

**REGULATION OF LENDING BY THE
DEPARTMENT OF FINANCIAL
INSTITUTIONS**

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kevin S. Garn

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ clarifies the requirements to file notification with the department under the Utah Consumer Credit Code;
- ▶ clarifies provisions administered by the department related to a lender, broker, or servicer of a mortgage loan;
- ▶ enacts the Financial Institution Loan Originator Licensing Act including:
 - providing definitions;
 - establishing the general powers and duties of the commissioner, including rulemaking authority;
 - establishing when licensure is required;
 - creating qualifications for licensure, including bonding requirements;
 - creating a licensing process;
 - 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 services
- 142 available to government in cooperation with the ingenuity and expertise of private enterprise to
- 143 alleviate this lack of safe and sanitary dwellings while stimulating local industry, according to
- 144 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 private
168 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 housing
171 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 by
178 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 been
203 permanently affixed to real property shall close the sale only through a qualified escrow agent
204 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; or

214 (b) the person is disabled.

215 (2) (a) An application for the deferral or abatement shall be filed on or before

216 September 1 with the county in which the property is located.

217 (b) The application shall include a signed statement setting forth the eligibility of the

218 applicant for the deferral or abatement.

219 (c) Both husband and wife shall sign the application if the husband and wife seek a

220 deferral or abatement on a residence:

221 (i) in which they both reside; and

222 (ii) which they own as joint tenants.

223 (d) A county may extend the deadline for filing under Subsection (2)(a) until December

224 31 if the county finds that good cause exists to extend the deadline.

225 (3) (a) For purposes of this Subsection (3):

226 (i) "Property taxes due" means the taxes due on a person's property:

227 (A) for which an abatement is granted by a county under Section 59-2-1107; and

228 (B) for the calendar year for which the abatement is granted.

229 (ii) "Property taxes paid" is an amount equal to the sum of:

230 (A) the amount of the property taxes the person paid for the taxable year for which the

231 person is applying for the abatement; and

232 (B) the amount of the abatement the county grants under Section 59-2-1107.

233 (b) A county granting an abatement to a person under Section 59-2-1107 shall refund

234 to that person an amount equal to the amount by which the person's property taxes paid exceed

235 the person's property taxes due, if that amount is \$1 or more.

236 (4) For purposes of this section:

237 (a) a poor person is any person:

238 (i) whose total household income as defined in Section 59-2-1202 is less than the

239 maximum household income certified to a homeowner's credit under Subsection 59-2-1208(1);

240 (ii) who resides for not less than ten months of each year in the residence for which the

241 tax relief, deferral, or abatement is requested; and

242 (iii) who is unable to meet the tax assessed on the person's residential property as the

243 tax becomes due; and

244 (b) "residence" includes a mobile home as defined under Section [70D-1-19]

245 70D-2-401.

246 (5) If the claimant is the grantor of a trust holding title to real or tangible personal
247 property on which an abatement or deferral is claimed, the claimant may claim the portion of
248 the abatement or deferral under Section 59-2-1107 or 59-2-1108 and be treated as the owner of
249 that portion of the property held in trust for which the claimant proves to the satisfaction of the
250 county that:

251 (a) title to the portion of the trust will revert in the claimant upon the exercise of a
252 power:

253 (i) by:

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

255 (B) a nonadverse party; or

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

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

258 (A) to revoke;

259 (B) to terminate;

260 (C) to alter;

261 (D) to amend; or

262 (E) to appoint;

263 (b) the claimant is obligated to pay the taxes on that portion of the trust property
264 beginning January 1 of the year the claimant claims the abatement or deferral; and

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

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

267 (7) Any poor person may qualify for:

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

269 (b) if the person meets the requisites of this section, for the abatement of taxes under
270 Section 59-2-1107; or

271 (c) both:

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

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

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

275 **59-2-1503. Property tax treatment of transportable factory-built housing units.**

276 Regardless of whether a transportable factory-built housing unit is considered to be real
277 property or personal property under Section [~~70D-1-20~~] 70D-2-401, for purposes of this
278 chapter:

279 (1) a transportable factory-built housing unit that is located in a transportable
280 factory-built housing unit park:

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

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

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

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

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

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

291 **61-2c-301. Prohibited conduct -- Violations of the chapter.**

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

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

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

297 (i) that is excessive; or

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

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

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

303 (i) make a false statement or representation;

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

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

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

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

312 (f) violate or not comply with:

313 (i) this chapter;

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

315 (iii) a rule made by the division;

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

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

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

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

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

321 engage in the business of residential mortgage loans with respect to the transaction if the

322 individual or entity also acts in any of the following capacities with respect to the same

323 residential mortgage loan transaction:

324 (i) appraiser;

325 (ii) escrow agent;

326 (iii) real estate agent;

327 (iv) general contractor; or

328 (v) title insurance agent;

329 (j) order a title insurance report or hold a title insurance policy unless the individual or

330 entity provides to the title insurer a copy of a valid, current license under this chapter;

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

332 (l) engage in an act or omission in transacting the business of residential mortgage

333 loans that constitutes dishonesty, fraud, or misrepresentation;

334 (m) engage in false or misleading advertising;

335 (n) (i) fail to account for [~~all funds~~] monies received in connection with a residential
336 mortgage loan;

337 (ii) use [~~funds~~] monies for a different purpose from the purpose for which the [~~funds~~

338 ~~were]~~ monies are received; or

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

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

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

344 (i) evade this chapter; or

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

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

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

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

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

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

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

357 (i) provide a title insurance product or service without the approval required by Section
358 31A-2-405; or

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

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

364 (a) be convicted;

365 (b) plead guilty or nolo contendere;

366 (c) enter a plea in abeyance; or

367 (d) be subjected to a criminal disposition similar to the ones described in Subsections
368 (2)(a) through (c).

- 369 (3) A principal lending manager does not violate Subsection (1)(r) if:
- 370 (a) in contravention of the principal lending manager's written policies and
- 371 instructions, an affiliated licensee of the principal lending manager violates:
- 372 (i) this chapter; or
- 373 (ii) rules made by the division under this chapter;
- 374 (b) the principal lending manager established and followed reasonable procedures to
- 375 ensure that affiliated licensees receive adequate supervision;
- 376 (c) upon learning of a violation by an affiliated licensee, the principal lending manager
- 377 attempted to prevent or mitigate the damage;
- 378 (d) the principal lending manager did not participate in or ratify the violation by an
- 379 affiliated licensee; and
- 380 (e) the principal lending manager did not attempt to avoid learning of the violation.
- 381 (4) Notwithstanding Subsection (1)(n)(iii), a licensee may, upon compliance with
- 382 Section ~~[70D-1-6]~~ 70D-2-305, charge a reasonable cancellation fee for work done originating a
- 383 mortgage if the mortgage is not closed.

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

385 **70C-1-302. Definitions.**

386 As used in this title:

- 387 (1) "Agreement" means the bargain of the parties in fact as stated in a written contract
- 388 or otherwise as found in the parties' language or by implication from other circumstances,
- 389 including ~~[- but not limited to,];~~
- 390 (a) course of dealing ~~[-];~~
- 391 (b) usage of trade ~~[-];~~ or
- 392 (c) course of performance.
- 393 (2) "Contract" means a document containing written terms and conditions of a credit
- 394 agreement.
- 395 (3) (a) "Creditor" means:
- 396 ~~[(a)]~~ (i) a party ~~[(+)]~~;
- 397 (A) who regularly extends consumer credit that is subject to a finance charge or is
- 398 payable by written agreement in more than four installments, not including a down payment ~~[-~~
- 399 ~~and (+)]; and~~

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

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

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

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

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

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

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

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

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

416 (A) more than 25 times; or

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

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

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

423 (a) a condominium unit;

424 (b) a cooperative unit;

425 (c) a manufactured home; or

426 (d) a house.

427 ~~[(4)]~~ (5) "Earnings" means compensation paid or payable to an individual or for ~~[his]~~
428 the individual's account for personal services rendered or to be rendered by ~~[him]~~ the individual
429 whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic
430 payments pursuant to a pension, retirement, or disability program.

431 ~~[(5)]~~ (6) "Installment" means a payment upon a debt that is part of a series of
 432 payments, each of which is less than the original amount of the debt and scheduled as to a
 433 specific amount and due date by agreement of the parties for the purpose of repaying the debt.

434 ~~[(6)]~~ (7) "Party" means ~~[any]~~ an individual ~~[person]~~ and any other entity legally
 435 capable of entering into a binding contract.

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

437 **70C-8-201. Applicability.**

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

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

440 ~~(b) a party who:~~

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

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

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

447 ~~(a) a depository [institutions] institution as defined in Section 7-1-103 [which are~~
 448 ~~regulated as such by the state of Utah or the United States are exempt from this part.] that is~~
 449 ~~federally insured; and~~

450 ~~(b) a wholly owned subsidiary of a depository institution described in Subsection~~

451 ~~(2)(a).~~

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

453 **70C-8-202. Notification.**

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

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

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

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

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

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

465 ~~[(d)]~~ (iv) the address of ~~[all offices or retail stores]~~;

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

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

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

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

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

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

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

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

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

487 **70C-8-203. Fees -- Examinations.**

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

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

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

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

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

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

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

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

504 (b) before the time of an examination by the department of ~~[records]~~ a book or record
505 pertaining to a preceding consumer credit ~~[transactions]~~ transaction.

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

507 **TITLE 70D. FINANCIAL INSTITUTION MORTGAGE**

508 **FINANCING REGULATION ACT**

509 **CHAPTER 1. GENERAL PROVISIONS**

510 **70D-1-101. Title.**

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

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

514 ~~[70D-1-3].~~ **70D-1-102. Definitions.**

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

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

517 ~~[(+)]~~ (2) "Department" means the Department of Financial Institutions.

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

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

521 (a) a condominium unit;

522 (b) a cooperative unit;

523 (c) a manufactured home; or

524 (d) a house.

525 [~~(2)~~] (5) "Mortgage" means a mortgage or deed of trust affecting real property located
526 in this state.

527 [~~(3)~~] "~~Mortgage lender~~" or "~~lender~~" means any person who in the regular course of
528 ~~business originates loans secured by mortgages. A person shall not be considered to be a~~
529 ~~mortgage lender, however, solely because the person, as seller, receives one or more mortgages~~
530 ~~as security for a purchase money obligation, or because the person receives mortgages as~~
531 ~~security for an obligation payable on an installment or deferred payment basis and arising out~~
532 ~~of materials furnished or services rendered in the improvement of real property.]~~

533 [~~(4)~~] (6) (a) "Mortgage loan" means [any] a loan [for a term longer than two years]:

534 (i) secured by a mortgage; and

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

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

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

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

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

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

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

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

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

550 (a) executes a mortgage; or

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

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

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

- 555 (a) inscribed on a tangible medium; or
 556 (b) stored in an electronic or other medium and is retrievable in perceivable form.
 557 (9) "Real estate brokerage activity" means an act that involves offering or providing
 558 real estate brokerage services to the public, including:
 559 (a) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee
 560 of real property;
 561 (b) bringing together parties interested in the sale, purchase, lease, rental, or exchange
 562 of real property;
 563 (c) negotiating, on behalf of a party, a portion of a contract relating to the sale,
 564 purchase, lease, rental, or exchange of real property, other than in connection with providing
 565 financing with respect to a the transaction;
 566 (d) engaging in an act for which a person engaged in the activity is required to be
 567 registered or licensed as a real estate agent or real estate broker under applicable law; and
 568 (e) offering to engage in an activity, or act in a capacity, described in Subsections (9)(a)
 569 through (d).
 570 (10) "State" means:
 571 (a) a state, territory, or possession of the United States;
 572 (b) the District of Columbia; or
 573 (c) the Commonwealth of Puerto Rico.

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

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

577 **Part 1. General Provisions**

578 ~~[70D-1-2].~~ **70D-2-101. Short title.**

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

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

582 ~~[70D-1-19].~~ **70D-2-102. Definitions.**

583 As used in this chapter:

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

586 consideration paid directly or indirectly.

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

588 (i) real estate brokerage activities; or

589 (ii) activities as an attorney licensed to practice law in this state who, in the course of

590 the attorney's practice as an attorney, assists a person in obtaining a mortgage loan.

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

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

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

597 (i) as seller only receives one or more mortgages as security for a purchase money

598 obligation; or

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

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

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

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

604 (a) is constructed;

605 (i) on or after June 15, 1976, according to the National Manufactured Housing

606 Construction and Safety Standards Act of 1974[;]; and

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

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

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

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

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

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

615 [(-)] (5) "Mobile home" means a transportable factory built housing unit built [~~prior to~~]

616 before June 15, 1976, in accordance with a state mobile home code [~~which~~] that existed [~~prior~~

617 to] before the National Manufactured Housing Construction and Safety Standards Act of 1974.

618 [~~(3)~~] (6) "Permanently affixed" means anchored to, and supported by, a permanent
619 foundation or installed in accordance with the manufactured housing installation standard code
620 referred to in Section 58-56-4.

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

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

625 [~~70D-1-4~~]. **70D-2-103. Exemptions.**

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

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

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

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

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

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

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

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

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

640 [~~70D-1-21~~]. **70D-2-104. Ordinance or law by political subdivision prohibited.**

641 (1) [~~No~~] A county subject to Title 17, Counties, and [no] a municipality subject to Title
642 10, [shall] Utah Municipal Code, may not enact [any] an ordinance or law that [regulates the
643 terms of home loans or that];

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

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

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

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

652 **Part 2. Notification to Commissioner**

653 ~~[70D-1-10].~~ **70D-2-201. Notification -- Exemptions.**

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

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

660 (ii) pays a fee required by Section 70D-2-203.

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

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

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

668 ~~[(c) all persons that:]~~

669 (c) a person who:

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

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

673 (ii) is not a servicer.

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

676 ~~[70D-1-11].~~ **70D-2-202. Form of notice.**

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

679 notification with the ~~[department]~~ commissioner:

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

682 (ii) on or before January 31 of each year~~[- All persons subject to the notification~~
683 ~~requirement which are engaged in business as a mortgage lender, broker, or servicer on July 1,~~
684 ~~1990, need not file an initial notification but shall file notification on or before January 31,~~
685 ~~1991. The]~~ after filing the notification required under Subsection (1)(a)(i).

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

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

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

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

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

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

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

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

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

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

705 (b) the commissioner specifically requests earlier notification.

706 Section 19. Section ~~70D-2-203~~, which is renumbered from Section 70D-1-12 is
707 renumbered and amended to read:

708 ~~[70D-1-12].~~ **70D-2-203. Fees -- Examination.**

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

710 commissioner:

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

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

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

716 (b) The commissioner:

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

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

721 (2) (a) If the [~~department~~] commissioner has probable cause to believe that a
722 [~~mortgage~~] lender, broker, or servicer has violated [~~the provisions of~~] this chapter, the
723 [~~department~~] commissioner may require the lender, broker, or servicer to make [~~any or all of its~~
724 books and records] a record of the lender, broker, or servicer relating to its activities as a
725 lender, broker, or servicer available to the [~~department or its~~] commissioner or the
726 commissioner's authorized representative for examination[~~, and to~~].

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

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

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

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

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

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

740 Section 20. Section **70D-2-301**, which is renumbered from Section 70D-1-9 is

741 renumbered and amended to read:

742 **Part 3. Operational Requirements**

743 ~~[70D-1-9].~~ **70D-2-301. Record retention.**

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

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

750 ~~[70D-1-5].~~ **70D-2-302. Notice required with loan application.**

751 ~~[Every mortgage]~~ (1) If the following is the case, a lender and ~~[mortgage loan]~~ broker
752 shall ~~[give, to each]~~ notify in writing a person from whom ~~[it]~~ the lender or broker receives or
753 for whom ~~[it]~~ the lender or broker prepares a written application for a mortgage loan~~[-, a written~~
754 ~~notice disclosing, if such is the case,]~~ that:

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

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

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

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

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

763 ~~[70D-1-7].~~ **70D-2-303. Notice upon closing -- Ongoing duty to notify --**
764 **Statements required.**

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

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

768 and

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

770 (2) (a) ~~[In the event]~~ (i) If the servicing of a mortgage loan is assigned, the servicer
771 ~~[which assigned]~~ that assigns the servicing and the successor servicer shall each mail, at least

772 ten days before the due date of the first mortgage payment due after the assignment, a written
773 notice to the mortgagor~~[-at his last known address contained in the assigning servicer's~~
774 ~~records,]~~ notifying the mortgagor of:

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

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

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

779 (b) Unless ~~[the]~~ an assigning servicer regularly provides the information in a monthly
780 ~~[statements to mortgagors]~~ statement to a mortgagor, the notice from the assigning servicer
781 shall ~~[also]~~ include the following information in addition to the information required by
782 Subsection (2)(a):

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

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

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

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

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

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

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

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

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

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

801 (4) A lender or servicer ~~[of a mortgage loan]~~ must credit to the mortgagor's account
802 ~~[any]~~ a payment received as of the ~~[date it was received]~~ day on which the payment is received

803 or by the next banking day, unless:

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

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

807 (c) the payment is received at an address other than the address for payment specified
808 in writing to the mortgagor.

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

811 ~~[70D-1-8].~~ **70D-2-304. Statement to be provided.**

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

817 (a) the date and amount of ~~[aH]~~ the payments credited to the account within the
818 previous 12-month period;

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

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

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

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

827 ~~[70D-1-6].~~ **70D-2-305. Fee restrictions.**

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

831 (1) signed by the applicant;

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

833 (3) describing the conditions, if any, under which all or a portion of the fee or deposit

834 will be refunded to the applicant.

835 Section 25. Section **70D-2-401**, which is renumbered from Section 70D-1-20 is
836 renumbered and amended to read:

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

838 ~~[70D-1-20]~~. **70D-2-401. Qualification of manufactured home or mobile home as**
839 **improvement to real property -- Requirements -- Removal from property.**

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

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

- 844 (a) considered to be an improvement to real property; and
- 845 (b) considered as real property.

846 (3) A manufactured home or mobile home ~~[shall be]~~ is considered to be an
847 improvement to real property if:

- 848 (a) the manufactured home or mobile home is permanently affixed to real property;
- 849 (b) the person seeking to have the manufactured home or mobile home considered to

850 be an improvement to real property:

- 851 (i) owns the manufactured home or mobile home; ~~[and]~~
- 852 (ii) (A) owns the real property to which the manufactured home or mobile home is
853 permanently affixed; or

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

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

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

- 859 (i) the affidavit of affixture described in Subsection (7); and
- 860 (ii) the receipt of surrender described in Subsection (7).

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

- 863 (a) the Federal Home Loan Mortgage Corporation;
- 864 (b) the Federal National Mortgage Association;

- 865 (c) the United States Department of Agriculture; or
- 866 (d) another entity that requires as part of the entity's financing program restrictions:
- 867 (i) on:
- 868 (A) ownership; and
- 869 (B) actions affecting title and possession; and
- 870 (ii) if the restrictions described in Subsection (4)(d)(i) are similar to restrictions
- 871 imposed by one or more of the entities described in Subsections (4)(a) through (c).
- 872 (5) (a) An owner of a manufactured home or mobile home seeking to have the
- 873 manufactured home or mobile home considered to be an improvement to real property and
- 874 considered real property shall complete an affidavit of affixture.
- 875 (b) An affidavit of affixture described in Subsection (5)(a) shall contain:
- 876 (i) the vehicle identification numbers of the manufactured home or mobile home;
- 877 (ii) the legal description of the real property to which the manufactured home or mobile
- 878 home is permanently affixed;
- 879 (iii) a statement certified by the assessor of the county in which the manufactured home
- 880 or mobile home is located that the owner of the manufactured home or mobile home:
- 881 (A) is not required to pay personal property tax in this state on the manufactured home
- 882 or mobile home; or
- 883 (B) if the manufactured home or mobile home is subject to personal property tax in this
- 884 state, has paid all current and prior year personal property taxes assessed on the manufactured
- 885 home or mobile home;
- 886 (iv) a description of any security interests in the manufactured home or mobile home;
- 887 and
- 888 (v) a receipt of surrender issued by the Motor Vehicle Division of the State Tax
- 889 Commission in accordance with Subsection (6).
- 890 (6) (a) The Motor Vehicle Division of the State Tax Commission shall issue a receipt
- 891 of surrender under Subsection (5)(b)(v) if an owner described in Subsection (5) surrenders to
- 892 the Motor Vehicle Division the:
- 893 (i) manufacturer's original certificate of origin; or
- 894 (ii) title to the manufactured home or mobile home.
- 895 (b) After issuing the receipt of surrender in Subsection (6)(a), the Motor Vehicle

896 Division shall maintain a permanent record of:

- 897 (i) the receipt of surrender; and
- 898 (ii) the certificate or title described in Subsection (6)(a)(ii).

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

- 900 (i) the affidavit of affixture described in Subsection (5); and
- 901 (ii) the receipt of surrender described in Subsection (6).

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

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

- 906 (i) the Motor Vehicle Division of the Tax Commission; and
- 907 (ii) the assessor of the county in which the manufactured home or mobile home is
908 located.

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

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

- 915 (a) a recorded affidavit that the manufactured home or mobile home [~~has been~~] is
916 removed from the real property; and
- 917 (b) an application for a new title.

918 (10) The determination of whether a manufactured home or mobile home is considered
919 real property or personal property under this section may not be considered in determining
920 whether the manufactured home or mobile home is real property or personal property for
921 purposes of taxation under Title 59, Chapter 2, Property Tax Act.

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

Part 5. Remedies and Enforcement

[~~70D-1-13~~]. 70D-2-501. Civil liability -- Misdemeanor.

926 (1) (a) A [~~mortgage~~] lender, broker, or servicer who violates [~~any of the provisions of~~]

927 this chapter is liable to ~~[any]~~ an injured party for actual damages.

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

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

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

935 ~~[70D-1-14].~~ **70D-2-502. Enforcement -- Rulemaking -- Federal law.**

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

937 (1) The commissioner may:

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

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

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

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

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

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

947 (i) restrict or prohibit a lending or servicing ~~[practices which are]~~ practice that is
 948 misleading, unfair, or abusive;

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

952 (A) a lender or servicer; and

953 (B) a borrower; or

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

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

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

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

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

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

964 ~~[(3)]~~ (2) (a) A person subject to this chapter violates this chapter if the person violates
 965 a federal law:

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

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

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

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

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

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

980 ~~[70D-1-15].~~ **70D-2-503. Investigation.**

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

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

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

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

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

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

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

992 (D) require the production of ~~[any]~~ a matter ~~[which]~~ that is relevant to the

993 investigation, including:

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

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

999 (2) (a) If the ~~[department]~~ commissioner requires a person to produce ~~[records which~~
1000 ~~are]~~ a record that is located outside this state, the person shall ~~[either]~~:

1001 (i) make ~~[them]~~ the record available to the ~~[department]~~ commissioner at a convenient
1002 location within this state; or

1003 (ii) pay the reasonable and necessary expenses for the department to examine ~~[them]~~
1004 the record at the place where ~~[they are]~~ the record is maintained.

1005 (b) The ~~[department]~~ commissioner may designate one or more representatives,
1006 including ~~[officials]~~ an official of the state in which ~~[the records are]~~ a record is located, to
1007 inspect ~~[them]~~ the record on ~~[its]~~ behalf of the commissioner.

1008 (3) Upon failure without lawful excuse to obey a subpoena or give testimony, and upon
1009 reasonable notice to ~~[all]~~ affected persons, the ~~[department]~~ commissioner may apply to the
1010 Third District Court or to any other district court for an order compelling compliance.

1011 (4) Unless otherwise required by law, the ~~[department]~~ commissioner may not make
1012 public:

1013 (a) the name or identity of a person whose acts or conduct ~~[it]~~ the commissioner
1014 investigates pursuant to this section; or

1015 (b) the facts disclosed in the investigation.

1016 (5) Subsection (4) does not apply to ~~[disclosures]~~ a disclosure in an enforcement
1017 ~~[proceedings]~~ proceeding conducted pursuant to this chapter.

1018 Section 29. Section **70D-2-504**, which is renumbered from Section 70D-1-16 is
1019 renumbered and amended to read:

1020 ~~[70D-1-16].~~ 70D-2-504. Orders.

1021 (1) If the [department] commissioner determines that [any] a person engaging in
 1022 business as a [mortgage] lender, broker, or servicer is violating, has violated, or the
 1023 [department] commissioner has reasonable cause to believe is about to violate [any provision
 1024 of] this chapter or [any] a rule of the [department] commissioner made under this chapter, the
 1025 [department] commissioner may:

1026 (a) order the person to cease and desist from committing [any further violations;] a
 1027 further violation; and

1028 (b) in the most serious instances may prohibit the person from continuing to engage in
 1029 business as a [mortgage] lender, broker, or servicer.

1030 ~~[(2) The department shall afford an opportunity for hearing upon request of any person
 1031 alleged to have violated this chapter if the request is filed with the department within 30 days
 1032 after the person requesting the hearing first receives notice of the allegations.]~~

1033 ~~[(3)]~~ (2) (a) If the [department] commissioner determines that a practice [which it has
 1034 alleged] that the commissioner alleges is unlawful should be enjoined during the pendency of
 1035 [any proceedings] a proceeding incident to [that] an allegation, [it] the commissioner may issue
 1036 a temporary order in accordance with Section 63G-4-502:

1037 (i) at the commencement of the proceedings; or ~~[at any time thereafter which is fully
 1038 binding on the person to whom the temporary order is directed until the proceedings are
 1039 concluded or the temporary order is modified or dissolved by the department.]~~

1040 ~~[(b) Any person to whom a temporary order is directed may request a hearing
 1041 concerning the order, which shall be held at the earliest mutually convenient time, but in no
 1042 event more that ten days after the person's request is received by the department unless the
 1043 department and the person requesting the hearing mutually agree to a later time.]~~

1044 ~~[(c) Every temporary order shall include findings and conclusions in support of it.]~~

1045 (ii) at any time after the proceeding commences.

1046 ~~[(d)]~~ (b) For purposes of Section 63G-4-502, an immediate and significant danger to
 1047 the public health, safety, or welfare exists if the [department] commissioner finds from specific
 1048 facts supported by sworn statement or the records of a person subject to the order that loan
 1049 applicants or mortgagors are otherwise likely to suffer immediate and irreparable injury, loss,
 1050 or damage before [proceedings] a proceeding incident to a final order can be completed.

1051 ~~[(4)]~~ (3) The ~~[department]~~ commissioner may not award damages or penalties under
1052 this chapter against a ~~[mortgage]~~ lender, broker, or servicer.

1053 ~~[(5)]~~ (4) (a) ~~[Any]~~ An order issued by the ~~[department]~~ commissioner under ~~[authority~~
1054 ~~of]~~ this chapter shall:

1055 (i) be in writing~~;~~;

1056 (ii) be delivered to or served upon the person affected~~;~~; and

1057 (iii) specify ~~[its]~~ the order's effective date, which may be immediate or at a later date.

1058 (b) ~~[Orders shall remain]~~ An order remains in effect until:

1059 (i) withdrawn by the ~~[department]~~ commissioner; or ~~[until]~~

1060 (ii) terminated by a court order. ~~[The]~~

1061 (c) An order of the ~~[department]~~ commissioner, upon application made on or after ~~[its]~~

1062 the order's effective date to the Third District Court, or in any other district court, may be

1063 enforced ex parte and without notice by an order to comply entered by the court.

1064 Section 30. Section **70D-2-505**, which is renumbered from Section 70D-1-17 is

1065 renumbered and amended to read:

1066 ~~[70D-1-17].~~ **70D-2-505. Relief from order.**

1067 ~~[Any]~~ A person aggrieved by ~~[any]~~ a rule, order, temporary order, decision, ruling, or

1068 other act or failure to act by the ~~[department]~~ commissioner under this chapter is entitled to

1069 judicial review as provided under Title 63G, Chapter 4, Administrative Procedures Act.

1070 Section 31. Section **70D-2-506**, which is renumbered from Section 70D-1-18 is

1071 renumbered and amended to read:

1072 ~~[70D-1-18].~~ **70D-2-506. Civil liability.**

1073 Nothing in this chapter ~~[is intended to limit]~~ limits any civil liability ~~[which]~~ that may

1074 exist against a ~~[mortgage]~~ lender, broker, or servicer for breach of contract or other ~~[wrongs]~~

1075 wrong committed against a mortgagor.

1076 Section 32. Section **70D-3-101** is enacted to read:

1077 **CHAPTER 3. FINANCIAL INSTITUTION LOAN ORIGINATOR LICENSING ACT**

1078 **Part 1. General Provisions**

1079 **70D-3-101. Title.**

1080 This chapter is known as the "Financial Institution Loan Originator Licensing Act."

1081 Section 33. Section **70D-3-102** is enacted to read:

1082 70D-3-102. Definitions.

1083 As used in this chapter:

1084 (1) "Administrative or clerical tasks" means:

1085 (a) the receipt, collection, and distribution of information common for the process or
1086 underwriting of a loan in the mortgage industry; and

1087 (b) a communication with a consumer to obtain information necessary for the
1088 processing or underwriting of a residential mortgage loan.

1089 (2) "Affiliate" shall be defined by the commissioner by rule made in accordance with
1090 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1091 (3) "Applicant" means an individual applying for a license under this chapter.

1092 (4) "Approved examination provider" means a person approved by the nationwide
1093 database as an approved test provider.

1094 (5) "Business as a loan originator" means for compensation or in the expectation of
1095 compensation to engage in an act that makes an individual a loan originator.

1096 (6) "Clerical or support duties" includes after the receipt of an application for a
1097 residential mortgage loan:

1098 (a) the receipt, collection, distribution, and analysis of information common for the
1099 processing or underwriting of a residential mortgage loan; and

1100 (b) communicating with a consumer to obtain the information necessary for the
1101 processing or underwriting of the residential mortgage loan, to the extent that the
1102 communication does not include:

1103 (i) offering or negotiating a residential mortgage loan rate or term; or

1104 (ii) counseling a consumer about a residential mortgage loan rate or term.

1105 (7) "Compensation" means anything of economic value that is paid, loaned, granted,
1106 given, donated, or transferred to an individual or entity for or in consideration of:

1107 (a) services;

1108 (b) personal or real property; or

1109 (c) another thing of value.

1110 (8) "Continuing education" means education taken by an individual licensed under this
1111 chapter in order to meet the education requirements imposed by Section 70D-3-303 to renew a
1112 license under this chapter.

- 1113 (9) "Covered subsidiary" means a subsidiary that is:
1114 (a) owned and controlled by a depository institution; and
1115 (b) regulated by a federal banking agency.
1116 (10) "Federal banking agency" means:
1117 (a) the Board of Governors of the Federal Reserve System;
1118 (b) the Comptroller of the Currency;
1119 (c) the Director of the Office of Thrift Supervision;
1120 (d) the National Credit Union Administration; or
1121 (e) the Federal Deposit Insurance Corporation.
1122 (11) "Licensee" means an individual licensed under this chapter.
1123 (12) (a) Except as provided in Subsection (12)(b), "loan originator" means an
1124 individual who for compensation or in the expectation of compensation:
1125 (i) takes a residential mortgage loan application; or
1126 (ii) offers or negotiates a term of a residential mortgage loan.
1127 (b) "Loan originator" does not include:
1128 (i) an individual who is engaged solely as a loan processor or underwriter;
1129 (ii) unless compensated by a lender, broker, other loan originator, or an agent of a
1130 lender, broker, or other loan originator, a person who:
1131 (A) only performs real estate brokerage activities; and
1132 (B) is licensed under Title 61, Chapter 2, Division of Real Estate;
1133 (iii) a person who is solely involved in extension of credit relating to a timeshare plan,
1134 as defined in 11 U.S.C. Sec. 101(53D); or
1135 (iv) an attorney licensed to practice law in this state who, in the course of the attorney's
1136 practice as an attorney, assists a person in obtaining a residential mortgage loan.
1137 (13) "Loan processor or underwriter" means an individual who as an employee
1138 performs clerical or support duties:
1139 (a) at the direction of and subject to the supervision and instruction of:
1140 (i) a licensee; or
1141 (ii) a registered loan originator; and
1142 (b) as an employee of:
1143 (i) the licensee; or

- 1144 (ii) a registered loan originator.
- 1145 (14) "Nationwide database" means the Nationwide Mortgage Licensing System and
- 1146 Registry, authorized under Secure and Fair Enforcement for Mortgage Licensing, 12 U.S.C.
- 1147 Sec. 5101, et seq.
- 1148 (15) "Nontraditional mortgage product" means a mortgage product other than a 30-year
- 1149 fixed rate mortgage.
- 1150 (16) "Owned and controlled by a depository institution" may be defined by rule made
- 1151 by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative
- 1152 Rulemaking Act.
- 1153 (17) "Prelicensing education" means education taken by an individual seeking to be
- 1154 licensed under this chapter in order to meet the education requirements imposed by Section
- 1155 70D-3-301 for an individual to obtain a license under this chapter.
- 1156 (18) "Registered loan originator" means an individual who:
- 1157 (a) engages in an act as a loan originator only as an employee of:
- 1158 (i) a depository institution;
- 1159 (ii) a covered subsidiary; or
- 1160 (iii) an institution regulated by the Farm Credit Administration; and
- 1161 (b) is registered with, and maintains a unique identifier through, the nationwide
- 1162 database.
- 1163 (19) (a) Subject to Subsection (19)(b), "residential mortgage loan" means:
- 1164 (i) a mortgage loan; or
- 1165 (ii) a loan that is:
- 1166 (A) secured by a mortgage; and
- 1167 (B) subject to Title 70C, Utah Consumer Credit Code.
- 1168 (b) A loan described in Subsection (19)(a) is a "residential mortgage loan" only if the
- 1169 mortgage securing the loan is on:
- 1170 (i) a dwelling located in the state; or
- 1171 (ii) real property located in the state, upon which is constructed or intended to be
- 1172 constructed a dwelling.
- 1173 (20) "Unique identifier" is as defined in 12 U.S.C. Sec. 5102.
- 1174 Section 34. Section **70D-3-103** is enacted to read:

1175 **70D-3-103. General powers and duties of commissioner.**

1176 Subject to this chapter:

1177 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1178 commissioner may make rules authorized by this chapter, including:

1179 (a) providing for an interim procedure for:

1180 (i) licensing; and

1181 (ii) acceptance of an application; and

1182 (b) coordination between filings required under this chapter and:

1183 (i) Title 70C, Utah Consumer Credit Code; or

1184 (ii) Chapter 2, Mortgage Lending and Servicing Act.

1185 (2) The commissioner may enter into a relationship or contract with the nationwide
1186 database or another entity designated by the nationwide database to do the following related to
1187 a licensee or other person subject to this chapter:

1188 (a) collect or maintain a record; and

1189 (b) process a transaction fee or other fee.

1190 (3) The commissioner shall regularly report the following to the nationwide database:

1191 (a) a violation of this chapter;

1192 (b) disciplinary action under Section 70D-3-501; and

1193 (c) other information relevant to this chapter.

1194 Section 35. Section **70D-3-201** is enacted to read:

1195 **Part 2. Licensing Requirements and Procedures**

1196 **70D-3-201. Licensing required -- Exemptions.**

1197 (1) (a) On or after January 1, 2011, except as provided in Subsection (2), an individual
1198 described in Subsection (1)(b) may not engage in the business of a loan originator unless that
1199 individual:

1200 (i) is licensed under this chapter; or

1201 (ii) is a registered loan originator.

1202 (b) This Subsection (1) applies to an employee or agent of:

1203 (i) a depository institution;

1204 (ii) a subsidiary of a depository institution; or

1205 (iii) an affiliate of a depository institution.

1206 (2) An individual described in Subsection (1)(b) may engage in the business of a loan
1207 originator without being licensed under this chapter or a registered loan originator when acting
1208 as a loan processor or underwriter.

1209 Section 36. Section **70D-3-202** is enacted to read:

1210 **70D-3-202. Qualifications for licensure.**

1211 To qualify for a license under this chapter an individual shall comply with all of the
1212 following, the individual:

1213 (1) shall comply with 12 U.S.C. Sec. 5104 to register with and maintain a unique
1214 identifier through the nationwide database;

1215 (2) may not have had a loan originator license revoked in a governmental jurisdiction;

1216 (3) may not have been convicted of, or pled guilty or no contest to, a felony:

1217 (a) during the seven years preceding the day on which the individual files an
1218 application; or

1219 (b) at any time, if the felony involves an act of:

1220 (i) fraud;

1221 (ii) dishonesty;

1222 (iii) breach of trust; or

1223 (iv) money laundering;

1224 (4) shall demonstrate financial responsibility, character, and general fitness such as to:

1225 (a) command the confidence of the community; and

1226 (b) warrant a determination that the individual will operate as a loan originator
1227 honestly, fairly, and efficiently within the purposes of this chapter;

1228 (5) shall be covered by a surety bond posted in accordance with Section 70D-3-205;

1229 (6) shall complete the prelicensing education required by Section 70D-3-301; and

1230 (7) shall pass the written examination required by Section 70D-3-302.

1231 Section 37. Section **70D-3-203** is enacted to read:

1232 **70D-3-203. Initial licensure procedure.**

1233 (1) To apply for licensure under this chapter an individual shall:

1234 (a) file an application with the commissioner in a form prescribed by the commissioner
1235 in rule;

1236 (b) demonstrate that the individual provided the information to the nationwide database

1237 required by 12 U.S.C. Sec. 5104;

1238 (c) provide the commissioner the individual's unique identifier;

1239 (d) consent to the commissioner receiving information obtained by the nationwide
1240 database under 12 U.S.C. Sec. 5104, including the results of a criminal history background
1241 check; and

1242 (e) notwithstanding the requirements applicable to a regulatory fee under Section
1243 63J-1-303, pay a fee of \$200.

1244 (2) The commissioner shall grant an individual a license if the commissioner finds that
1245 the individual complies with:

1246 (a) Subsection (1); and

1247 (b) the qualifications for a license under Section 70D-3-202.

1248 (3) Subject to this chapter, the commissioner may make rules in accordance with Title
1249 63G, Chapter 3, Utah Administrative Rulemaking Act, concerning:

1250 (a) the form of an application under this chapter;

1251 (b) the content of an application under this chapter; and

1252 (c) the procedures for filing an application under this chapter.

1253 Section 38. Section **70D-3-204** is enacted to read:

1254 **70D-3-204. Renewal of license.**

1255 (1) A license issued under this chapter expires on December 31 of each year.

1256 (2) To qualify to renew a license under this chapter an individual shall:

1257 (a) meet the requirements of Section 70D-3-202; and

1258 (b) complete the annual continuing education requirements of Section 70D-3-303.

1259 (3) To renew a license under this chapter an individual shall:

1260 (a) file an application with the commissioner in a form prescribed by the commissioner
1261 in rule;

1262 (b) demonstrate that the individual continues to meet the requirements related to the
1263 nationwide database under 12 U.S.C. Sec. 5104;

1264 (c) demonstrate completion of the continuing education requirements; and

1265 (d) notwithstanding the requirements applicable to a regulatory fee under Section
1266 63J-1-303, pay a fee of \$100.

1267 Section 39. Section **70D-3-205** is enacted to read:

1268 **70D-3-205. Surety bond requirements.**

1269 (1) (a) To be licensed under this chapter an individual shall be covered by a surety
1270 bond that meets the minimum surety bonding requirements required by rule.

1271 (b) If an action is brought against a bond under this chapter, the commissioner may
1272 require that another bond be posted.

1273 (2) The commissioner shall by rule made in accordance with Title 63G, Chapter 3,
1274 Utah Administrative Rulemaking Act, establish minimum surety bonding requirements under
1275 this section, except that the requirements shall:

1276 (a) reflect the dollar amount of residential mortgage loans originated by a loan
1277 originator; and

1278 (b) ensure that if in accordance with this chapter a surety bond is posted by an
1279 employer or other entity on behalf of an individual, the bond covers the activities of the
1280 individual regulated by this chapter.

1281 Section 40. Section **70D-3-206** is enacted to read:

1282 **70D-3-206. Challenging information in the nationwide database.**

1283 The commissioner shall by rule made in accordance with Title 63G, Chapter 3, Utah
1284 Administrative Rulemaking Act, provide a process under which an individual may challenge
1285 information contained in the nationwide database.

1286 Section 41. Section **70D-3-301** is enacted to read:

1287 **Part 3. Education Requirements**

1288 **70D-3-301. Prelicensing education.**

1289 (1) Before an individual may be licensed under this chapter, the individual shall
1290 complete the number of hours of prelicensing education required by rule made by the
1291 commissioner.

1292 (2) (a) The commissioner shall make the rules described in Subsection (1):

1293 (i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

1294 (ii) subject to the requirements of this Subsection (2).

1295 (b) The rules described in Subsection (1) shall require that an individual complete:

1296 (i) at least 20 hours of prelicensing education approved by the nationwide database;

1297 and

1298 (ii) as part of the 20 hours required by Subsection (2)(b)(i):

- 1299 (A) 3 hours of federal law and regulations;
- 1300 (B) 3 hours of ethics that include instruction on:
- 1301 (I) fraud;
- 1302 (II) consumer protection; and
- 1303 (III) fair lending issues; and
- 1304 (C) 2 hours of training related to lending standards for the nontraditional mortgage
- 1305 product marketplace.

1306 Section 42. Section **70D-3-302** is enacted to read:

1307 **70D-3-302. Examination.**

1308 (1) Before an individual may be licensed under this chapter, the individual shall pass a

1309 written examination that:

1310 (a) meets the requirements of 12 U.S.C. Sec. 5104(d);

1311 (b) is developed by the nationwide database; and

1312 (c) is administered by an approved examination provider.

1313 (2) The commissioner shall make rules made in accordance with Title 63G, Chapter 3,

1314 Utah Administrative Rulemaking Act, that:

1315 (a) require that an individual comply at a minimum with the standards of 12 U.S.C.

1316 Sec. 5104(d); and

1317 (b) address:

1318 (i) what constitutes passing a written examination;

1319 (ii) the ability of an individual to retake a written examination if the individual fails the

1320 written examination; and

1321 (iii) when an individual is required to retake a written examination if an individual fails

1322 to maintain a valid license under this chapter after taking the written examination.

1323 Section 43. Section **70D-3-303** is enacted to read:

1324 **70D-3-303. Continuing Education.**

1325 (1) A licensee shall annually complete at least the number of hours of continuing

1326 education required by rule made by the commissioner.

1327 (2) (a) The commissioner shall make the rules described in Subsection (1):

1328 (i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

1329 (ii) subject to the requirements of this Subsection (2).

1330 (b) The rules described in Subsection (1) shall require that an individual complete each
1331 calendar year:

1332 (i) eight hours of continuing education approved by the nationwide database;

1333 (ii) as part of the eight hours required by Subsection (2)(b)(i):

1334 (A) three hours of federal law and regulations; and

1335 (B) two hours of ethics that include instruction on:

1336 (I) fraud;

1337 (II) consumer protection; and

1338 (III) fair lending issues; and

1339 (iii) two hours of training related to lending standards for the nontraditional mortgage
1340 product marketplace.

1341 (3) The commissioner shall by rule made in accordance with Title 63G, Chapter 3,
1342 Utah Administrative Rulemaking Act, provide for the calculation of continuing education
1343 hours, except that the rules shall be consistent with 12 U.S.C. Sec. 5105.

1344 Section 44. Section **70D-3-401** is enacted to read:

1345 **Part 4. Operational Requirements and Prohibitions**

1346 **70D-3-401. Record requirements -- Reports of condition.**

1347 (1) An individual required to be licensed under this chapter shall create a record
1348 required by rule made by the commissioner in accordance with Title 63G, Chapter 3, Utah
1349 Administrative Rulemaking Act.

1350 (2) An individual required to be licensed under this chapter shall maintain and produce
1351 for inspection a record required to be maintained by a rule made by the commissioner in
1352 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for four years
1353 from the last to occur of the following:

1354 (a) the final entry on a residential mortgage loan is made by that licensee;

1355 (b) if the residential mortgage loan is serviced by the licensee:

1356 (i) the residential mortgage loan is paid in full; or

1357 (ii) the licensee ceases to service the residential mortgage loan; or

1358 (c) if the residential mortgage loan is not serviced by the licensee, the residential
1359 mortgage loan is closed.

1360 (3) An individual required to be licensed under this chapter shall maintain and produce

1361 for inspection by the commissioner a report of condition submitted to the nationwide database
1362 as required by 12 U.S.C. Sec. 5104(e) for at least four years from the day on which the
1363 individual submits the report of condition to the nationwide database.

1364 Section 45. Section **70D-3-402** is enacted to read:

1365 **70D-3-402. Prohibited acts.**

1366 (1) An individual transacting the business of a loan originator in this state may not:

1367 (a) violate or not comply with:

1368 (i) this chapter;

1369 (ii) an order of the commissioner under this chapter;

1370 (iii) a rule made by the commissioner under this chapter;

1371 (iv) Title 70C, Utah Consumer Credit Code, if subject to that title; or

1372 (v) Chapter 2, Mortgage Lending and Servicing Act, if subject to that chapter;

1373 (b) engage in an act that is performed to:

1374 (i) evade this chapter; or

1375 (ii) assist another person to evade this chapter;

1376 (c) do any of the following to induce a lender to extend credit as part of a residential
1377 mortgage loan transaction:

1378 (i) make a false statement or representation;

1379 (ii) cause a false document to be generated; or

1380 (iii) knowingly permit false information to be submitted by a person in a transaction;

1381 (d) fail to respond within the required time period to:

1382 (i) a notice or complaint of the commissioner; or

1383 (ii) a request for information from the commissioner;

1384 (e) make a false representation to the commissioner, including in a licensure

1385 application;

1386 (f) engage in the business of a loan originator with respect to a residential mortgage

1387 loan transaction if the individual also acts in any of the following capacities with respect to the
1388 same residential mortgage loan transaction:

1389 (i) appraiser;

1390 (ii) escrow agent;

1391 (iii) real estate agent;

- 1392 (iv) general contractor; or
- 1393 (v) title insurance agent;
- 1394 (g) engage in an act or omission in transacting the business of a loan originator that
- 1395 constitutes dishonesty, fraud, or misrepresentation;
- 1396 (h) engage in false or misleading advertising;
- 1397 (i) (i) fail to account for monies received in connection with a residential mortgage
- 1398 loan;
- 1399 (ii) use monies for a different purpose than the purpose for which the monies are
- 1400 received; or
- 1401 (iii) subject to Subsection (3), retain monies paid for services if the services are not
- 1402 performed;
- 1403 (j) fail, within 90 calendar days of a request from a borrower who has paid for an
- 1404 appraisal, to give a copy of an appraisal ordered and used for a residential mortgage loan to the
- 1405 borrower;
- 1406 (k) recommend or encourage default, delinquency, or continuation of an existing
- 1407 default or delinquency, by a mortgage applicant on an existing indebtedness before the closing
- 1408 of a residential mortgage loan that will refinance all or part of the indebtedness; or
- 1409 (l) pay or offer to pay an individual who does not hold a license under this chapter for
- 1410 services that require the individual to hold a license under this chapter.
- 1411 (2) (a) An individual engaging solely in loan processor or underwriter activities, may
- 1412 not represent to the public that the individual can or will perform any act of a loan originator.
- 1413 (b) A representation prohibited under this Subsection (2) includes an advertisement or
- 1414 other means of communicating or providing information including the use of:
- 1415 (i) a business card;
- 1416 (ii) stationery;
- 1417 (iii) a brochure;
- 1418 (iv) a sign;
- 1419 (v) a rate list; or
- 1420 (vi) another promotional item.
- 1421 (3) Notwithstanding Subsection (1)(i)(iii), if a licensee complies with Section
- 1422 70D-2-305, the licensee may charge a reasonable cancellation fee for services completed to

1423 originate a residential mortgage loan if the residential mortgage loan is not closed.

1424 Section 46. Section **70D-3-501** is enacted to read:

1425 **Part 5. Enforcement**

1426 **70D-3-501. Disciplinary action.**

1427 (1) The commissioner may through an adjudicative proceeding subject to Title 63G,
1428 Chapter 4, Administrative Procedures Act, impose a sanction described in Subsection (2)
1429 against an individual if the individual:

1430 (a) is licensed or required to be licensed under this chapter; and

1431 (b) violates this chapter.

1432 (2) The commissioner may against an individual described in Subsection (1) who
1433 violates this chapter:

1434 (a) impose an educational requirement;

1435 (b) impose a civil penalty against the individual in an amount not to exceed the greater
1436 of:

1437 (i) \$2,500 for each violation; or

1438 (ii) the amount equal to any gain or economic benefit derived from each violation;

1439 (c) deny an application for an initial license;

1440 (d) do any of the following to a license under this chapter:

1441 (i) suspend;

1442 (ii) revoke;

1443 (iii) place on probation;

1444 (iv) deny renewal;

1445 (v) deny reinstatement;

1446 (vi) in the case of a denial of a license, set a waiting period for an individual to apply
1447 for a license under this chapter; or

1448 (vii) issue a cease and desist order; or

1449 (e) impose a combination of sanctions described in this Subsection (2).

1450 (3) (a) If the commissioner determines that a practice that the commissioner alleges is
1451 unlawful should be enjoined during the pendency of a proceeding incident to an allegation, the
1452 commissioner may issue a temporary order in accordance with Section 63G-4-502:

1453 (i) at the commencement of the proceedings; or

1454 (ii) at any time after the proceeding commences.
1455 (b) For purposes of Section 63G-4-502, an immediate and significant danger to the
1456 public health, safety, or welfare exists if the commissioner finds from specific facts supported
1457 by sworn statement or the records of a person subject to the order that loan applicants or
1458 mortgagors are otherwise likely to suffer immediate and irreparable injury, loss, or damage
1459 before a proceeding incident to a final order can be completed.

1460 Section 47. Section **70D-3-502** is enacted to read:

1461 **70D-3-502. Investigations.**

1462 (1) The commissioner may investigate the actions of:

1463 (a) a licensee; or

1464 (b) an individual required to be licensed under this chapter.

1465 (2) In conducting an investigation or adjudicative proceeding, the commissioner may:

1466 (a) administer an oath or affirmation under penalty of perjury;

1467 (b) subpoena a witness;

1468 (c) compel the attendance of a witness

1469 (d) take evidence;

1470 (e) require the production of a record or information relevant to an investigation from
1471 any person including:

1472 (i) the existence, description, nature, custody, condition, and location of a record or
1473 other tangible thing of any kind or nature; and

1474 (ii) the identity and location of a person having knowledge of a relevant fact or any
1475 other matter reasonably calculated to lead to the discovery of admissible evidence; and

1476 (f) serve a subpoena.

1477 (3) A failure to respond to a request by the commissioner in an investigation authorized
1478 under this chapter is considered as a separate violation of this chapter, including:

1479 (a) failing to respond to a subpoena;

1480 (b) withholding evidence; or

1481 (c) failing to produce a record or other information.

1482 (4) In conducting an investigation the commissioner may inspect and copy a record
1483 related to the business of a loan originator, regardless of whether the record is maintained at a
1484 business location in Utah.

1485 (5) Regardless of whether the commissioner takes action pursuant to an investigation
1486 under this chapter, an individual investigated under this section shall pay to the commissioner
1487 the amounts that would be assessed to a financial institution for an examination under
1488 Subsection 7-1-401(7) including:

1489 (a) a per diem assessment at the rate calculated under Subsection 7-1-401(7); and
1490 (b) if the investigation requires one or more representatives of the commissioner to
1491 travel out of state, the reasonable travel, lodging, and other expenses incurred by each
1492 representative while conducting the investigation.

1493 Section 48. **Repealer.**

1494 This bill repeals:

1495 Section **70D-1-1, Intent statement.**

Legislative Review Note
as of 1-28-09 2:24 PM

Office of Legislative Research and General Counsel

H.B. 286 - Regulation of Lending by the Department of Financial Institutions

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
