

1 **REGULATION OF LENDING BY THE**
2 **DEPARTMENT OF FINANCIAL**
3 **INSTITUTIONS**

4 2009 GENERAL SESSION

5 STATE OF UTAH

6 **Chief Sponsor: Kevin S. Garn**

7 Senate Sponsor: Lyle W. Hillyard

8
9 **LONG TITLE**

10 **General Description:**

11 This bill modifies the Utah Consumer Credit Code, and mortgage lending and
12 servicing provisions to address the regulation of consumer and residential mortgage
13 loans by the Department of Financial Institutions.

14 **Highlighted Provisions:**

15 This bill:

- 16 ▶ clarifies the requirements to file notification with the department under the Utah
17 Consumer Credit Code;
- 18 ▶ clarifies provisions administered by the department related to a lender, broker, or
19 servicer of a mortgage loan;
- 20 ▶ enacts the Financial Institution Loan Originator Licensing Act including:
- 21 • providing definitions;
 - 22 • establishing the general powers and duties of the commissioner, including
23 rulemaking authority;
 - 24 • establishing when licensure is required;
 - 25 • creating qualifications for licensure, including bonding requirements;
 - 26 • creating a licensing process;
 - 27 • requiring the commissioner to create a process for challenging information in
28 the nationwide database;
 - 29 • addressing education requirements;

- 30 • imposing operational requirements and prohibitions; and
- 31 • providing for enforcement;
- 32 ▶ repeals intent language; and
- 33 ▶ makes technical and conforming amendments.

34 **Monies Appropriated in this Bill:**

35 None

36 **Other Special Clauses:**

37 None

38 **Utah Code Sections Affected:**

39 **AMENDS:**

- 40 **9-4-1202**, as last amended by Laws of Utah 2003, Chapter 229
- 41 **41-1a-506**, as last amended by Laws of Utah 2006, Chapter 232
- 42 **58-56-17**, as last amended by Laws of Utah 2003, Chapter 229
- 43 **59-2-1109**, as last amended by Laws of Utah 2003, Chapter 229
- 44 **59-2-1503**, as enacted by Laws of Utah 2004, Chapter 243
- 45 **61-2c-301**, as last amended by Laws of Utah 2007, Chapter 325
- 46 **70C-1-302**, as enacted by Laws of Utah 1985, Chapter 159
- 47 **70C-8-201**, as enacted by Laws of Utah 1985, Chapter 159
- 48 **70C-8-202**, as last amended by Laws of Utah 1991, Chapter 241
- 49 **70C-8-203**, as enacted by Laws of Utah 1985, Chapter 159

50 **ENACTS:**

- 51 **70D-1-101**, Utah Code Annotated 1953
- 52 **70D-3-101**, Utah Code Annotated 1953
- 53 **70D-3-102**, Utah Code Annotated 1953
- 54 **70D-3-103**, Utah Code Annotated 1953
- 55 **70D-3-201**, Utah Code Annotated 1953
- 56 **70D-3-202**, Utah Code Annotated 1953
- 57 **70D-3-203**, Utah Code Annotated 1953

- 58 **70D-3-204**, Utah Code Annotated 1953
- 59 **70D-3-205**, Utah Code Annotated 1953
- 60 **70D-3-206**, Utah Code Annotated 1953
- 61 **70D-3-301**, Utah Code Annotated 1953
- 62 **70D-3-302**, Utah Code Annotated 1953
- 63 **70D-3-303**, Utah Code Annotated 1953
- 64 **70D-3-401**, Utah Code Annotated 1953
- 65 **70D-3-402**, Utah Code Annotated 1953
- 66 **70D-3-501**, Utah Code Annotated 1953
- 67 **70D-3-502**, Utah Code Annotated 1953

68 RENUMBERS AND AMENDS:

- 69 **70D-1-102**, (Renumbered from 70D-1-3, as enacted by Laws of Utah 1990, Chapter
- 70 172)
- 71 **70D-2-101**, (Renumbered from 70D-1-2, as enacted by Laws of Utah 1990, Chapter
- 72 172)
- 73 **70D-2-102**, (Renumbered from 70D-1-19, as last amended by Laws of Utah 2004,
- 74 Chapter 75)
- 75 **70D-2-103**, (Renumbered from 70D-1-4, as enacted by Laws of Utah 1990, Chapter
- 76 172)
- 77 **70D-2-104**, (Renumbered from 70D-1-21, as enacted by Laws of Utah 2004, Chapter
- 78 252)
- 79 **70D-2-201**, (Renumbered from 70D-1-10, as last amended by Laws of Utah 2004,
- 80 Chapter 297)
- 81 **70D-2-202**, (Renumbered from 70D-1-11, as enacted by Laws of Utah 1990, Chapter
- 82 172)
- 83 **70D-2-203**, (Renumbered from 70D-1-12, as enacted by Laws of Utah 1990, Chapter
- 84 172)
- 85 **70D-2-301**, (Renumbered from 70D-1-9, as enacted by Laws of Utah 1990, Chapter

86 172)
87 **70D-2-302**, (Renumbered from 70D-1-5, as enacted by Laws of Utah 1990, Chapter
88 172)
89 **70D-2-303**, (Renumbered from 70D-1-7, as enacted by Laws of Utah 1990, Chapter
90 172)
91 **70D-2-304**, (Renumbered from 70D-1-8, as enacted by Laws of Utah 1990, Chapter
92 172)
93 **70D-2-305**, (Renumbered from 70D-1-6, as enacted by Laws of Utah 1990, Chapter
94 172)
95 **70D-2-401**, (Renumbered from 70D-1-20, as last amended by Laws of Utah 2004,
96 Chapter 243)
97 **70D-2-501**, (Renumbered from 70D-1-13, as enacted by Laws of Utah 1990, Chapter
98 172)
99 **70D-2-502**, (Renumbered from 70D-1-14, as last amended by Laws of Utah 2008,
100 Chapter 382)
101 **70D-2-503**, (Renumbered from 70D-1-15, as enacted by Laws of Utah 1990, Chapter
102 172)
103 **70D-2-504**, (Renumbered from 70D-1-16, as last amended by Laws of Utah 2008,
104 Chapter 382)
105 **70D-2-505**, (Renumbered from 70D-1-17, as last amended by Laws of Utah 2008,
106 Chapter 382)
107 **70D-2-506**, (Renumbered from 70D-1-18, as enacted by Laws of Utah 1990, Chapter
108 172)
109 REPEALS:
110 **70D-1-1**, as enacted by Laws of Utah 1990, Chapter 172

112 *Be it enacted by the Legislature of the state of Utah:*

113 Section 1. Section **9-4-1202** is amended to read:

114 **9-4-1202. Legislative policy and purpose.**

115 (1) It is the policy of the state that to promote the general welfare of its citizens it is
116 necessary to remedy the unsafe and unsanitary housing conditions and the acute shortage of
117 decent, safe, and sanitary dwellings for families of medium and low income, in urban and rural
118 areas. These conditions cause an increase and spread of disease and crime, and constitute a
119 menace to the health, safety, morals, and welfare of the state.

120 (2) It is the policy of the state:

121 (a) to make adequate provision of affordable housing for:

122 (i) persons of medium or low income who are unable to provide themselves with
123 decent housing including:

124 (A) elderly persons;

125 (B) persons with disabilities;

126 (C) veterans;

127 (D) special needs populations;

128 (E) low income persons living on tribal trust lands;

129 (F) persons receiving public assistance under self-sufficiency programs; or

130 (G) low income persons living in mobile homes, as defined in Section [~~70D-1-19~~

131 70D-2-102; and

132 (ii) during limited periods, for disaster victims; and

133 (b) that the provision of safe and sanitary dwelling accommodations at rents or prices
134 that persons of medium and low income can afford will materially assist in developing more
135 desirable neighborhoods and alleviating the effects of poverty in this state.

136 (3) The purposes of this part and Part 6, Housing Authorities, are to meet these
137 problems by:

138 (a) providing low-cost housing for medium and low income persons; and

139 (b) encouraging cooperation between political subdivisions and the nonprofit sector to
140 make available low-cost housing in all areas of the state.

141 (4) It is in the public interest to use the broad financial resources and technical

142 services available to government in cooperation with the ingenuity and expertise of private
143 enterprise to alleviate this lack of safe and sanitary dwellings while stimulating local industry,
144 according to the following principles:

145 (a) The private sector, including nonprofit entities, shall be the primary source of
146 developing and providing affordable housing with state and local incentives to encourage
147 housing development.

148 (b) State money used in the development of housing shall:

149 (i) be heavily leveraged when possible;

150 (ii) be primarily invested as loans;

151 (iii) be primarily spent on housing production; and

152 (iv) give priority to needs of persons of medium or low income who are unable to
153 provide themselves with decent housing including:

154 (A) elderly persons;

155 (B) persons with disabilities;

156 (C) veterans;

157 (D) special needs populations;

158 (E) low income persons living on tribal trust lands;

159 (F) persons receiving public assistance under self-sufficiency programs; and

160 (G) low income persons living in mobile homes, as defined in Section ~~[70D-1-19]~~

161 70D-2-102.

162 (c) When possible based on economic feasibility and effectiveness, state housing
163 programs shall encourage:

164 (i) mixed income developments;

165 (ii) socio-economic diversity in neighborhoods; and

166 (iii) new, multifamily construction.

167 (d) State resources may be used in partnership with political subdivisions or the
168 private sector to promote affordable housing.

169 (e) Within appropriations from the Legislature, the state may provide training and

170 technical assistance to Utah’s political subdivision, quasi-governmental, and nonprofit
171 housing providers.

172 Section 2. Section **41-1a-506** is amended to read:

173 **41-1a-506. Exceptions to title requirements for manufactured homes or mobile**
174 **homes.**

175 (1) ~~Each~~ A manufactured home or mobile home in this state is subject to the titling
176 provisions of this part except:

177 (a) a manufactured ~~[homes and]~~ home or mobile ~~[homes]~~ home owned and operated
178 by the federal government; and

179 (b) a manufactured ~~[homes and]~~ home or mobile ~~[homes]~~ home that ~~[have]~~ has been
180 converted to real property under Section ~~[70D-1-20]~~ 70D-2-401 if:

181 (i) (A) an Affidavit of Mobile Home Affixture ~~[has been]~~ is issued by the division for
182 that home; and

183 (B) the home is permanently affixed to real property; or

184 (ii) (A) the home is permanently affixed to real property;

185 (B) the home is not registered with the division;

186 (C) the home is taxed as an improvement to real estate by the county assessor as
187 permitted under Section 59-2-1503; and

188 (D) the manufacturer's identification number or numbers are included in the deed or
189 loan document recorded with the county recorder.

190 (2) A manufactured home or mobile home previously converted to real property but
191 that has been separated from the real property is subject to the titling provisions of this part
192 upon separation.

193 Section 3. Section **58-56-17** is amended to read:

194 **58-56-17. Fees on sale -- Escrow agents -- Sales tax.**

195 (1) ~~Each~~ A dealer shall collect and remit a fee of \$75 to the division for each factory
196 built home the dealer sells that ~~[has not]~~, as of the date of the sale, has not been permanently
197 affixed to real property and converted to real property as provided in Section ~~[70D-1-20]~~

198 70D-2-401. The fee shall be payable within 30 days following the close of each calendar
199 quarter for all units sold during that calendar quarter. The fee shall be deposited in a restricted
200 account as provided in Section 58-56-17.5.

201 (2) [~~Any~~] A principal real estate broker, associate broker, or sales agent exempt from
202 registration as a dealer under Section 58-56-16 who sells a factory built home that has not
203 been permanently affixed to real property shall close the sale only through a qualified escrow
204 agent in this state registered with the Insurance Department or the Department of Financial
205 Institutions.

206 (3) [~~Each~~] An escrow agent through which a sale is closed under Subsection (2) shall
207 remit all required sales tax to the state.

208 Section 4. Section **59-2-1109** is amended to read:

209 **59-2-1109. Indigent persons -- Deferral or abatement -- Application -- County**
210 **authority to make refunds.**

211 (1) A person under the age of 65 years is not eligible for a deferral or abatement
212 provided for poor people under Sections 59-2-1107 and 59-2-1108 unless:

213 (a) the county finds that extreme hardship would prevail if the grants were not made;
214 or

215 (b) the person is disabled.

216 (2) (a) An application for the deferral or abatement shall be filed on or before
217 September 1 with the county in which the property is located.

218 (b) The application shall include a signed statement setting forth the eligibility of the
219 applicant for the deferral or abatement.

220 (c) Both husband and wife shall sign the application if the husband and wife seek a
221 deferral or abatement on a residence:

222 (i) in which they both reside; and

223 (ii) which they own as joint tenants.

224 (d) A county may extend the deadline for filing under Subsection (2)(a) until
225 December 31 if the county finds that good cause exists to extend the deadline.

226 (3) (a) For purposes of this Subsection (3):
227 (i) "Property taxes due" means the taxes due on a person's property:
228 (A) for which an abatement is granted by a county under Section 59-2-1107; and
229 (B) for the calendar year for which the abatement is granted.
230 (ii) "Property taxes paid" is an amount equal to the sum of:
231 (A) the amount of the property taxes the person paid for the taxable year for which the
232 person is applying for the abatement; and
233 (B) the amount of the abatement the county grants under Section 59-2-1107.
234 (b) A county granting an abatement to a person under Section 59-2-1107 shall refund
235 to that person an amount equal to the amount by which the person's property taxes paid exceed
236 the person's property taxes due, if that amount is \$1 or more.
237 (4) For purposes of this section:
238 (a) a poor person is any person:
239 (i) whose total household income as defined in Section 59-2-1202 is less than the
240 maximum household income certified to a homeowner's credit under Subsection
241 59-2-1208(1);
242 (ii) who resides for not less than ten months of each year in the residence for which the
243 tax relief, deferral, or abatement is requested; and
244 (iii) who is unable to meet the tax assessed on the person's residential property as the
245 tax becomes due; and
246 (b) "residence" includes a mobile home as defined under Section [~~70D-1-19~~]
247 70D-2-401.
248 (5) If the claimant is the grantor of a trust holding title to real or tangible personal
249 property on which an abatement or deferral is claimed, the claimant may claim the portion of
250 the abatement or deferral under Section 59-2-1107 or 59-2-1108 and be treated as the owner of
251 that portion of the property held in trust for which the claimant proves to the satisfaction of the
252 county that:
253 (a) title to the portion of the trust will revert in the claimant upon the exercise of a

254 power:

255 (i) by:

256 (A) the claimant as grantor of the trust;

257 (B) a nonadverse party; or

258 (C) both the claimant and a nonadverse party; and

259 (ii) regardless of whether the power is a power:

260 (A) to revoke;

261 (B) to terminate;

262 (C) to alter;

263 (D) to amend; or

264 (E) to appoint;

265 (b) the claimant is obligated to pay the taxes on that portion of the trust property

266 beginning January 1 of the year the claimant claims the abatement or deferral; and

267 (c) the claimant meets the requirements under this part for the abatement or deferral.

268 (6) The commission shall adopt rules to implement this section.

269 (7) Any poor person may qualify for:

270 (a) the deferral of taxes under Section 59-2-1108;

271 (b) if the person meets the requisites of this section, for the abatement of taxes under

272 Section 59-2-1107; or

273 (c) both:

274 (i) the deferral described in Subsection (7)(a); and

275 (ii) the abatement described in Subsection (7)(b).

276 Section 5. Section **59-2-1503** is amended to read:

277 **59-2-1503. Property tax treatment of transportable factory-built housing units.**

278 Regardless of whether a transportable factory-built housing unit is considered to be real

279 property or personal property under Section [~~70D-1-20~~] 70D-2-401, for purposes of this

280 chapter:

281 (1) a transportable factory-built housing unit that is located in a transportable

282 factory-built housing unit park:

283 (a) except as provided in Subsection (1)(b), is considered to be personal property; and

284 (b) notwithstanding Subsection (1)(a), is considered to be real property if the owner of
285 the transportable factory-built housing unit owns the real property upon which the
286 transportable factory-built housing unit is located; and

287 (2) a transportable factory-built housing unit that is not located in a transportable
288 factory-built housing unit park:

289 (a) except as provided in Subsection (2)(b), is considered to be personal property; and

290 (b) notwithstanding Subsection (2)(a), is considered to be real property if the
291 transportable factory-built housing unit is an improvement.

292 Section 6. Section **61-2c-301** is amended to read:

293 **61-2c-301. Prohibited conduct -- Violations of the chapter.**

294 (1) An individual or entity transacting the business of residential mortgage loans in
295 this state may not:

296 (a) give or receive compensation or anything of value in exchange for a referral of
297 residential mortgage loan business;

298 (b) charge a fee in connection with a residential mortgage loan transaction:

299 (i) that is excessive; or

300 (ii) if the individual or entity does not comply with Section [~~70D-1-6~~] 70D-2-305;

301 (c) give or receive compensation or anything of value in exchange for a referral of
302 settlement or loan closing services related to a residential mortgage loan transaction;

303 (d) do any of the following to induce a lender to extend credit as part of a residential
304 mortgage loan transaction:

305 (i) make a false statement or representation;

306 (ii) cause false documents to be generated; or

307 (iii) knowingly permit false information to be submitted by any party;

308 (e) give or receive compensation or anything of value, or withhold or threaten to

309 withhold payment of an appraiser fee, to influence the independent judgment of an appraiser

310 in reaching a value conclusion in a residential mortgage loan transaction, except that it is not a
311 violation of this section for a licensee to withhold payment because of a bona fide dispute
312 regarding a failure of the appraiser to comply with the licensing law or the Uniform Standards
313 of Professional Appraisal Practice;

314 (f) violate or not comply with:

315 (i) this chapter;

316 (ii) an order of the commission or division; or

317 (iii) a rule made by the division;

318 (g) fail to respond within the required time period to:

319 (i) a notice or complaint of the division; or

320 (ii) a request for information from the division;

321 (h) make false representations to the division, including in a licensure statement;

322 (i) for any residential mortgage loan transaction beginning on or after January 1, 2004,

323 engage in the business of residential mortgage loans with respect to the transaction if the
324 individual or entity also acts in any of the following capacities with respect to the same
325 residential mortgage loan transaction:

326 (i) appraiser;

327 (ii) escrow agent;

328 (iii) real estate agent;

329 (iv) general contractor; or

330 (v) title insurance agent;

331 (j) order a title insurance report or hold a title insurance policy unless the individual or
332 entity provides to the title insurer a copy of a valid, current license under this chapter;

333 (k) engage in unprofessional conduct as defined by rule;

334 (l) engage in an act or omission in transacting the business of residential mortgage
335 loans that constitutes dishonesty, fraud, or misrepresentation;

336 (m) engage in false or misleading advertising;

337 (n) (i) fail to account for [~~all funds~~] monies received in connection with a residential

338 mortgage loan;

339 (ii) use ~~[funds]~~ monies for a different purpose from the purpose for which the ~~[funds~~
340 ~~were]~~ monies are received; or

341 (iii) except as provided in Subsection (4), retain ~~[funds]~~ monies paid for services if the
342 services ~~[were]~~ are not ~~[actually]~~ performed;

343 (o) fail, within 90 calendar days of a request from a borrower who has paid for an
344 appraisal, to give a copy of an appraisal ordered and used for a transaction to the borrower;

345 (p) engage in an act that is performed to:

346 (i) evade this chapter; or

347 (ii) assist another person to evade this chapter;

348 (q) recommend or encourage default ~~[or]~~, delinquency, or continuation of an existing
349 default or delinquency, by a mortgage applicant on an existing indebtedness prior to the
350 closing of a residential mortgage loan that will refinance all or part of the indebtedness;

351 (r) in the case of the principal lending manager of an entity or a branch office of an
352 entity, fail to exercise reasonable supervision over the activities of:

353 (i) ~~[any]~~ unlicensed staff; and

354 (ii) ~~[any mortgage officers who are]~~ a mortgage officer who is licensed with the
355 principal lending manager;

356 (s) pay or offer to pay an individual who does not hold a license under this chapter for
357 work that requires the individual to hold a license under this chapter; or

358 (t) in the case of a dual licensed title licensee as defined in Section 31A-2-402:

359 (i) provide a title insurance product or service without the approval required by
360 Section 31A-2-405; or

361 (ii) knowingly provide false or misleading information in the statement required by
362 Subsection 31A-2-405(2).

363 (2) Whether or not the crime is related to the business of residential mortgage loans, it
364 is a violation of this chapter for a licensee or a person who is a certified education provider to
365 do any of the following with respect to a criminal offense which involves moral turpitude:

- 366 (a) be convicted;
- 367 (b) plead guilty or nolo contendere;
- 368 (c) enter a plea in abeyance; or
- 369 (d) be subjected to a criminal disposition similar to the ones described in Subsections
- 370 (2)(a) through (c).

371 (3) A principal lending manager does not violate Subsection (1)(r) if:

372 (a) in contravention of the principal lending manager's written policies and
373 instructions, an affiliated licensee of the principal lending manager violates:

- 374 (i) this chapter; or
- 375 (ii) rules made by the division under this chapter;
- 376 (b) the principal lending manager established and followed reasonable procedures to
- 377 ensure that affiliated licensees receive adequate supervision;
- 378 (c) upon learning of a violation by an affiliated licensee, the principal lending manager
- 379 attempted to prevent or mitigate the damage;

380 (d) the principal lending manager did not participate in or ratify the violation by an
381 affiliated licensee; and

382 (e) the principal lending manager did not attempt to avoid learning of the violation.

383 (4) Notwithstanding Subsection (1)(n)(iii), a licensee may, upon compliance with
384 Section ~~[70D-1-6]~~ 70D-2-305, charge a reasonable cancellation fee for work done originating
385 a mortgage if the mortgage is not closed.

386 Section 7. Section **70C-1-302** is amended to read:

387 **70C-1-302. Definitions.**

388 As used in this title:

389 (1) "Agreement" means the bargain of the parties in fact as stated in a written contract
390 or otherwise as found in the parties' language or by implication from other circumstances,
391 including~~[-but not limited to,];~~

392 (a) course of dealing~~[-];~~

393 (b) usage of trade~~[-];~~ or

394 (c) course of performance.

395 (2) "Contract" means a document containing written terms and conditions of a credit
396 agreement.

397 (3) (a) "Creditor" means:

398 ~~[(a)]~~ (i) a party ~~[(i)]~~:

399 (A) who regularly extends consumer credit that is subject to a finance charge or is
400 payable by written agreement in more than four installments, not including a down payment[;
401 ~~and (ii)]~~; and

402 (B) to whom the obligation is initially payable, either on the face of the note or
403 contract, or by agreement when there is no note or contract[. ~~For purposes of this definition, a
404 party is deemed to extend consumer credit regularly only if it extended credit more than 25
405 times, or more than five times for transactions secured by a dwelling, in the preceding calendar
406 year. If a person did not meet these numerical standards in the preceding calendar year, the
407 numerical standards shall be applied to the current calendar year]~~];

408 ~~[(b) any]~~ (ii) an issuer of a credit [cards] card that extends either open-end credit or
409 credit that:

410 (A) is not subject to a finance charge; and

411 (B) is not payable by written agreement in more than four installments; and

412 ~~[(c) any credit card issuer]~~

413 (iii) an issuer of a credit card that extends closed-end credit that:

414 (A) is subject to a finance charge; or

415 (B) is payable by written agreement in more than four installments.

416 (b) (i) For purposes of this Subsection (3), a party is considered to extend consumer
417 credit regularly only if the party extends credit in the preceding calendar year:

418 (A) more than 25 times; or

419 (B) more than five times for a transaction secured by a dwelling.

420 (ii) If a person does not meet the numerical standards described in Subsection (3)(b)(i)
421 in the preceding calendar year, the numerical standards shall be applied to the current calendar

422 year.

423 (4) "Dwelling" means a residential structure attached to real property that contains one
 424 to four units including any of the following if used as a residence:

425 (a) a condominium unit;

426 (b) a cooperative unit;

427 (c) a manufactured home; or

428 (d) a house.

429 ~~[(4)]~~ (5) "Earnings" means compensation paid or payable to an individual or for [his]
 430 the individual's account for personal services rendered or to be rendered by [him] the
 431 individual whether denominated as wages, salary, commission, bonus, or otherwise, and
 432 includes periodic payments pursuant to a pension, retirement, or disability program.

433 ~~[(5)]~~ (6) "Installment" means a payment upon a debt that is part of a series of
 434 payments, each of which is less than the original amount of the debt and scheduled as to a
 435 specific amount and due date by agreement of the parties for the purpose of repaying the debt.

436 ~~[(6)]~~ (7) "Party" means [any] an individual [person] and any other entity legally
 437 capable of entering into a binding contract.

438 Section 8. Section **70C-8-201** is amended to read:

439 **70C-8-201. Applicability.**

440 ~~[This]~~ (1) Except as provided in Subsection (2), this part applies to [all creditors]:

441 (a) a creditor that is subject to this title; and [to all parties having]

442 (b) a party who:

443 (i) has an office or place of business in this state [which take assignments of and
 444 undertake]; and

445 (ii) takes an assignment of or undertakes direct collection of [payments] a payment
 446 from or enforcement of [rights against debtors] a right against a debtor arising from a
 447 consumer credit [transactions] transaction.

448 (2) Except where otherwise indicated, the following are exempt from this part:

449 (a) a depository [institutions] institution as defined in Section 7-1-103 [which are

450 ~~regulated as such by the state of Utah or the United States are exempt from this part.] that is~~
 451 federally insured; and

452 (b) a wholly owned subsidiary of a depository institution described in Subsection
 453 (2)(a).

454 Section 9. Section **70C-8-202** is amended to read:

455 **70C-8-202. Notification.**

456 (1) ~~[Parties]~~ (a) A party who is subject to this part shall file notification with the
 457 department at least 30 days before commencing business in this state[; and, thereafter,].

458 (b) After filing the notification required by Subsection (1)(a), a party shall file a
 459 notification on or before January 31 of each year. [All parties subject to this title which are
 460 extending credit to consumers on July 1, 1985, need not file an initial notification but shall file
 461 notification on or before the next January 31. The notification shall state:]

462 (c) A notification required by this Subsection (1) shall state:

463 ~~[(a)]~~ (i) the name of the party;

464 ~~[(b)]~~ (ii) the name in which the business is transacted if different from that required in
 465 Subsection ~~[(a)](1)(c)(i);~~

466 ~~[(c)]~~ (iii) the address of the party's principal office, which may be outside this state;

467 ~~[(d)]~~ (iv) the address of [all offices or retail stores]:

468 (A) each office or retail store, if any, in this state at which credit is offered or extended
 469 to [consumers,] a consumer; or

470 (B) in the case of a party taking [assignments of obligations, the offices or places] an
 471 assignment of an obligation, each office or place of business within this state at which
 472 business is transacted;

473 ~~[(e)]~~ (v) if credit is extended to [consumers] a consumer other than at an office or
 474 retail store in this state, a brief description of the manner in which the credit [transactions
 475 occur] transaction occurs;

476 ~~[(f)]~~ (vi) the name and address in this state of a designated agent upon whom service
 477 of process may be made; and

478 ~~(g)~~ (vii) any other information ~~[deemed]~~ considered pertinent by the department.

479 (2) If information in a notification becomes inaccurate after filing, ~~[no]~~ a party is not
480 required to file further notification ~~[is required]~~ until ~~[the following January 31]~~ required to
481 renew the party's notification.

482 (3) (a) A party ~~[which has not filed the]~~ who fails to file a notification ~~[and paid the~~
483 ~~fees]~~ or pay a fee required by this part may not extend ~~[any]~~ credit to ~~[consumers]~~ a consumer
484 in this state until ~~[it has]~~ the party fully ~~[complied]~~ complies with ~~[the requirements of]~~ this
485 part. ~~[Any]~~

486 (b) A party who willfully violates this Subsection (3) is guilty of a class B
487 misdemeanor.

488 Section 10. Section **70C-8-203** is amended to read:

489 **70C-8-203. Fees -- Examinations.**

490 (1) A party required to file notification under Section 70C-8-202 shall, on or before
491 January 31 of each year, pay to the department an annual fee equal to the sum of:

492 (a) \$25 ~~[plus]; and~~

493 (b) \$7 for each \$100,000 or part thereof in excess of \$100,000, of the original
494 principal balance of all consumer credit ~~[it]~~ the party extended during the preceding calendar
495 year.

496 (2) In addition to filing notification, ~~[any]~~ a party subject to this part, and ~~[any]~~ a
497 depository institution subject to this title~~;~~:

498 (a) may be required to make ~~[any or all of its books and records]~~ a book or record
499 relating to a consumer credit ~~[transactions]~~ transaction available to the department or its
500 authorized representative for examination~~;~~; and

501 (b) shall pay to the department a fee to be set by the department based on an hourly
502 rate per each examiner.

503 (3) No portion of ~~[any fees]~~ a fee paid or owed to the department under this part ~~[are]~~
504 is refundable because ~~[the]~~ a party voluntarily or involuntarily ceases to extend credit to
505 consumers;

506 (a) during the period covered by the fee; or ~~[prior to]~~
 507 (b) before the time of an examination by the department of ~~[records]~~ a book or record
 508 pertaining to a preceding consumer credit ~~[transactions]~~ transaction.

509 Section 11. Section **70D-1-101** is enacted to read:

510 **TITLE 70D. FINANCIAL INSTITUTION MORTGAGE**
 511 **FINANCING REGULATION ACT**
 512 **CHAPTER 1. GENERAL PROVISIONS**

513 **70D-1-101. Title.**

514 This title is known as the "Financial Institution Mortgage Financing Regulation Act."

515 Section 12. Section **70D-1-102**, which is renumbered from Section 70D-1-3 is
 516 renumbered and amended to read:

517 ~~[70D-1-3].~~ **70D-1-102. Definitions.**

518 As used in this ~~[chapter]~~ title:

519 (1) "Commissioner" means the commissioner of the department.

520 ~~[(1)]~~ (2) "Department" means the Department of Financial Institutions.

521 (3) "Depository institution" is as defined in Section 7-1-103.

522 (4) "Dwelling" means a residential structure attached to real property that contains one
 523 to four units including any of the following if used as a residence:

524 (a) a condominium unit;

525 (b) a cooperative unit;

526 (c) a manufactured home; or

527 (d) a house.

528 ~~[(2)]~~ (5) "Mortgage" means a mortgage or deed of trust affecting real property located
 529 in this state.

530 ~~[(3)]~~ "Mortgage lender" or "lender" means any person who in the regular course of
 531 business originates loans secured by mortgages. A person shall not be considered to be a
 532 mortgage lender, however, solely because the person, as seller, receives one or more mortgages
 533 as security for a purchase money obligation, or because the person receives mortgages as

534 ~~security for an obligation payable on an installment or deferred payment basis and arising out~~
535 ~~of materials furnished or services rendered in the improvement of real property.]~~

536 ~~[(4)]~~ (6) (a) "Mortgage loan" means ~~[any]~~ a loan ~~[for a term longer than two years]:~~

537 (i) secured by a mortgage; and

538 (ii) made for personal, family, or household purposes.

539 (b) "Mortgage loan" does not include a loan:

540 (i) made by an individual to a member of ~~[his]~~ the individual's family; or ~~[a loan]~~

541 (ii) subject to Title 70C, Utah Consumer Credit Code.

542 ~~[(5) "Mortgage loan broker" or "broker" means any person who in the regular course~~
543 ~~of business assists a person in obtaining a mortgage loan for a fee or other consideration paid~~
544 ~~directly or indirectly. A person shall not be considered to be a mortgage loan broker, however,~~
545 ~~solely because of his activities as:]~~

546 ~~[(a) a real estate broker or agent who, for a normal and customary real estate sales~~
547 ~~commission, assists a buyer in obtaining a mortgage loan in order to buy real property; or]~~

548 ~~[(b) an attorney licensed to practice law in this state who, in the course of his practice~~
549 ~~as an attorney, assists a person in obtaining a mortgage loan.]]~~

550 ~~[(6) "Mortgage loan servicer" or "servicer" means any person who in the regular~~
551 ~~course of business assumes responsibility for servicing and accepting payments for a mortgage~~
552 ~~loan.]]~~

553 (7) "Mortgagor" means ~~[any]~~ a person who:

554 (a) executes a mortgage; or

555 (b) is obligated to pay a mortgage loan.

556 ~~[(8) "Regular course of business" as used in this chapter does not include a casual~~
557 ~~lender who makes less than five mortgage loans per year.]]~~

558 (8) "Record" means information that is:

559 (a) inscribed on a tangible medium; or

560 (b) stored in an electronic or other medium and is retrievable in perceivable form.

561 (9) "Real estate brokerage activity" means an act that involves offering or providing

562 real estate brokerage services to the public, including:

563 (a) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee
564 of real property;

565 (b) bringing together parties interested in the sale, purchase, lease, rental, or exchange
566 of real property;

567 (c) negotiating, on behalf of a party, a portion of a contract relating to the sale,
568 purchase, lease, rental, or exchange of real property, other than in connection with providing
569 financing with respect to the transaction;

570 (d) engaging in an act for which a person engaged in the activity is required to be
571 registered or licensed as a real estate agent or real estate broker under applicable law; and

572 (e) offering to engage in an activity, or act in a capacity, described in Subsections
573 (9)(a) through (d).

574 (10) "State" means:

575 (a) a state, territory, or possession of the United States;

576 (b) the District of Columbia; or

577 (c) the Commonwealth of Puerto Rico.

578 Section 13. Section **70D-2-101**, which is renumbered from Section 70D-1-2 is
579 renumbered and amended to read:

580 **CHAPTER 2. MORTGAGE LENDING AND SERVICING ACT**

581 **Part 1. General Provisions**

582 **[70D-1-2]. 70D-2-101. Short title.**

583 This chapter is known as the "Mortgage Lending and Servicing Act."

584 Section 14. Section **70D-2-102**, which is renumbered from Section 70D-1-19 is
585 renumbered and amended to read:

586 **[70D-1-19]. 70D-2-102. Definitions.**

587 As used in this chapter:

588 (1) (a) Except as provided in Subsection (1)(b), "broker" means a person who in the
589 regular course of business assists a person in obtaining a mortgage loan for a fee or other

590 consideration paid directly or indirectly.

591 (b) "Broker" does not include a person solely because of the person's:

592 (i) real estate brokerage activities; or

593 (ii) activities as an attorney licensed to practice law in this state who, in the course of
594 the attorney's practice as an attorney, assists a person in obtaining a mortgage loan.

595 (2) "Business as a lender, broker, or servicer" means a person who engages in an act
596 for compensation or in the expectation of compensation that makes the person a lender,
597 broker, or servicer.

598 (3) (a) Except as provided in Subsection (3)(b), "lender" means a person who in the
599 regular course of business originates a loan secured by a mortgage.

600 (b) "Lender" does not include a person who:

601 (i) as a seller only receives one or more mortgages as security for a purchase money
602 obligation; or

603 (ii) only receives a mortgage as security for an obligation:

604 (A) payable on an installment or deferred payment basis; and

605 (B) arising out of materials furnished or services rendered in the improvement of real
606 property.

607 [(+)] (4) "Manufactured home" means a transportable factory built housing unit that:

608 (a) is constructed:

609 (i) on or after June 15, 1976, according to the National Manufactured Housing
610 Construction and Safety Standards Act of 1974[;]; and

611 (ii) in one or more sections, which[;];

612 (A) in the traveling mode, is eight body feet or more in width or 40 body feet or more
613 in length[;]; or

614 (B) when erected on site, is 400 or more square feet[; and which];

615 (b) is built on a permanent chassis [and];

616 (c) is designed to be used as a dwelling with or without a permanent foundation when
617 connected to the required utilities[;]; and

618 (d) includes the plumbing, heating, air-conditioning, and electrical systems.

619 [(2)] (5) "Mobile home" means a transportable factory built housing unit built [prior
620 to] before June 15, 1976, in accordance with a state mobile home code [which] that existed
621 [prior to] before the National Manufactured Housing Construction and Safety Standards Act
622 of 1974.

623 [(3)] (6) "Permanently affixed" means anchored to, and supported by, a permanent
624 foundation or installed in accordance with the manufactured housing installation standard
625 code referred to in Section 58-56-4.

626 (7) "Servicer" means a person who in the regular course of business assumes
627 responsibility for servicing and accepting payments for a mortgage loan.

628 Section 15. Section 70D-2-103, which is renumbered from Section 70D-1-4 is
629 renumbered and amended to read:

630 [~~70D-1-4~~]. **70D-2-103. Exemptions.**

631 [~~The provisions of this~~] This chapter [~~do~~] does not apply to:

632 (1) a bona fide nonprofit [~~corporations granting~~] corporation that grants a first
633 mortgage [~~loans~~] loan to promote home ownership for low and moderate income borrowers;
634 [and]

635 (2) an agency of the following that grants a first mortgage loan under a specific federal
636 or state law:

637 [~~(2) agencies of~~] (a) the federal government [~~or of any~~];

638 (b) a state, county, or municipal government; or [any]

639 (c) a quasi-governmental agency [~~granting first mortgage loans under the specific~~
640 authority of the laws of any state or the United States.];

641 (3) a casual lender that makes less than five mortgage loans a year; or

642 (4) a mortgage loan of two years or less.

643 Section 16. Section 70D-2-104, which is renumbered from Section 70D-1-21 is
644 renumbered and amended to read:

645 [~~70D-1-21~~]. **70D-2-104. Ordinance or law by political subdivision prohibited.**

646 (1) ~~[No]~~ A county subject to Title 17, Counties, and ~~[no]~~ a municipality subject to
 647 Title 10, ~~[shall]~~ Utah Municipal Code, may not enact ~~[any]~~ an ordinance or law that ~~[regulates~~
 648 ~~the terms of home loans or that]~~:

649 (a) regulates a term of a mortgage loan on a dwelling; or

650 (b) makes the eligibility of ~~[any]~~ a person to do business with the county or
 651 municipality dependent upon ~~[the terms of home loans]~~ a term of a mortgage loan on a
 652 dwelling originated or serviced by ~~[such]~~ the person.

653 (2) ~~[The prohibition in]~~ Subsection (1) does not apply to ~~[terms of loans]~~ a term or
 654 loan funded in whole or in part with money provided or administered by the county or
 655 municipality.

656 Section 17. Section **70D-2-201**, which is renumbered from Section 70D-1-10 is
 657 renumbered and amended to read:

658 **Part 2. Notification to Commissioner**

659 ~~[70D-1-10].~~ **70D-2-201. Notification -- Exemptions.**

660 (1) Except as provided in Subsection (2), ~~[no]~~ a person may not engage in ~~[the~~
 661 ~~business of making mortgage loans nor may any person engage in the business of being a~~
 662 ~~mortgage loan broker or servicer, without first filing]~~ business as a lender, broker, or servicer
 663 in this state before the day on which the person:

664 (a) files written notification with the ~~[department and paying the fees required by this~~
 665 ~~chapter:]~~ commissioner in accordance with Section 70D-2-202; and

666 (b) pays a fee required by Section 70D-2-203.

667 (2) The following persons are exempt from ~~[the notification requirements contained in~~
 668 ~~this chapter and from the annual fee imposed in Subsection 70D-1-12(1)]~~ this part, except for
 669 a reimbursement or fee described in Subsection 70D-2-203(2):

670 (a) ~~[all persons authorized under Utah law or under federal law to do business as]~~ a
 671 federally insured depository institution in this state;

672 (b) ~~[all]~~ a wholly owned ~~[subsidiaries]~~ subsidiary of a depository ~~[institutions]~~
 673 institution described in Subsection (2)(a); and

674 ~~[(e) all persons that:]~~

675 (c) a person who:

676 (i) [are] is required to [license] be licensed with the ~~[Utah]~~ Division of Real Estate
 677 pursuant to Title 61, Chapter 2c, Utah Residential Mortgage Practices Act; and

678 ~~[(ii) are not engaged in the business of being a mortgage loan servicer.]~~

679 (ii) is not a servicer.

680 Section 18. Section **70D-2-202**, which is renumbered from Section 70D-1-11 is
 681 renumbered and amended to read:

682 **~~[70D-1-11].~~ 70D-2-202. Form of notice.**

683 (1) (a) [Persons subject to the notification requirements of Section 70D-1-10] A
 684 person required to file notification with the commissioner under Section 70D-2-201 shall file
 685 notification with the ~~[department]~~ commissioner:

686 (i) at least 30 days before commencing business as a ~~[mortgage]~~ lender, broker, or
 687 servicer in this state~~[-];~~ and ~~[thereafter]~~

688 (ii) on or before January 31 of each year~~[- All persons subject to the notification~~
 689 ~~requirement which are engaged in business as a mortgage lender, broker, or servicer on July 1,~~
 690 ~~1990, need not file an initial notification but shall file notification on or before January 31,~~
 691 ~~1991. The] after filing the notification required under Subsection (1)(a)(i).~~

692 (b) A notification required by this Subsection (1) shall state:

693 ~~[(a)]~~ (i) the name of the person;

694 ~~[(b)]~~ (ii) the name in which the business will be transacted if different from ~~[that~~
 695 ~~required]~~ the name in Subsection ~~[(a)](1)(b)(i);~~

696 ~~[(c)]~~ (iii) the address of the person's principal business office, which may be outside
 697 this state;

698 ~~[(d)]~~ (iv) the addresses of ~~[all offices]~~ each office in this state at which the person
 699 conducts business as a ~~[mortgage]~~ lender, broker, or servicer;

700 ~~[(e)]~~ (v) if the person conducts business as a ~~[mortgage]~~ lender, broker, or servicer but
 701 does not maintain an office in this state, a brief description of the manner in which the

702 business is conducted;

703 ~~[(f)]~~ (vi) the name and address in this state of a designated agent upon whom service
704 of process may be made; and

705 ~~[(g)]~~ (vii) any other information required by the rules of the ~~[department]~~
706 commissioner.

707 (2) If information in a notification becomes inaccurate after filing, ~~[no further~~
708 ~~notification is required until January 31 the following year, unless the department]~~ a person is
709 not required to notify the commissioner until the earlier of when:

710 (a) the person is required to renew the person's notification; or

711 (b) the commissioner specifically requests earlier notification.

712 Section 19. Section **70D-2-203**, which is renumbered from Section 70D-1-12 is
713 renumbered and amended to read:

714 ~~[70D-1-12].~~ **70D-2-203. Fees -- Examination.**

715 (1) (a) ~~[Each]~~ A person required to file notification under this part shall pay to the
716 commissioner:

717 (i) a fee of \$200 [to the department] with [its] the person's initial notification[;]; and
718 ~~[shall thereafter pay to the department, on or before January 31 of each year;]~~

719 (ii) an annual fee, on or before January 31 of each year, in an amount to be set by rule
720 of the [department] commissioner subject to Subsection (1)(b).

721 ~~[(b) The department]~~

722 (b) The commissioner:

723 (i) subject to Subsection (1)(b)(ii), shall set the annual renewal fee at an amount
724 ~~[which will generate]~~ that generates sufficient revenue to cover the department's costs of
725 administering this chapter~~[, but in no event shall the fee exceed]; and~~

726 (ii) may not set an annual renewal fee that exceeds \$100 per renewal.

727 (2) (a) If the ~~[department]~~ commissioner has probable cause to believe that a
728 ~~[mortgage]~~ lender, broker, or servicer has violated ~~[the provisions of]~~ this chapter, the
729 ~~[department]~~ commissioner may require the lender, broker, or servicer to make ~~[any or all of]~~

730 ~~its books and records]~~ a record of the lender, broker, or servicer relating to its activities as a
 731 lender, broker, or servicer available to the ~~[department or its]~~ commissioner or the
 732 commissioner's authorized representative for examination~~[-, and to].~~

733 (b) A lender, broker, or servicer described in Subsection (2)(a) shall:

734 (i) reimburse the department for [any] travel and other reasonable and necessary costs
 735 incurred in the examination[-] described in Subsection (2)(a); and

736 (ii) pay to the [department] commissioner a fee set by the [department] commissioner
 737 based on an hourly rate per each examiner, not to exceed [~~\$320 per day per~~] \$55 per hour for
 738 each examiner.

739 (3) No portion of ~~[any fees]~~ a fee paid or owed to the [department] commissioner
 740 under this section [are] is refundable because a person voluntarily or involuntarily ceases to do
 741 business as a [mortgage] lender, broker, or servicer:

742 (a) during the period covered by the fee; or [prior to]

743 (b) before the time of an examination by the [department of records pertaining to
 744 preceding transactions] commissioner of a record pertaining to a transaction preceding the day
 745 on which the person ceases to do business as a lender, broker, or servicer.

746 Section 20. Section **70D-2-301**, which is renumbered from Section 70D-1-9 is
 747 renumbered and amended to read:

748 **Part 3. Operational Requirements**

749 ~~[70D-1-9].~~ **70D-2-301. Record retention.**

750 ~~[Every mortgage]~~ A lender, broker, [and] or servicer shall keep and maintain at all
 751 times in its principal place of business the records of [its] a mortgage loan [transactions]
 752 transaction of the lender, broker, or servicer as required by the rules of the [department]
 753 commissioner.

754 Section 21. Section **70D-2-302**, which is renumbered from Section 70D-1-5 is
 755 renumbered and amended to read:

756 ~~[70D-1-5].~~ **70D-2-302. Notice required with loan application.**

757 ~~[Every mortgage]~~ (1) If the following is the case, a lender and [mortgage loan] broker

758 shall ~~[give, to each]~~ notify in writing a person from whom ~~[it]~~ the lender or broker receives or
 759 for whom ~~[it]~~ the lender or broker prepares a written application for a mortgage loan~~[-a~~
 760 ~~written notice disclosing, if such is the case,]~~ that:

761 (a) the mortgage loan applied for may be sold or assigned~~[-or]~~;

762 (b) the servicing of the loan may be sold or assigned~~[-]~~; and ~~[that]~~

763 (c) the mortgage loan will not necessarily be held or serviced by the lender ~~[which]~~
 764 that originates [it. The] the mortgage loan.

765 (2) A lender and broker shall provide a written notice required by this section ~~[shall be~~
 766 ~~provided]~~ at the time of receipt or preparation of the written application for a mortgage loan.

767 Section 22. Section **70D-2-303**, which is renumbered from Section 70D-1-7 is
 768 renumbered and amended to read:

769 ~~[70D-1-7].~~ **70D-2-303. Notice upon closing -- Ongoing duty to notify --**
 770 **Statements required.**

771 (1) At the time of closing of ~~[any]~~ a mortgage loan ~~[the]~~, a lender shall notify the
 772 mortgagor in writing of:

773 (a) the name of the initial servicer ~~[which will be servicing]~~ that will service the loan;
 774 and

775 (b) the address at which a loan ~~[payments]~~ payment should be made.

776 (2) (a) ~~[In the event]~~(i) If the servicing of a mortgage loan is assigned, the servicer
 777 ~~[which assigned]~~ that assigns the servicing and the successor servicer shall each mail, at least
 778 ten days before the due date of the first mortgage payment due after the assignment, a written
 779 notice to the mortgagor~~[-at his last known address contained in the assigning servicer's~~
 780 ~~records,]~~ notifying the mortgagor of:

781 (A) the assignment of servicing; and ~~[of]~~

782 (B) the address at which future loan payments should be made.

783 (ii) A notice required by this Subsection (2)(a) shall be mailed to the mortgagor's last
 784 known address contained in the assigning servicer's records.

785 (b) Unless ~~[the]~~ an assigning servicer regularly provides the information in a monthly

786 ~~[statements to mortgagors]~~ statement to a mortgagor, the notice from the assigning servicer
787 shall ~~[also]~~ include the following information in addition to the information required by
788 Subsection (2)(a):

789 (i) the date and amount of ~~[all]~~ the payments credited to the account within the
790 previous 12-month period;

791 (ii) the balance in any escrow ~~[accounts]~~ account held by the servicer; and

792 (iii) the total unpaid balance of the mortgage loan.

793 (c) The ~~[servicers]~~ servicer that assigns the servicing and the successor servicer may,
794 at their option, comply with the requirements of this Subsection (2) by both signing one notice
795 and ~~[causing it to be mailed]~~ mailing the notice to the mortgagor.

796 (d) ~~[The signatures on any]~~ A signature on a notice required by this section may be
797 printed, stamped, or ~~[other]~~ in another facsimile ~~[signatures]~~.

798 (e) ~~[The]~~ A lender and ~~[any]~~ a subsequent servicer of ~~[the]~~ a mortgage loan shall
799 comply with ~~[the requirements of]~~ Section 7-17-6.

800 (3) (a) ~~[Inadvertent errors in the notices]~~ An inadvertent error in a notice required in
801 Subsection (2) ~~[shall]~~ may not be construed to waive ~~[any payments which]~~ a payment that
802 would otherwise be due from ~~[the]~~ a mortgagor.

803 (b) ~~[No]~~ A late payment penalty may not be assessed against a mortgagor with respect
804 to a payment ~~[which]~~ that is misdirected because of ~~[errors in the notices]~~:

805 (i) an error in a notice required in Subsection (2); or

806 (ii) a failure to timely mail ~~[the notices]~~ a notice required in Subsection (2).

807 (4) A lender or servicer ~~[of a mortgage loan]~~ must credit to the mortgagor's account
808 ~~[any]~~ a payment received as of the ~~[date it was received]~~ day on which the payment is received
809 or by the next banking day, unless:

810 (a) the payment is insufficient to pay the principal, interest, late charges, and ~~[the]~~
811 reserves then due;

812 (b) the mortgage loan ~~[has been]~~ is referred to an attorney because of default; or

813 (c) the payment is received at an address other than the address for payment specified

814 in writing to the mortgagor.

815 Section 23. Section **70D-2-304**, which is renumbered from Section 70D-1-8 is
816 renumbered and amended to read:

817 ~~[70D-1-8].~~ **70D-2-304. Statement to be provided.**

818 (1) Unless a ~~[mortgage loan]~~ servicer regularly provides the information described in
819 ~~[Subsections (a), (b), and (c) in monthly statements to mortgagors]~~ this Subsection (1) in a
820 monthly statement to a mortgagor, the servicer shall deliver to a mortgagor, within 15 days
821 after receipt of a written request, a statement of the mortgagor's account including the
822 following information:

823 (a) the date and amount of ~~[all]~~ the payments credited to the account within the
824 previous 12-month period;

825 (b) the balance in any escrow ~~[accounts]~~ account held by the servicer; and

826 (c) the total unpaid balance of the mortgage loan.

827 (2) ~~[The]~~ A servicer shall provide the first two statements requested for an account in
828 ~~[any]~~ a 12-month period ~~[shall be provided]~~ without charge. If more than two statements are
829 requested for the same account in a 12-month period, the servicer may charge a reasonable fee
830 for ~~[the]~~ an additional ~~[statements]~~ statement.

831 Section 24. Section **70D-2-305**, which is renumbered from Section 70D-1-6 is
832 renumbered and amended to read:

833 ~~[70D-1-6].~~ **70D-2-305. Fee restrictions.**

834 ~~[No mortgage]~~ A lender or broker may not accept ~~[any]~~ a fee or deposit from an
835 applicant for a mortgage loan unless at the time the lender or broker accepts the fee or deposit
836 there is a written statement:

837 (1) signed by the applicant;

838 (2) stating whether or not the fee or deposit is refundable; and

839 (3) describing the conditions, if any, under which all or a portion of the fee or deposit
840 will be refunded to the applicant.

841 Section 25. Section **70D-2-401**, which is renumbered from Section 70D-1-20 is

842 renumbered and amended to read:

843 **Part 4. Manufactured and Mobile Homes**

844 ~~70D-1-20~~. 70D-2-401. **Qualification of manufactured home or mobile home as**
845 **improvement to real property -- Requirements -- Removal from property.**

846 (1) Except as provided in this section, for purposes of this chapter, a manufactured
847 home or mobile home ~~shall be~~ is considered personal property.

848 (2) Notwithstanding Subsection (1), for purposes of this chapter, if the requirements of
849 this section are met, a manufactured home or mobile home ~~shall be~~ is:

850 (a) considered to be an improvement to real property; and

851 (b) considered as real property.

852 (3) A manufactured home or mobile home ~~shall be~~ is considered to be an
853 improvement to real property if:

854 (a) the manufactured home or mobile home is permanently affixed to real property;

855 (b) the person seeking to have the manufactured home or mobile home considered to
856 be an improvement to real property:

857 (i) owns the manufactured home or mobile home; ~~and~~

858 (ii) (A) owns the real property to which the manufactured home or mobile home is
859 permanently affixed; or

860 (B) leases the real property to which the manufactured home or mobile home is
861 permanently affixed and the real property is financed in accordance with Subsection (4); and

862 (iii) meets the requirements of Subsections (5) and (6); and

863 (c) in accordance with Subsection (7), the following are recorded by the county
864 recorder:

865 (i) the affidavit of affixture described in Subsection (7); and

866 (ii) the receipt of surrender described in Subsection (7).

867 (4) For purposes of Subsection (3)(b)(ii)(B), a manufactured home or mobile home
868 shall be financed in accordance with the guidelines established by:

869 (a) the Federal Home Loan Mortgage Corporation;

870 (b) the Federal National Mortgage Association;

871 (c) the United States Department of Agriculture; or

872 (d) another entity that requires as part of the entity's financing program restrictions:

873 (i) on:

874 (A) ownership; and

875 (B) actions affecting title and possession; and

876 (ii) if the restrictions described in Subsection (4)(d)(i) are similar to restrictions

877 imposed by one or more of the entities described in Subsections (4)(a) through (c).

878 (5) (a) An owner of a manufactured home or mobile home seeking to have the

879 manufactured home or mobile home considered to be an improvement to real property and

880 considered real property shall complete an affidavit of affixture.

881 (b) An affidavit of affixture described in Subsection (5)(a) shall contain:

882 (i) the vehicle identification numbers of the manufactured home or mobile home;

883 (ii) the legal description of the real property to which the manufactured home or

884 mobile home is permanently affixed;

885 (iii) a statement certified by the assessor of the county in which the manufactured

886 home or mobile home is located that the owner of the manufactured home or mobile home:

887 (A) is not required to pay personal property tax in this state on the manufactured home

888 or mobile home; or

889 (B) if the manufactured home or mobile home is subject to personal property tax in

890 this state, has paid all current and prior year personal property taxes assessed on the

891 manufactured home or mobile home;

892 (iv) a description of any security interests in the manufactured home or mobile home;

893 and

894 (v) a receipt of surrender issued by the Motor Vehicle Division of the State Tax

895 Commission in accordance with Subsection (6).

896 (6) (a) The Motor Vehicle Division of the State Tax Commission shall issue a receipt

897 of surrender under Subsection (5)(b)(v) if an owner described in Subsection (5) surrenders to

898 the Motor Vehicle Division the:

899 (i) manufacturer's original certificate of origin; or

900 (ii) title to the manufactured home or mobile home.

901 (b) After issuing the receipt of surrender in Subsection (6)(a), the Motor Vehicle

902 Division shall maintain a permanent record of:

903 (i) the receipt of surrender; and

904 (ii) the certificate or title described in Subsection (6)(a)(ii).

905 (7) (a) An owner shall present to the county recorder:

906 (i) the affidavit of affixture described in Subsection (5); and

907 (ii) the receipt of surrender described in Subsection (6).

908 (b) A county recorder who receives an affidavit of affixture and receipt of surrender
909 described in Subsection (7)(a) shall record the receipt of surrender and affidavit of affixture.

910 (c) An owner of property described in Subsection (5) shall provide a copy of the
911 recorded affidavit of affixture to:

912 (i) the Motor Vehicle Division of the Tax Commission; and

913 (ii) the assessor of the county in which the manufactured home or mobile home is
914 located.

915 (8) A lien on the manufactured home or mobile home that is considered to be an
916 improvement to real property shall be perfected in the manner provided for the perfection of a
917 lien on real property.

918 (9) If a manufactured home or mobile home owner separates the manufactured home
919 or mobile home from the real property, the owner may acquire a new title by submitting to the
920 Motor Vehicle Division of the State Tax Commission:

921 (a) a recorded affidavit that the manufactured home or mobile home [~~has been~~] is
922 removed from the real property; and

923 (b) an application for a new title.

924 (10) The determination of whether a manufactured home or mobile home is
925 considered real property or personal property under this section may not be considered in

926 determining whether the manufactured home or mobile home is real property or personal
 927 property for purposes of taxation under Title 59, Chapter 2, Property Tax Act.

928 Section 26. Section **70D-2-501**, which is renumbered from Section 70D-1-13 is
 929 renumbered and amended to read:

930 **Part 5. Remedies and Enforcement**

931 **~~70D-1-13~~. 70D-2-501. Civil liability -- Misdemeanor.**

932 (1) (a) A [~~mortgage~~] lender, broker, or servicer who violates [~~any of the provisions of~~]
 933 this chapter is liable to [~~any~~] an injured party for actual damages.

934 (b) In [~~any~~] an action filed to determine the liability of a [~~mortgage~~] lender, broker, or
 935 servicer for damages under [~~the provisions of~~] this chapter, the prevailing party is entitled to
 936 court costs and [~~attorney's~~] attorney fees.

937 (2) [~~Any~~] A person who wilfully violates [~~any of the provisions of~~] this chapter is
 938 guilty of a class A misdemeanor.

939 Section 27. Section **70D-2-502**, which is renumbered from Section 70D-1-14 is
 940 renumbered and amended to read:

941 **~~70D-1-14~~. 70D-2-502. Enforcement -- Rulemaking -- Federal law.**

942 [~~(1) The department has the power, within the limitations provided by]~~

943 (1) The commissioner may:

944 (a) in accordance with Title 63G, Chapter 4, Administrative Procedures Act[~~, to~~]:

945 [~~(a)~~] (i) receive and act on [~~complaints~~] a complaint;

946 (ii) take action designed to obtain voluntary compliance with this chapter; or

947 (iii) commence [~~proceedings on its~~] a proceeding on the commissioner's own initiative
 948 to enforce compliance with this chapter;

949 (b) counsel [~~persons and groups on their~~] a person or group on the person's or group's
 950 rights and duties under this chapter;

951 (c) [~~adopt, amend, and repeal~~] make rules in accordance with Title 63G, Chapter 3,
 952 Utah Administrative Rulemaking Act, to:

953 (i) restrict or prohibit a lending or servicing [~~practices which are~~] practice that is

954 misleading, unfair, or abusive;

955 (ii) promote or assure fair and full disclosure of the terms and conditions of
956 [~~agreements and communications between mortgage lenders or servicers and borrowers; or~~] an
957 agreement or communication between:

958 (A) a lender or servicer; and

959 (B) a borrower; or

960 (iii) promote or assure uniform application of or to resolve ambiguities in applicable
961 state or federal laws or federal regulations; and

962 (d) employ hearing examiners, clerks, and other employees and agents as necessary to
963 perform [~~its~~] the commissioner's duties under this chapter.

964 [~~(2) A rule or any part of a rule adopted by the department pursuant to this chapter~~
965 ~~may not be determined by any judicial or other authority to be invalid in whole or in part~~
966 ~~unless the judicial or other authority expressly finds that the rule or a part of it:]~~

967 [~~(a) is arbitrary, capricious, constitutes an abuse of discretion;]~~

968 [~~(b) exceeds the authority granted to the department by this chapter; or]~~

969 [~~(c) is otherwise unlawful.]~~

970 [~~(3)~~] (2) (a) A person subject to this chapter violates this chapter if the person violates
971 a federal law:

972 (i) that is applicable to the person because of the activities that make the person
973 subject to this chapter; and

974 (ii) pursuant to the terms of the federal law in effect on the day the person violates the
975 federal law.

976 (b) The [~~department~~] commissioner shall by rule, made in accordance with Title 63G,
977 Chapter 3, Utah Administrative Rulemaking Act, and consistent with this chapter, designate
978 which one or more federal laws are applicable to a person described in Subsection [~~(3)~~] (2)(a).

979 (c) (i) Notwithstanding the other provisions of this chapter, only the [~~department~~]
980 commissioner may enforce or bring an action under this chapter for a violation described in
981 this Subsection [~~(3)~~] (2).

982 (ii) The ~~[department]~~ commissioner may bring an action under this Subsection ~~[(3)]~~
 983 (2) in state court.

984 Section 28. Section **70D-2-503**, which is renumbered from Section 70D-1-15 is
 985 renumbered and amended to read:

986 ~~[70D-1-15].~~ **70D-2-503. Investigation.**

987 (1) (a) If the ~~[department]~~ commissioner has probable cause to believe that a
 988 ~~[mortgage]~~ lender, broker, or servicer has violated ~~[any]~~ a law, rule, or ~~[regulations]~~ federal
 989 regulation relating to its business or ~~[any]~~ an obligation to a mortgagor, ~~[it]~~ the commissioner
 990 may ~~[make an investigation]~~ investigate to determine if a violation has been committed.

991 (b) To the extent necessary for ~~[this purpose, the department may administer oaths or~~
 992 affirmations] an investigation under this section, the commissioner may:

993 (i) administer an oath or affirmation under penalty of perjury~~[-];~~ and~~[-];~~

994 (ii) upon ~~[its]~~ the commissioner's own motion or upon request of any person~~[-, may];~~

995 (A) subpoena ~~[witnesses,]~~ a witness;

996 (B) compel ~~[their]~~ the attendance~~[-];~~ of a witness;

997 (C) adduce evidence under penalty of perjury~~[-];~~ and

998 (D) require the production of ~~[any]~~ a matter ~~[which]~~ that is relevant to the
 999 investigation, including:

1000 (I) the existence, description, nature, custody, condition, and location of ~~[any books,~~
 1001 documents, or other tangible things] a record or other tangible thing of any kind or nature; and

1002 (II) the identity and location of ~~[persons]~~ a person having knowledge of a relevant
 1003 ~~[facts]~~ fact, or any other matter reasonably calculated to lead to the discovery of admissible
 1004 evidence.

1005 (2) (a) If the ~~[department]~~ commissioner requires a person to produce ~~[records which~~
 1006 are] a record that is located outside this state, the person shall ~~[either];~~

1007 (i) make ~~[them]~~ the record available to the ~~[department]~~ commissioner at a convenient
 1008 location within this state; or

1009 (ii) pay the reasonable and necessary expenses for the department to examine ~~[them]~~

1010 the record at the place where ~~[they are]~~ the record is maintained.

1011 (b) The ~~[department]~~ commissioner may designate one or more representatives,
1012 including ~~[officials]~~ an official of the state in which ~~[the records are]~~ a record is located, to
1013 inspect ~~[them]~~ the record on ~~[its]~~ behalf of the commissioner.

1014 (3) Upon failure without lawful excuse to obey a subpoena or give testimony, and
1015 upon reasonable notice to ~~[all]~~ affected persons, the ~~[department]~~ commissioner may apply to
1016 the Third District Court or to any other district court for an order compelling compliance.

1017 (4) Unless otherwise required by law, the ~~[department]~~ commissioner may not make
1018 public:

1019 (a) the name or identity of a person whose acts or conduct ~~[it]~~ the commissioner
1020 investigates pursuant to this section; or

1021 (b) the facts disclosed in the investigation.

1022 (5) Subsection (4) does not apply to ~~[disclosures]~~ a disclosure in an enforcement
1023 ~~[proceedings]~~ proceeding conducted pursuant to this chapter.

1024 Section 29. Section **70D-2-504**, which is renumbered from Section 70D-1-16 is
1025 renumbered and amended to read:

1026 ~~[70D-1-16].~~ **70D-2-504. Orders.**

1027 (1) If the ~~[department]~~ commissioner determines that ~~[any]~~ a person engaging in
1028 business as a ~~[mortgage]~~ lender, broker, or servicer is violating, has violated, or the
1029 ~~[department]~~ commissioner has reasonable cause to believe is about to violate ~~[any provision~~
1030 ~~of]~~ this chapter or ~~[any]~~ a rule of the ~~[department]~~ commissioner made under this chapter, the
1031 ~~[department]~~ commissioner may:

1032 (a) order the person to cease and desist from committing ~~[any further violations;]~~ a
1033 further violation; and

1034 (b) in the most serious instances may prohibit the person from continuing to engage in
1035 business as a ~~[mortgage]~~ lender, broker, or servicer.

1036 ~~[(2) The department shall afford an opportunity for hearing upon request of any person~~
1037 ~~alleged to have violated this chapter if the request is filed with the department within 30 days~~

1038 after the person requesting the hearing first receives notice of the allegations.]

1039 ~~[(3)]~~ (2) (a) If the ~~[department]~~ commissioner determines that a practice ~~[which it has~~
1040 ~~alleged]~~ that the commissioner alleges is unlawful should be enjoined during the pendency of
1041 ~~[any proceedings]~~ a proceeding incident to ~~[that]~~ an allegation, ~~[it]~~ the commissioner may
1042 issue a temporary order in accordance with Section 63G-4-502:

1043 (i) at the commencement of the proceedings; ~~or [at any time thereafter which is fully~~
1044 ~~binding on the person to whom the temporary order is directed until the proceedings are~~
1045 ~~concluded or the temporary order is modified or dissolved by the department.]~~

1046 ~~[(b)]~~ Any person to whom a temporary order is directed may request a hearing
1047 concerning the order, which shall be held at the earliest mutually convenient time, but in no
1048 event more than ten days after the person's request is received by the department unless the
1049 department and the person requesting the hearing mutually agree to a later time.]

1050 ~~[(c)]~~ Every temporary order shall include findings and conclusions in support of it.]

1051 (ii) at any time after the proceeding commences.

1052 ~~[(d)]~~ (b) For purposes of Section 63G-4-502, an immediate and significant danger to
1053 the public health, safety, or welfare exists if the ~~[department]~~ commissioner finds from
1054 specific facts supported by sworn statement or the records of a person subject to the order that
1055 loan applicants or mortgagors are otherwise likely to suffer immediate and irreparable injury,
1056 loss, or damage before ~~[proceedings]~~ a proceeding incident to a final order can be completed.

1057 ~~[(4)]~~ (3) The ~~[department]~~ commissioner may not award damages or penalties under
1058 this chapter against a ~~[mortgage]~~ lender, broker, or servicer.

1059 ~~[(5)]~~ (4) (a) ~~[Any]~~ An order issued by the ~~[department]~~ commissioner under ~~[authority~~
1060 ~~of]~~ this chapter shall:

1061 (i) be in writing[;];

1062 (ii) be delivered to or served upon the person affected[;]; and

1063 (iii) specify ~~[its]~~ the order's effective date, which may be immediate or at a later date.

1064 (b) ~~[Orders shall remain]~~ An order remains in effect until:

1065 (i) withdrawn by the ~~[department]~~ commissioner; or ~~[until]~~

1066 (ii) terminated by a court order. ~~[The]~~
 1067 (c) An order of the ~~[department]~~ commissioner, upon application made on or after ~~[its]~~
 1068 the order's effective date to the Third District Court, or in any other district court, may be
 1069 enforced ex parte and without notice by an order to comply entered by the court.

1070 Section 30. Section **70D-2-505**, which is renumbered from Section 70D-1-17 is
 1071 renumbered and amended to read:

1072 ~~[70D-1-17].~~ **70D-2-505. Relief from order.**

1073 ~~[Any]~~ A person aggrieved by ~~[any]~~ a rule, order, temporary order, decision, ruling, or
 1074 other act or failure to act by the ~~[department]~~ commissioner under this chapter is entitled to
 1075 judicial review as provided under Title 63G, Chapter 4, Administrative Procedures Act.

1076 Section 31. Section **70D-2-506**, which is renumbered from Section 70D-1-18 is
 1077 renumbered and amended to read:

1078 ~~[70D-1-18].~~ **70D-2-506. Civil liability.**

1079 Nothing in this chapter ~~[is intended to limit]~~ limits any civil liability ~~[which]~~ that may
 1080 exist against a ~~[mortgage]~~ lender, broker, or servicer for breach of contract or other ~~[wrongs]~~
 1081 wrong committed against a mortgagor.

1082 Section 32. Section **70D-3-101** is enacted to read:

1083 **CHAPTER 3. FINANCIAL INSTITUTION LOAN ORIGINATOR LICENSING ACT**

1084 **Part 1. General Provisions**

1085 **70D-3-101. Title.**

1086 This chapter is known as the "Financial Institution Loan Originator Licensing Act."

1087 Section 33. Section **70D-3-102** is enacted to read:

1088 **70D-3-102. Definitions.**

1089 As used in this chapter:

1090 (1) "Administrative or clerical tasks" means:

1091 (a) the receipt, collection, and distribution of information common for the process or
 1092 underwriting of a loan in the mortgage industry; and

1093 (b) a communication with a consumer to obtain information necessary for the

1094 processing or underwriting of a residential mortgage loan.

1095 (2) "Affiliate" shall be defined by the commissioner by rule made in accordance with
1096 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1097 (3) "Applicant" means an individual applying for a license under this chapter.

1098 (4) "Approved examination provider" means a person approved by the nationwide
1099 database as an approved test provider.

1100 (5) "Business as a loan originator" means for compensation or in the expectation of
1101 compensation to engage in an act that makes an individual a loan originator.

1102 (6) "Clerical or support duties" includes after the receipt of an application for a
1103 residential mortgage loan:

1104 (a) the receipt, collection, distribution, and analysis of information common for the
1105 processing or underwriting of a residential mortgage loan; and

1106 (b) communicating with a consumer to obtain the information necessary for the
1107 processing or underwriting of the residential mortgage loan, to the extent that the
1108 communication does not include:

1109 (i) offering or negotiating a residential mortgage loan rate or term; or

1110 (ii) counseling a consumer about a residential mortgage loan rate or term.

1111 (7) "Compensation" means anything of economic value that is paid, loaned, granted,
1112 given, donated, or transferred to an individual or entity for or in consideration of:

1113 (a) services;

1114 (b) personal or real property; or

1115 (c) another thing of value.

1116 (8) "Continuing education" means education taken by an individual licensed under
1117 this chapter in order to meet the education requirements imposed by Section 70D-3-303 to
1118 renew a license under this chapter.

1119 (9) "Covered subsidiary" means a subsidiary that is:

1120 (a) owned and controlled by a depository institution; and

1121 (b) regulated by a federal banking agency.

- 1122 (10) "Federal banking agency" means:
1123 (a) the Board of Governors of the Federal Reserve System;
1124 (b) the Comptroller of the Currency;
1125 (c) the Director of the Office of Thrift Supervision;
1126 (d) the National Credit Union Administration; or
1127 (e) the Federal Deposit Insurance Corporation.
1128 (11) "Licensee" means an individual licensed under this chapter.
1129 (12) (a) Except as provided in Subsection (12)(b), "loan originator" means an
1130 individual who for compensation or in the expectation of compensation:
1131 (i) takes a residential mortgage loan application; or
1132 (ii) offers or negotiates a term of a residential mortgage loan.
1133 (b) "Loan originator" does not include:
1134 (i) an individual who is engaged solely as a loan processor or underwriter;
1135 (ii) unless compensated by a lender, broker, other loan originator, or an agent of a
1136 lender, broker, or other loan originator, a person who:
1137 (A) only performs real estate brokerage activities; and
1138 (B) is licensed under Title 61, Chapter 2, Division of Real Estate;
1139 (iii) a person who is solely involved in extension of credit relating to a timeshare plan,
1140 as defined in 11 U.S.C. Sec. 101(53D); or
1141 (iv) an attorney licensed to practice law in this state who, in the course of the
1142 attorney's practice as an attorney, assists a person in obtaining a residential mortgage loan.
1143 (13) "Loan processor or underwriter" means an individual who as an employee
1144 performs clerical or support duties:
1145 (a) at the direction of and subject to the supervision and instruction of:
1146 (i) a licensee; or
1147 (ii) a registered loan originator; and
1148 (b) as an employee of:
1149 (i) the licensee; or

- 1150 (ii) a registered loan originator.
- 1151 (14) "Nationwide database" means the Nationwide Mortgage Licensing System and
- 1152 Registry, authorized under Secure and Fair Enforcement for Mortgage Licensing, 12 U.S.C.
- 1153 Sec. 5101, et seq.
- 1154 (15) "Nontraditional mortgage product" means a mortgage product other than a
- 1155 30-year fixed rate mortgage.
- 1156 (16) "Owned and controlled by a depository institution" may be defined by rule made
- 1157 by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative
- 1158 Rulemaking Act.
- 1159 (17) "Prelicensing education" means education taken by an individual seeking to be
- 1160 licensed under this chapter in order to meet the education requirements imposed by Section
- 1161 70D-3-301 for an individual to obtain a license under this chapter.
- 1162 (18) "Registered loan originator" means an individual who:
- 1163 (a) engages in an act as a loan originator only as an employee of:
- 1164 (i) a depository institution;
- 1165 (ii) a covered subsidiary; or
- 1166 (iii) an institution regulated by the Farm Credit Administration; and
- 1167 (b) is registered with, and maintains a unique identifier through, the nationwide
- 1168 database.
- 1169 (19) (a) Subject to Subsection (19)(b), "residential mortgage loan" means:
- 1170 (i) a mortgage loan; or
- 1171 (ii) a loan that is:
- 1172 (A) secured by a mortgage; and
- 1173 (B) subject to Title 70C, Utah Consumer Credit Code.
- 1174 (b) A loan described in Subsection (19)(a) is a "residential mortgage loan" only if the
- 1175 mortgage securing the loan is on:
- 1176 (i) a dwelling located in the state; or
- 1177 (ii) real property located in the state, upon which is constructed or intended to be

1178 constructed a dwelling.

1179 (20) "Unique identifier" is as defined in 12 U.S.C. Sec. 5102.

1180 Section 34. Section **70D-3-103** is enacted to read:

1181 **70D-3-103. General powers and duties of commissioner.**

1182 Subject to this chapter:

1183 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,

1184 the commissioner may make rules authorized by this chapter, including:

1185 (a) providing for an interim procedure for:

1186 (i) licensing; and

1187 (ii) acceptance of an application; and

1188 (b) coordination between filings required under this chapter and:

1189 (i) Title 70C, Utah Consumer Credit Code; or

1190 (ii) Chapter 2, Mortgage Lending and Servicing Act.

1191 (2) The commissioner may enter into a relationship or contract with the nationwide

1192 database or another entity designated by the nationwide database to do the following related to

1193 a licensee or other person subject to this chapter:

1194 (a) collect or maintain a record; and

1195 (b) process a transaction fee or other fee.

1196 (3) The commissioner shall regularly report the following to the nationwide database:

1197 (a) a violation of this chapter;

1198 (b) disciplinary action under Section 70D-3-501; and

1199 (c) other information relevant to this chapter.

1200 Section 35. Section **70D-3-201** is enacted to read:

1201 **Part 2. Licensing Requirements and Procedures**

1202 **70D-3-201. Licensing required -- Exemptions.**

1203 (1) (a) On or after January 1, 2011, except as provided in Subsection (2), an individual

1204 described in Subsection (1)(b) may not engage in the business of a loan originator unless that

1205 individual:

1206 (i) is licensed under this chapter; or
1207 (ii) is a registered loan originator.
1208 (b) This Subsection (1) applies to an employee or agent of:
1209 (i) a depository institution;
1210 (ii) a subsidiary of a depository institution; or
1211 (iii) an affiliate of a depository institution.
1212 (2) An individual described in Subsection (1)(b) may engage in the business of a loan
1213 originator without being licensed under this chapter or a registered loan originator when acting
1214 as a loan processor or underwriter.
1215 Section 36. Section **70D-3-202** is enacted to read:
1216 **70D-3-202. Qualifications for licensure.**
1217 To qualify for a license under this chapter an individual shall comply with all of the
1218 following, the individual:
1219 (1) shall comply with 12 U.S.C. Sec. 5104 to register with and maintain a unique
1220 identifier through the nationwide database;
1221 (2) may not have had a loan originator license revoked in a governmental jurisdiction;
1222 (3) may not have been convicted of, or pled guilty or no contest to, a felony:
1223 (a) during the seven years preceding the day on which the individual files an
1224 application; or
1225 (b) at any time, if the felony involves an act of:
1226 (i) fraud;
1227 (ii) dishonesty;
1228 (iii) breach of trust; or
1229 (iv) money laundering;
1230 (4) shall demonstrate financial responsibility, character, and general fitness such as to:
1231 (a) command the confidence of the community; and
1232 (b) warrant a determination that the individual will operate as a loan originator
1233 honestly, fairly, and efficiently within the purposes of this chapter;

- 1234 (5) shall be covered by a surety bond posted in accordance with Section 70D-3-205;
- 1235 (6) shall complete the precicensing education required by Section 70D-3-301; and
- 1236 (7) shall pass the written examination required by Section 70D-3-302.

1237 Section 37. Section **70D-3-203** is enacted to read:

1238 **70D-3-203. Initial licensure procedure.**

1239 (1) To apply for licensure under this chapter an individual shall:

1240 (a) file an application with the commissioner in a form prescribed by the
1241 commissioner in rule;

1242 (b) demonstrate that the individual provided the information to the nationwide
1243 database required by 12 U.S.C. Sec. 5104;

1244 (c) provide the commissioner the individual's unique identifier;

1245 (d) consent to the commissioner receiving information obtained by the nationwide
1246 database under 12 U.S.C. Sec. 5104, including the results of a criminal history background
1247 check; and

1248 (e) notwithstanding the requirements applicable to a regulatory fee under Section
1249 63J-1-303, pay a fee of \$200.

1250 (2) The commissioner shall grant an individual a license if the commissioner finds that
1251 the individual complies with:

1252 (a) Subsection (1); and

1253 (b) the qualifications for a license under Section 70D-3-202.

1254 (3) Subject to this chapter, the commissioner may make rules in accordance with Title
1255 63G, Chapter 3, Utah Administrative Rulemaking Act, concerning:

1256 (a) the form of an application under this chapter;

1257 (b) the content of an application under this chapter; and

1258 (c) the procedures for filing an application under this chapter.

1259 Section 38. Section **70D-3-204** is enacted to read:

1260 **70D-3-204. Renewal of license.**

1261 (1) A license issued under this chapter expires on December 31 of each year.

- 1262 (2) To qualify to renew a license under this chapter an individual shall:
- 1263 (a) meet the requirements of Section 70D-3-202; and
- 1264 (b) complete the annual continuing education requirements of Section 70D-3-303.
- 1265 (3) To renew a license under this chapter an individual shall:
- 1266 (a) file an application with the commissioner in a form prescribed by the
- 1267 commissioner in rule;
- 1268 (b) demonstrate that the individual continues to meet the requirements related to the
- 1269 nationwide database under 12 U.S.C. Sec. 5104;
- 1270 (c) demonstrate completion of the continuing education requirements; and
- 1271 (d) notwithstanding the requirements applicable to a regulatory fee under Section
- 1272 63J-1-303, pay a fee of \$100.

Section 39. Section **70D-3-205** is enacted to read:

70D-3-205. Surety bond requirements.

- 1275 (1) (a) To be licensed under this chapter an individual shall be covered by a surety
- 1276 bond that meets the minimum surety bonding requirements required by rule.
- 1277 (b) If an action is brought against a bond under this chapter, the commissioner may
- 1278 require that another bond be posted.

- 1279 (2) The commissioner shall by rule made in accordance with Title 63G, Chapter 3,
- 1280 Utah Administrative Rulemaking Act, establish minimum surety bonding requirements under
- 1281 this section, except that the requirements shall:

- 1282 (a) reflect the dollar amount of residential mortgage loans originated by a loan
- 1283 originator; and
- 1284 (b) ensure that if in accordance with this chapter a surety bond is posted by an
- 1285 employer or other entity on behalf of an individual, the bond covers the activities of the
- 1286 individual regulated by this chapter.

Section 40. Section **70D-3-206** is enacted to read:

70D-3-206. Challenging information in the nationwide database.

The commissioner shall by rule made in accordance with Title 63G, Chapter 3, Utah

1290 Administrative Rulemaking Act, provide a process under which an individual may challenge
1291 information contained in the nationwide database.

1292 Section 41. Section **70D-3-301** is enacted to read:

1293 **Part 3. Education Requirements**

1294 **70D-3-301. Prelicensing education.**

1295 (1) Before an individual may be licensed under this chapter, the individual shall
1296 complete the number of hours of prelicensing education required by rule made by the
1297 commissioner.

1298 (2) (a) The commissioner shall make the rules described in Subsection (1):

1299 (i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

1300 and

1301 (ii) subject to the requirements of this Subsection (2).

1302 (b) The rules described in Subsection (1) shall require that an individual complete:

1303 (i) at least 20 hours of prelicensing education approved by the nationwide database;

1304 and

1305 (ii) as part of the 20 hours required by Subsection (2)(b)(i):

1306 (A) 3 hours of federal law and regulations;

1307 (B) 3 hours of ethics that include instruction on:

1308 (I) fraud;

1309 (II) consumer protection; and

1310 (III) fair lending issues; and

1311 (C) 2 hours of training related to lending standards for the nontraditional mortgage

1312 product marketplace.

1313 Section 42. Section **70D-3-302** is enacted to read:

1314 **70D-3-302. Examination.**

1315 (1) Before an individual may be licensed under this chapter, the individual shall pass a
1316 written examination that:

1317 (a) meets the requirements of 12 U.S.C. Sec. 5104(d);

1318 (b) is developed by the nationwide database; and
1319 (c) is administered by an approved examination provider.
1320 (2) The commissioner shall make rules made in accordance with Title 63G, Chapter 3,
1321 Utah Administrative Rulemaking Act, that:
1322 (a) require that an individual comply at a minimum with the standards of 12 U.S.C.
1323 Sec. 5104(d); and
1324 (b) address:
1325 (i) what constitutes passing a written examination;
1326 (ii) the ability of an individual to retake a written examination if the individual fails
1327 the written examination; and
1328 (iii) when an individual is required to retake a written examination if an individual
1329 fails to maintain a valid license under this chapter after taking the written examination.
1330 Section 43. Section **70D-3-303** is enacted to read:
1331 **70D-3-303. Continuing education.**
1332 (1) A licensee shall annually complete at least the number of hours of continuing
1333 education required by rule made by the commissioner.
1334 (2) (a) The commissioner shall make the rules described in Subsection (1):
1335 (i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
1336 and
1337 (ii) subject to the requirements of this Subsection (2).
1338 (b) The rules described in Subsection (1) shall require that an individual complete
1339 each calendar year:
1340 (i) eight hours of continuing education approved by the nationwide database;
1341 (ii) as part of the eight hours required by Subsection (2)(b)(i):
1342 (A) three hours of federal law and regulations; and
1343 (B) two hours of ethics that include instruction on:
1344 (I) fraud;
1345 (II) consumer protection; and

1346 (III) fair lending issues; and
1347 (iii) two hours of training related to lending standards for the nontraditional mortgage
1348 product marketplace.

1349 (3) The commissioner shall by rule made in accordance with Title 63G, Chapter 3,
1350 Utah Administrative Rulemaking Act, provide for the calculation of continuing education
1351 hours, except that the rules shall be consistent with 12 U.S.C. Sec. 5105.

1352 Section 44. Section **70D-3-401** is enacted to read:

1353 **Part 4. Operational Requirements and Prohibitions**

1354 **70D-3-401. Record requirements -- Reports of condition.**

1355 (1) An individual required to be licensed under this chapter shall create a record
1356 required by rule made by the commissioner in accordance with Title 63G, Chapter 3, Utah
1357 Administrative Rulemaking Act.

1358 (2) An individual required to be licensed under this chapter shall maintain and
1359 produce for inspection a record required to be maintained by a rule made by the commissioner
1360 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for four years
1361 from the last to occur of the following:

- 1362 (a) the final entry on a residential mortgage loan is made by that licensee;
- 1363 (b) if the residential mortgage loan is serviced by the licensee:
 - 1364 (i) the residential mortgage loan is paid in full; or
 - 1365 (ii) the licensee ceases to service the residential mortgage loan; or
- 1366 (c) if the residential mortgage loan is not serviced by the licensee, the residential
1367 mortgage loan is closed.

1368 (3) An individual required to be licensed under this chapter shall maintain and
1369 produce for inspection by the commissioner a report of condition submitted to the nationwide
1370 database as required by 12 U.S.C. Sec. 5104(e) for at least four years from the day on which
1371 the individual submits the report of condition to the nationwide database.

1372 Section 45. Section **70D-3-402** is enacted to read:

1373 **70D-3-402. Prohibited acts.**

- 1374 (1) An individual transacting the business of a loan originator in this state may not:
1375 (a) violate or not comply with:
1376 (i) this chapter;
1377 (ii) an order of the commissioner under this chapter;
1378 (iii) a rule made by the commissioner under this chapter;
1379 (iv) Title 70C, Utah Consumer Credit Code, if subject to that title; or
1380 (v) Chapter 2, Mortgage Lending and Servicing Act, if subject to that chapter;
1381 (b) engage in an act that is performed to:
1382 (i) evade this chapter; or
1383 (ii) assist another person to evade this chapter;
1384 (c) do any of the following to induce a lender to extend credit as part of a residential
1385 mortgage loan transaction:
1386 (i) make a false statement or representation;
1387 (ii) cause a false document to be generated; or
1388 (iii) knowingly permit false information to be submitted by a person in a transaction;
1389 (d) fail to respond within the required time period to:
1390 (i) a notice or complaint of the commissioner; or
1391 (ii) a request for information from the commissioner;
1392 (e) make a false representation to the commissioner, including in a licensure
1393 application;
1394 (f) engage in the business of a loan originator with respect to a residential mortgage
1395 loan transaction if the individual also acts in any of the following capacities with respect to the
1396 same residential mortgage loan transaction:
1397 (i) appraiser;
1398 (ii) escrow agent;
1399 (iii) real estate agent;
1400 (iv) general contractor; or
1401 (v) title insurance agent;

- 1402 (g) engage in an act or omission in transacting the business of a loan originator that
1403 constitutes dishonesty, fraud, or misrepresentation;
- 1404 (h) engage in false or misleading advertising;
- 1405 (i) (i) fail to account for monies received in connection with a residential mortgage
1406 loan;
- 1407 (ii) use monies for a different purpose than the purpose for which the monies are
1408 received; or
- 1409 (iii) subject to Subsection (3), retain monies paid for services if the services are not
1410 performed;
- 1411 (j) fail, within 90 calendar days of a request from a borrower who has paid for an
1412 appraisal, to give a copy of an appraisal ordered and used for a residential mortgage loan to the
1413 borrower;
- 1414 (k) recommend or encourage default, delinquency, or continuation of an existing
1415 default or delinquency, by a mortgage applicant on an existing indebtedness before the closing
1416 of a residential mortgage loan that will refinance all or part of the indebtedness; or
- 1417 (l) pay or offer to pay an individual who does not hold a license under this chapter for
1418 services that require the individual to hold a license under this chapter.
- 1419 (2) (a) An individual engaging solely in loan processor or underwriter activities, may
1420 not represent to the public that the individual can or will perform any act of a loan originator.
- 1421 (b) A representation prohibited under this Subsection (2) includes an advertisement or
1422 other means of communicating or providing information including the use of:
- 1423 (i) a business card;
- 1424 (ii) stationery;
- 1425 (iii) a brochure;
- 1426 (iv) a sign;
- 1427 (v) a rate list; or
- 1428 (vi) another promotional item.
- 1429 (3) Notwithstanding Subsection (1)(i)(iii), if a licensee complies with Section

1430 70D-2-305, the licensee may charge a reasonable cancellation fee for services completed to
1431 originate a residential mortgage loan if the residential mortgage loan is not closed.

1432 Section 46. Section **70D-3-501** is enacted to read:

1433 **Part 5. Enforcement**

1434 **70D-3-501. Disciplinary action.**

1435 (1) The commissioner may through an adjudicative proceeding subject to Title 63G,
1436 Chapter 4, Administrative Procedures Act, impose a sanction described in Subsection (2)
1437 against an individual if the individual:

1438 (a) is licensed or required to be licensed under this chapter; and

1439 (b) violates this chapter.

1440 (2) The commissioner may against an individual described in Subsection (1) who
1441 violates this chapter:

1442 (a) impose an educational requirement;

1443 (b) impose a civil penalty against the individual in an amount not to exceed the greater
1444 of:

1445 (i) \$2,500 for each violation; or

1446 (ii) the amount equal to any gain or economic benefit derived from each violation;

1447 (c) deny an application for an initial license;

1448 (d) do any of the following to a license under this chapter:

1449 (i) suspend;

1450 (ii) revoke;

1451 (iii) place on probation;

1452 (iv) deny renewal;

1453 (v) deny reinstatement;

1454 (vi) in the case of a denial of a license, set a waiting period for an individual to apply
1455 for a license under this chapter; or

1456 (vii) issue a cease and desist order; or

1457 (e) impose a combination of sanctions described in this Subsection (2).

1458 (3) (a) If the commissioner determines that a practice that the commissioner alleges is
 1459 unlawful should be enjoined during the pendency of a proceeding incident to an allegation, the
 1460 commissioner may issue a temporary order in accordance with Section 63G-4-502:

1461 (i) at the commencement of the proceedings; or

1462 (ii) at any time after the proceeding commences.

1463 (b) For purposes of Section 63G-4-502, an immediate and significant danger to the
 1464 public health, safety, or welfare exists if the commissioner finds from specific facts supported
 1465 by sworn statement or the records of a person subject to the order that loan applicants or
 1466 mortgagors are otherwise likely to suffer immediate and irreparable injury, loss, or damage
 1467 before a proceeding incident to a final order can be completed.

1468 Section 47. Section **70D-3-502** is enacted to read:

1469 **70D-3-502. Investigations.**

1470 (1) The commissioner may investigate the actions of:

1471 (a) a licensee; or

1472 (b) an individual required to be licensed under this chapter.

1473 (2) In conducting an investigation or adjudicative proceeding, the commissioner may:

1474 (a) administer an oath or affirmation under penalty of perjury;

1475 (b) subpoena a witness;

1476 (c) compel the attendance of a witness;

1477 (d) take evidence;

1478 (e) require the production of a record or information relevant to an investigation from
 1479 any person including:

1480 (i) the existence, description, nature, custody, condition, and location of a record or
 1481 other tangible thing of any kind or nature; and

1482 (ii) the identity and location of a person having knowledge of a relevant fact or any
 1483 other matter reasonably calculated to lead to the discovery of admissible evidence; and

1484 (f) serve a subpoena.

1485 (3) A failure to respond to a request by the commissioner in an investigation

1486 authorized under this chapter is considered as a separate violation of this chapter, including:
1487 (a) failing to respond to a subpoena;
1488 (b) withholding evidence; or
1489 (c) failing to produce a record or other information.
1490 (4) In conducting an investigation, the commissioner may inspect and copy a record
1491 related to the business of a loan originator, regardless of whether the record is maintained at a
1492 business location in Utah.
1493 (5) Regardless of whether the commissioner takes action pursuant to an investigation
1494 under this chapter, an individual investigated under this section shall pay to the commissioner
1495 the amounts that would be assessed to a financial institution for an examination under
1496 Subsection 7-1-401(7) including:
1497 (a) a per diem assessment at the rate calculated under Subsection 7-1-401(7); and
1498 (b) if the investigation requires one or more representatives of the commissioner to
1499 travel out of state, the reasonable travel, lodging, and other expenses incurred by each
1500 representative while conducting the investigation.
1501 Section 48. **Repealer.**
1502 This bill repeals:
1503 Section **70D-1-1, Intent statement.**