenders, and mortgage loan originators be imposed.
8 The Legislature further finds that the obligations of mortgage
9 brokers, mortgage lenders, and mortgage loan originators to
10 consumers in connection with originating or making, ~~or~~ modifying or
11 servicing residential mortgage loans are such as to warrant the
12 regulation of the mortgage lending and servicing process. The
13 purpose of ~~this act~~ the Oklahoma Secure and Fair Enforcement for
14 Mortgage Licensing Act is to protect consumers seeking mortgage
15 loans and to ensure that the mortgage lending and servicing industry
16 is operating without unfair, deceptive, and fraudulent practices on
17 the part of mortgage brokers, mortgage lenders, and mortgage loan
18 originators. Therefore, the Legislature establishes within ~~this act~~
19 the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act:

20 1. An effective system of supervision and enforcement of the
21 mortgage lending and servicing industry, including:

- 22 a. the authority to issue licenses to conduct business
23 under this act, including the authority to write rules
24 or regulations or adopt procedures necessary to the

1 licensing of entities or individuals covered ~~under~~
2 ~~this act~~ pursuant to the Oklahoma Secure and Fair
3 Enforcement for Mortgage Licensing Act,

4 b. the authority to censure, deny, place on probation,
5 suspend or revoke licenses issued ~~under this act~~
6 pursuant to the Oklahoma Secure and Fair Enforcement
7 for Mortgage Licensing Act, and

8 c. the authority to examine, investigate, and conduct
9 enforcement actions as necessary to carry out the
10 intended purposes of the Oklahoma Secure and Fair
11 Enforcement for Mortgage Licensing Act, including the
12 authority to subpoena witnesses and documents, enter
13 orders, including cease and desist orders, order
14 restitution and monetary penalties, and order the
15 removal and ban of individuals from office or
16 employment; and

17 2. Broad administrative authority for the Administrator of
18 Consumer Credit to administer, interpret, and enforce ~~this act~~ the
19 Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act and
20 promulgate rules, subject to approval of the Commission on Consumer
21 Credit, in order to carry out the intentions of the Legislature.

22 SECTION 2. AMENDATORY 59 O.S. 2011, Section 2095.2, as
23 amended by Section 1, Chapter 98, O.S.L. 2013 (59 O.S. Supp. 2014,
24 Section 2095.2), is amended to read as follows:

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

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

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

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

13 4. "Commission" means the Commission on Consumer Credit;

14 5. "Compensation" means anything of value or any benefit
15 including points, commissions, bonuses, referral fees and loan
16 origination fees;

17 6. "Depository institution" has the same meaning as in Section
18 3 of the Federal Deposit Insurance Act and includes any credit
19 union;

20 7. "Entity" means a corporation, company, limited liability
21 company, partnership or association;

22 8. "Federal banking agencies" means the Board of Governors of
23 the Federal Reserve System, the Comptroller of the currency, the
24

1 Director of the Office of Thrift Supervision, the National Credit
2 Union Administration and the Federal Deposit Insurance Corporation;

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

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

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

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

23 c. An entity or individual engaging solely in loan
24 processor or underwriter activities shall not

1 represent to the public through advertising or other
2 means of communicating or providing information,
3 including the use of business cards, stationery,
4 brochures, signs, rate lists or other promotional
5 items, that such entity or individual can or will
6 perform any of the activities of a mortgage broker or
7 mortgage loan originator;

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

- 10 (1) takes a residential mortgage loan application, or
11 (2) offers, negotiates or modifies the terms of a
12 residential mortgage loan.

13 b. Mortgage broker does not include:

- 14 (1) an entity engaged solely as a loan processor or
15 underwriter except as otherwise provided in
16 Section 2095.5 of this title,
17 (2) an entity that only performs real estate
18 brokerage activities and is licensed or
19 registered in accordance with Oklahoma law,
20 unless the entity is compensated by a lender, a
21 mortgage broker, or other mortgage loan
22 originator or by any agent of such lender,
23 mortgage broker or other mortgage loan
24 originator, and

1 (3) an entity solely involved in extensions of credit
2 relating to timeshare plans, as that term is
3 defined in 11 U.S.C., Section 101(53D) United
4 States Code;

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

- 9 a. ~~mortgagee with direct endorsement underwriting~~
10 ~~authority granted by the United States Department of~~
11 ~~Housing and Urban Development,~~
- 12 b. ~~seller or servicer of the Federal National Mortgage~~
13 ~~Association or the Federal Home Loan Mortgage~~
14 ~~Corporation, or~~
- 15 c. ~~issuer for the Government National Mortgage~~
16 ~~Association;~~

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

- 20 (1) takes a residential mortgage loan application, or
21 (2) offers or negotiates or modifies the terms of a
22 residential mortgage loan.

23 b. Mortgage loan originator does not include:
24

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

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

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

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

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

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

- 1 a. acting as a real estate agent or real estate broker
2 for a buyer, seller, lessor or lessee of real
3 property,
4 b. bringing together parties interested in the sale,
5 purchase, lease, rental or exchange of real property,
6 c. negotiating, on behalf of any party, any portion of a
7 contract relating to the sale, purchase, lease, rental
8 or exchange of real property, other than in connection
9 with providing financing with respect to any such
10 transaction,
11 d. engaging in any activity for which an entity engaged
12 in the activity is required to be registered or
13 licensed as a real estate agent or real estate broker
14 under any applicable law, and
15 e. offering to engage in any activity or act in any
16 capacity, described in this paragraph;

17 18. "Registered mortgage loan originator" means any individual

18 who:

- 19 a. meets the definition of mortgage loan originator and
20 is an employee of:
21 (1) a depository institution,
22 (2) a subsidiary that:
23 (a) is owned and controlled by a depository
24 institution, and

1 (b) is regulated by a federal banking agency, or
2 (3) an institution regulated by the Farm Credit
3 Administration, and

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

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

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

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

20 SECTION 3. AMENDATORY 59 O.S. 2011, Section 2095.3, is
21 amended to read as follows:

22 Section 2095.3. The following are exempt from all provisions of
23 the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act:
24

1 1. Registered mortgage loan originators, when acting for an
2 entity described in divisions (1), (2) and (3) of subparagraph a of
3 paragraph ~~17~~ 18 of Section 2095.2 of this title;

4 2. An individual who offers or negotiates or modifies terms of
5 a residential mortgage loan with or on behalf of an immediate family
6 member of the individual;

7 3. An individual who offers or negotiates or modifies terms of
8 a residential mortgage loan secured by a dwelling that served as the
9 individual's residence;

10 4. A licensed attorney who negotiates or modifies the terms of
11 a residential mortgage loan on behalf of a client as an ancillary
12 matter to the attorney's representation of the client, unless the
13 attorney is compensated by a lender, a mortgage broker or other
14 mortgage loan originator or by any agent of such lender, mortgage
15 broker, or other mortgage loan originator; or

16 5. Entities described in divisions (1), (2) and (3) of
17 subparagraph a of paragraph ~~17~~ 18 of Section 2095.2 of this title.

18 SECTION 4. AMENDATORY 59 O.S. 2011, Section 2095.6, as
19 amended by Section 4, Chapter 98, O.S.L. 2013 (59 O.S. Supp. 2014,
20 Section 2095.6), is amended to read as follows:

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

23 B. In order to fulfill the purposes of the Oklahoma Secure and
24 Fair Enforcement for Mortgage Licensing Act, the Administrator is

1 authorized to establish relationships or contracts with the
2 Nationwide Mortgage Licensing System and Registry or other entities
3 designated by the Nationwide Mortgage Licensing System and Registry
4 to collect and maintain records and process transaction fees or
5 other fees related to licensees or other entities or individuals
6 subject to the Oklahoma Secure and Fair Enforcement for Mortgage
7 Licensing Act.

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

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

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

- 19 a. an independent credit report obtained from a consumer
20 reporting agency defined in 15 U.S.C., Section
21 1681a(p), and
22 b. information related to any administrative, civil or
23 criminal findings by any governmental jurisdiction.
24

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

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

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

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

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

18 E. For purposes of this section and in order to reduce points
19 of contact which the Federal Bureau of Investigation may have to
20 maintain for purposes of paragraph 1 and subparagraph b of paragraph
21 2 of subsection D of this section, the Administrator may use the
22 Nationwide Mortgage Licensing System and Registry as a channeling
23 agent for requesting information from and distributing information
24 to the Department of Justice or any governmental agency.

1 F. For the purposes of this section and in order to reduce the
2 points of contact which the Administrator may have to maintain for
3 purposes of subparagraphs a and b of paragraph 2 of subsection D of
4 this section, the Administrator may use the Nationwide Mortgage
5 Licensing System and Registry as a channeling agent for requesting
6 and distributing information to and from any source so directed by
7 the Administrator.

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

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

20 I. A licensee shall pay the renewal fee on or before December
21 1. If the license is not renewed by December 1, the licensee shall
22 pay a late renewal fee as prescribed by rule of the Commission on
23 Consumer Credit. Licenses not renewed by December 31 shall expire
24 and the licensee shall not act as a mortgage broker, mortgage lender

1 or mortgage loan originator until a new license is issued pursuant
2 to the Oklahoma Secure and Fair Enforcement for Mortgage Licensing
3 Act. A license shall not be granted to the holder of an expired
4 license except as provided in the Oklahoma Secure and Fair
5 Enforcement for Mortgage Licensing Act for the issuance of an
6 original license.

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

18 ~~K. An inactive licensee may return to active status~~
19 ~~notwithstanding the requirements of this section by making a request~~
20 ~~in writing to the Administrator for reactivation and paying the~~
21 ~~prorated portion of the annual fee that would have been charged to~~
22 ~~the licensee to maintain normal active status. The licensee shall~~
23 ~~also provide the Administrator with proof that the licensee meets~~
24 ~~all of the other requirements for acting as a mortgage broker,~~

1 ~~mortgage lender or mortgage loan originator, including any~~
2 ~~applicable education and testing requirements.~~

3 ~~H.~~ A licensee shall prominently display the mortgage broker,
4 mortgage lender or mortgage loan originator license in the office of
5 the mortgage broker, mortgage lender or mortgage loan originator and
6 any branch office of the mortgage broker or mortgage lender.

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

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

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

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

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

18 ~~6.~~ 5. A fee as prescribed by rule of the Commission on Consumer
19 Credit shall be paid by applicants and licensees into the Oklahoma
20 Mortgage Broker and Mortgage Loan Originator Recovery Fund as
21 provided for in Section 2095.20 of this title for each initial
22 application and each renewal application.

23 ~~7.~~ 6. An examination fee shall be as prescribed by rule of the
24 Commission on Consumer Credit.

1 ~~8.~~ 7. An application fee shall be as prescribed by rule of the
2 Commission on Consumer Credit.

3 SECTION 5. AMENDATORY 59 O.S. 2011, Section 2095.8, is
4 amended to read as follows:

5 Section 2095.8. A. In order to meet the prelicensing education
6 requirement referred to in Section 10 of this act, an individual
7 shall complete at least twenty (20) hours of education approved in
8 accordance with subsection B of this section, which shall include at
9 least:

10 1. Three (3) hours of federal law and regulations;

11 2. Three (3) hours of ethics, which shall include instruction
12 on fraud, consumer protection and fair lending issues; ~~and~~

13 3. Two (2) hours of training related to lending standards for
14 the nontraditional mortgage product marketplace; and

15 4. One (1) hour of Oklahoma law and regulations.

16 B. For purposes of subsection A of this section, prelicensing
17 education courses shall be reviewed and approved by the Nationwide
18 Mortgage Licensing System and Registry based upon reasonable
19 standards. Review and approval of a prelicensing education course
20 shall include review and approval of the course provider.

21 C. Nothing in this section shall preclude any prelicensing
22 education course as approved by the Nationwide Mortgage Licensing
23 System and Registry that is provided by the employer of the
24 applicant or an entity which is affiliated with the applicant by an

1 agency contract or any subsidiary or affiliate of such employer or
2 entity.

3 D. Prelicensing education may be offered either in a classroom,
4 online or by any other means approved by the Nationwide Mortgage
5 Licensing System and Registry.

6 E. The prelicensing education requirements approved by the
7 Nationwide Mortgage Licensing System and Registry in paragraph 1 of
8 subsection A and subsections B and C of this section for any state
9 shall be accepted as credit towards completion of prelicensing
10 education requirements in this state.

11 F. An individual previously licensed ~~under this act~~ pursuant to
12 the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act,
13 subsequent to the effective date of this act July 1, 2009, and
14 applying to be licensed again, must prove ~~they have completed~~
15 completion of all of the continuing education requirements for the
16 year in which the license was last held.

17 SECTION 6. AMENDATORY 59 O.S. 2011, Section 2095.21, as
18 last amended by Section 12, Chapter 98, O.S.L. 2013 (59 O.S. Supp.
19 2014, Section 2095.21), is amended to read as follows:

20 Section 2095.21. A. In order to meet the annual continuing
21 education requirements as provided in subsection A of Section
22 2095.10 of this title, a licensed mortgage loan originator shall
23 complete at least eight (8) hours of education approved as provided
24 in subsection B of this section, which shall include at least:

1 1. Three (3) hours of federal law and regulations;

2 2. Two (2) hours of ethics, which shall include instruction on
3 fraud, consumer protection and fair lending issues; and

4 3. Two (2) hours of training related to lending standards for
5 the nontraditional mortgage product marketplace.

6 B. For purposes of subsection A of this section, continuing
7 education courses shall be reviewed and approved by the Nationwide
8 Mortgage Licensing System and Registry based upon reasonable
9 standards. Review and approval of a continuing education course
10 shall include review and approval of the course provider.

11 C. Nothing in this section shall preclude any education course
12 as approved by the Nationwide Mortgage Licensing System and Registry
13 that is provided by the employer of the mortgage loan originator or
14 an entity which is affiliated with the mortgage loan originator by
15 an agency contract or any subsidiary or affiliate of such employer
16 or entity.

17 D. Continuing education may be offered either in a classroom,
18 online or by any other means approved by the Nationwide Mortgage
19 Licensing System and Registry. ~~A licensed mortgage loan originator
20 shall complete annual continuing education requirements in a
21 classroom setting at least every two (2) years.~~

22 E. A licensed mortgage loan originator, except as provided in
23 subsection B of Section 2095.10 of this title and subsection I of
24 this section:

1 1. May only receive credit for a continuing education course in
2 the year in which the course is taken; and

3 2. May not take the same approved course in the same or
4 successive years to meet the annual requirements for continuing
5 education.

6 F. A licensed mortgage loan originator who is an approved
7 instructor of an approved continuing education course may receive
8 credit for the licensed mortgage loan originator's own annual
9 continuing education requirement at the rate of two (2) hours credit
10 for every one (1) hour taught.

11 G. An individual having successfully completed the education
12 requirements approved by the Nationwide Mortgage Licensing System
13 and Registry in paragraph 1 of subsection A and subsections B and C
14 of this section for any state shall be accepted as credit towards
15 completion of continuing education requirements in this state.

16 H. A licensed mortgage loan originator who subsequently becomes
17 unlicensed must complete the continuing education requirements for
18 the last year in which the license was held prior to issuance of a
19 new or renewed license.

20 I. An individual meeting the requirements of paragraphs 1 and 2
21 of subsection A of Section 2095.10 of this title may make up any
22 deficiency in continuing education as established by rule.

23 SECTION 7. This act shall become effective November 1, 2015.

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