

Prior law defined "registered mortgage loan originator" as any individual who met the definition of mortgage loan originator and was an employee of a depository institution or a subsidiary that was either owned and controlled by a depository institution and regulated by a federal banking agency or an institution regulated by the Farm Credit Administration and was registered with, and maintained a unique identifier through, the Nationwide Mortgage Licensing System and Registry (NMLS&R).

New law retains prior law.

Prior law provided that, for the purposes of prior law, "employee" included a natural person who was an agent of a depository institution or its controlled and regulated subsidiary acting under the management and supervision of the depository institution or its controlled regulated subsidiary and subject to the oversight of a banking agency, but only if:

- (1) The natural person entered into a written agreement prohibiting the individual from soliciting, processing, negotiating, or placing a mortgage loan with a person other than the institution or its controlled and regulated subsidiary.
- (2) The natural person was not barred from licensure, as determined by the commissioner of financial institutions.
- (3) The natural person acknowledged that he was subject to the authority of the commissioner, as applicable.
- (4) A financial institution acceptable to the commissioner was required to have:
 - (a) Provided an undertaking of accountability supported by a surety bond equal to \$1 million to meet the financial responsibility requirement of prior law and to cover all of the natural persons who are considered to be employees under prior law, which undertaking includes full and direct financial responsibility for the loan origination activities of each such natural person.
 - (b) Paid an annual fee of one half the license fee for a mortgage loan originator times the number of natural persons who are considered exclusive agents as of Dec. 31 of the preceding year, as determined by the commissioner.
 - (c) Provided a business plan acceptable to the commissioner that sets forth the education program for the natural persons, the handling of consumer complaints related to the natural persons, and the supervision of the loan origination activities of the natural persons. The provisions of the business plan were the following:
 - (i) The commissioner had 45 days in which to accept or deny the business plan from its receipt. If the commissioner did not accept or reject the plan within 45 days, the plan was deemed accepted. If the plan was rejected within 45 days, the commissioner was required to make recommendations in writing to the financial institution as to changes in the plan that would render it acceptable.
 - (ii) If the plan was rejected, the financial institution had 45 days to make recommended changes to the plan and resubmit it to the commissioner for reconsideration.
 - (iii) The commissioner had 15 days from the receipt of the resubmitted plan to accept or deny the resubmitted plan. If the resubmitted plan was not accepted or rejected within 15 days, the plan was deemed accepted.
 - (iv) The denial of the plan or dissatisfaction with the substance of the plan entitled the applicant to a hearing before the division of administrative law, provided the applicant filed notice requesting the hearing with the commissioner within 15 days of the receipt of the

commissioner's decision. The commissioner was required to forward the request and any supporting documents to the division of administrative law within 10 days. The hearing was to be scheduled to take place within 60 days from the date a request was received by the division of administrative law, unless continued by all parties, and a decision had to be rendered as expeditiously as possible.

- (v) Any applicant aggrieved by the division of administrative law's decision was entitled to judicial review in the 19th JDC, which would conduct a de novo review. Such action was entitled to priority and preference over all other pending civil matters such that a decision would be rendered as expeditiously as possible.

New law deletes prior law.

Prior law provided exemptions from the provisions of prior law applicable to certain persons engaged in residential mortgage lending activities as a residential mortgage loan originator.

New law retains prior law and adds an exemption for any individual who meets all of the following requirements:

- (1) In any calendar year, originates five or fewer residential mortgage loans exclusively for a single federally chartered depository institution and the loans are closed.
- (2) Is contractually prohibited from soliciting, processing, negotiating, or placing a residential mortgage loan with a person other than the single federally chartered depository institution.
- (3) Enrolls with the Office of Financial Institutions as an individual who originates exclusively with a single federal depository institution until the time any registration with the NMLS&R is required for the individual by federal law or regulation and a suitable category is created for that registration with NMLS&R. Enrollment pursuant to new law must be renewed annually with the Office of Financial Institutions.
- (4) Is not barred from licensure, as determined by the commissioner of financial institutions.
- (5) Is sponsored by a life insurance company or an affiliate of the company which is authorized to engage in business in this state and which is a licensed mortgage loan broker or originator, and which sponsorship shall include all of the following:
 - (a) Providing an undertaking of accountability supported by a surety bond equal to \$1 million to meet the financial requirement of new law and to cover all of the persons who are exempt pursuant to new law, which undertaking includes full and direct financial responsibility for the loan origination activities of each such exempt person.
 - (b) Paying an annual fee on behalf of the individual exempted pursuant to new law in the amount of one half the license fee for a mortgage loan originator to the Office of Financial Institutions.

New law exempts a nonprofit corporation that is providing financial education and counseling to consumers, is exempt from federal taxation under Section 501(c) of the Internal Revenue Code, is approved by the U.S. Dept. of Housing and Urban Development (HUD) to provide housing counseling, and does not originate residential mortgage loans.

New law further exempts individuals employed as residential mortgage loan originators and residential mortgage brokers by the exempt nonprofit corporation.

Prior law authorized the commissioner of financial institutions to exempt mortgage servicer loss mitigation specialists if he determined that an exemption of a mortgage servicer loss mitigation specialist was compliant with the minimum standards of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

New law retains prior law.

New law provides that, if the secretary of the U.S. Dept. of Housing and Urban Development or the director of the Consumer Financial Protection Bureau by final administrative decision determines that new law or the application of new law to any person or circumstance is considered to be in conflict with the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, or any rules or regulations adopted pursuant to that act, new law shall be held invalid; however, the remainder of La. law implementing the federal act or the application of the provisions thereof to other persons or circumstances shall not be affected.

New law provides that, in the event the provisions of new law are null and void or otherwise held invalid, and until such time, any person acting according to the provision of invalidity in new law shall be deemed in compliance with the provisions of new Law and any transactions of any type covered in new law shall be deemed to be lawful and in full force and effect.

New law provides that any licensing requirement for any person operating pursuant to the exception found in new law, should the provisions of new law be null and void or otherwise held invalid, shall not be effective until 180 days after secretary of the U.S. Dept. of Housing and Urban Development or the director of the Consumer Financial Protection Bureau makes such determination of invalidity in writing. This period shall not commence until the commissioner of financial institutions has concurred in this determination and posted official notice of this action on the Office of Financial Institution's official website. The commissioner shall also notify in writing any individual or sponsoring entity enrolled pursuant to new law or any other person requesting notice of such action.

New law provides that, if certain provisions of new law or the application thereof are null and void, or otherwise held invalid, such invalidity shall not affect other provisions or application of new law which can be given effect without the invalid provisions or application and, to this end, the provisions of new law shall be declared severable.

Effective upon signature of governor (June 20, 2011).

(Amends R.S. 6:1083(16) and 1087(E)(9); Adds R.S. 6:1087(E)(10) and (11) and (F)(11))