

Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1181

AN ACT to amend the Indiana Code concerning financial institutions.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 24-4.4-1-102, AS AMENDED BY P.L.186-2015, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 102. (1) This article shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this article are:

- (a) to permit and encourage the development of fair and economically sound first lien mortgage lending practices; and
- (b) to conform the regulation of first lien mortgage lending practices to applicable state and federal laws, rules, regulations, policies, and guidance.

(3) A reference to a requirement imposed by this article includes reference to a related rule of the department adopted under this article.

(4) A reference to a federal law in this article is a reference to the law as in effect December 31, ~~2014~~. **2015**.

SECTION 2. IC 24-4.4-1-301, AS AMENDED BY P.L.137-2014, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 301. In addition to definitions appearing in subsequent chapters of this article, the following definitions apply throughout this article:

- (1) "Affiliate", with respect to any person subject to this article, means a person that, directly or indirectly, through one (1) or

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more intermediaries:

- (a) controls;
- (b) is controlled by; or
- (c) is under common control with;

the person subject to this article.

(2) "Agreement" means the bargain of the parties in fact as found in the parties' language or by implication from other circumstances, including course of dealing or usage of trade or course of performance.

(3) "Agricultural products" includes agricultural products, horticultural products, viticultural products, dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, any products raised or produced on farms, and any products processed or manufactured from products raised or produced on farms.

(4) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products.

(5) "Consumer credit sale" is a sale of goods, services, or an interest in land in which:

- (a) credit is granted by a person who engages as a seller in credit transactions of the same kind;
- (b) the buyer is a person other than an organization;
- (c) the goods, services, or interest in land are purchased primarily for a personal, family, or household purpose;
- (d) either the debt is payable in installments or a credit service charge is made; and

(e) with respect to a sale of goods or services, either:

- (i) the amount of credit extended, the written credit limit, or the initial advance does not exceed ~~fifty-three thousand five hundred dollars (\$53,500)~~ **or another the exempt threshold amount, as adjusted in accordance with the annual adjustment of the exempt threshold amount, specified in Regulation Z (12 CFR 226.3 or 12 CFR 1026.3(b), as applicable); or**
- (ii) the debt is secured by personal property used or expected to be used as the principal dwelling of the buyer.

(6) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(7) "Creditor" means a person:

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(a) that regularly engages in the extension of first lien mortgage transactions that are subject to a credit service charge or loan finance charge, as applicable, or are payable by written agreement in more than four (4) installments (not including a down payment); and

(b) to which the obligation is initially payable, either on the face of the note or contract, or by agreement if there is not a note or contract.

The term does not include a person described in subsection (34)(a) in a tablefunded transaction. A creditor may be an individual, a limited liability company, a sole proprietorship, a partnership, a trust, a joint venture, a corporation, an unincorporated organization, or other form of entity, however organized.

(8) "Department" refers to the members of the department of financial institutions.

(9) "Depository institution" has the meaning set forth in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)) and includes any credit union.

(10) "Director" refers to the director of the department of financial institutions or the director's designee.

(11) "Dwelling" means a residential structure that contains one (1) to four (4) units, regardless of whether the structure is attached to real property. The term includes an individual:

- (a) condominium unit;
- (b) cooperative unit;
- (c) mobile home; or
- (d) trailer;

that is used as a residence.

(12) "Employee" means an individual who is paid wages or other compensation by an employer required under federal income tax law to file Form W-2 on behalf of the individual.

(13) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(14) "First lien mortgage transaction" means:

- (a) a consumer loan; or
- (b) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage or a land



contract (or another consensual security interest equivalent to a mortgage or a land contract) that constitutes a first lien on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed.

(15) "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. The term includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

(16) "Individual" means a natural person.

(17) "Licensee" means a person licensed as a creditor under this article.

(18) "Loan" includes:

(a) the creation of debt by:

- (i) the creditor's payment of or agreement to pay money to the debtor or to a third party for the account of the debtor; or
- (ii) the extension of credit by a person who engages as a seller in credit transactions primarily secured by an interest in land;

(b) the creation of debt by a credit to an account with the creditor upon which the debtor is entitled to draw immediately; and

(c) the forbearance of debt arising from a loan.

(19) "Loan brokerage business" means any activity in which a person, in return for any consideration from any source, procures, attempts to procure, or assists in procuring, a mortgage transaction from a third party or any other person, whether or not the person seeking the mortgage transaction actually obtains the mortgage transaction.

(20) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of, and subject to the supervision and instruction of, a person licensed or exempt from licensing under this article. For purposes of this subsection, the term "clerical or support duties" may include, after the receipt of an application, the following:

(a) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a mortgage transaction.

(b) The communication with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that the communication does not include:

- (i) offering or negotiating loan rates or terms; or
- (ii) counseling consumers about mortgage transaction rates or terms.



(21) "Mortgage loan originator" means an individual who, for compensation or gain, or in the expectation of compensation or gain, regularly engages in taking a mortgage transaction application or in offering or negotiating the terms of a mortgage transaction that either is made under this article or under IC 24-4.5 or is made by an employee of a person licensed or exempt from licensing under this article or under IC 24-4.5, while the employee is engaging in the loan brokerage business. The term does not include the following:

(a) An individual engaged solely as a loan processor or underwriter as long as the individual works exclusively as an employee of a person licensed or exempt from licensing under this article.

(b) Unless the person or entity is compensated by:

(i) a creditor;

(ii) a loan broker;

(iii) another mortgage loan originator; or

(iv) any agent of a creditor, a loan broker, or another mortgage loan originator described in items (i) through (iii); a person or entity that performs only real estate brokerage activities and is licensed or registered in accordance with applicable state law.

(c) A person solely involved in extensions of credit relating to timeshare plans (as defined in 11 U.S.C. 101(53D)).

(22) "Mortgage servicer" means the last person to whom a mortgagor or the mortgagor's successor in interest has been instructed by a mortgagee to send payments on a loan secured by a mortgage.

(23) "Mortgage transaction" means:

(a) a consumer loan; or

(b) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage or a land contract (or another consensual security interest equivalent to a mortgage or a land contract) on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed.

(24) "**Nationwide Multistate Licensing System and Registry**" (or "Nationwide Mortgage Licensing System and Registry" or "NMLSR") means a **mortgage multistate** licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential



Mortgage Regulators owned and operated by the State Regulatory Registry, LLC, or by any successor or affiliated entity, for the licensing and registration of creditors, and mortgage loan originators, and other persons in the mortgage or financial services industries. The term includes any other name or acronym that may be assigned to the system by the State Regulatory Registry, LLC, or by any successor or affiliated entity.

(25) "Nontraditional mortgage product" means any mortgage product other than a thirty (30) year fixed rate mortgage.

(26) "Organization" means a corporation, a government or government subdivision, an agency, a trust, an estate, a partnership, a limited liability company, a cooperative, an association, a joint venture, an unincorporated organization, or any other entity, however organized.

(27) "Payable in installments", with respect to a debt or an obligation, means that payment is required or permitted by written agreement to be made in more than four (4) installments not including a down payment.

(28) "Person" includes an individual or an organization.

(29) "Principal" of a mortgage transaction means the total of:

- (a) the net amount paid to, receivable by, or paid or payable for the account of the debtor; and
- (b) to the extent that payment is deferred, amounts actually paid or to be paid by the creditor for registration, certificate of title, or license fees if not included in clause (a).

(30) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including the following:

- (a) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property.
- (b) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property.
- (c) Negotiating, on behalf of any party, any part of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to the sale, purchase, lease, rental, or exchange of real property).
- (d) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law.
- (e) Offering to engage in any activity, or act in any capacity,



described in this subsection.

(31) "Registered mortgage loan originator" means any individual who:

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

- (i) a depository institution;
- (ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or
- (iii) an institution regulated by the Farm Credit Administration; and

(b) is registered with, and maintains a unique identifier through, the NMLSR.

(32) "Residential real estate" means any real property that is located in Indiana and on which there is located or intended to be constructed a dwelling.

(33) "Revolving first lien mortgage transaction" means a first lien mortgage transaction in which:

- (a) the creditor permits the debtor to obtain advances from time to time;
- (b) the unpaid balances of principal, finance charges, and other appropriate charges are debited to an account; and
- (c) the debtor has the privilege of paying the balances in installments.

(34) "Tablefunded" means a transaction in which:

- (a) a person closes a first lien mortgage transaction in the person's own name as a mortgagee with funds provided by one (1) or more other persons; and
- (b) the transaction is assigned, not later than one (1) business day after the funding of the transaction, to the mortgage creditor providing the funding.

(35) "Unique identifier" means a number or other identifier assigned by protocols established by the NMLSR.

(36) "Land contract" means a contract for the sale of real estate in which the seller of the real estate retains legal title to the real estate until the total contract price is paid by the buyer.

(37) "Bona fide nonprofit organization" means an organization that does the following, as determined by the director, under criteria established by the director:

- (a) Maintains tax exempt status under Section 501(c)(3) of the Internal Revenue Code.
- (b) Promotes affordable housing or provides home ownership education or similar services.

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(c) Conducts the organization's activities in a manner that serves public or charitable purposes.

(d) Receives funding and revenue and charges fees in a manner that does not encourage the organization or the organization's employees to act other than in the best interests of the organization's clients.

(e) Compensates the organization's employees in a manner that does not encourage employees to act other than in the best interests of the organization's clients.

(f) Provides to, or identifies for, debtors mortgage transactions with terms that are favorable to the debtor (as described in section 202(b)(15) of this chapter) and comparable to mortgage transactions and housing assistance provided under government housing assistance programs.

(g) Maintains certification by the United States Department of Housing and Urban Development or employs counselors who are certified by the Indiana housing and community development authority.

(38) "Regularly engaged", with respect to a person who extends or originates first lien mortgage transactions, refers to a person who:

(a) extended or originated more than five (5) first lien mortgage transactions in the preceding calendar year; or

(b) extends or originates, or will extend or originate, more than five (5) first lien mortgage transactions in the current calendar year if the person did not extend or originate more than five (5) first lien mortgage transactions in the preceding calendar year.

SECTION 3. IC 24-4.4-2-201, AS AMENDED BY P.L.27-2012, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 201. (1) A creditor or mortgage servicer shall provide, in writing, an accurate payoff amount for a first lien mortgage transaction to the debtor not later than seven (7) business days (excluding legal public holidays, Saturdays, and Sundays) after the creditor or mortgage servicer receives the debtor's written request for the accurate payoff amount. A payoff statement provided by a creditor or mortgage servicer under this subsection must show the date the statement was prepared and itemize the unpaid principal balance and each fee, charge, or other sum included within the payoff amount. A creditor or mortgage servicer who fails to provide an accurate payoff amount is liable for:

(a) one hundred dollars (\$100) if an accurate payoff amount is not

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provided by the creditor or mortgage servicer not later than seven (7) business days (excluding legal public holidays, Saturdays, and Sundays) after the creditor or mortgage servicer receives the debtor's first written request; and

(b) the greater of:

(i) one hundred dollars (\$100); or

(ii) the loan finance charge that accrues on the first lien mortgage transaction from the date the creditor or mortgage servicer receives the first written request until the date on which the accurate payoff amount is provided;

if an accurate payoff amount is not provided by the creditor or mortgage servicer not later than seven (7) business days (excluding legal public holidays, Saturdays, and Sundays) after the creditor or mortgage servicer receives the debtor's second written request, and the creditor or mortgage servicer fails to comply with subdivision (a).

(2) This subsection applies to a first lien mortgage transaction, or the refinancing or consolidation of a first lien mortgage transaction, that:

(a) is closed after June 30, 2009; and

(b) has an interest rate that is subject to change at one (1) or more times during the term of the first lien mortgage transaction.

A creditor in a transaction to which this subsection applies may not contract for and may not charge the debtor a prepayment fee or penalty.

(3) This subsection applies to a first lien mortgage transaction with respect to which any installment or minimum payment due is delinquent for at least sixty (60) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than five (5) business days (excluding legal public holidays, Saturdays, and Sundays) after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days (excluding legal public holidays, Saturdays, and Sundays) after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. The thirty (30) day period described in this subsection may be extended for not more than fifteen (15) business days (excluding legal public holidays, Saturdays, and

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Sundays) if, before the end of the thirty (30) day period, the creditor, the servicer, or the creditor's agent notifies the debtor of the extension and the reason the extension is needed. Payment accepted by a creditor, servicer, or creditor's agent in connection with a short sale constitutes payment in full satisfaction of the first lien mortgage transaction unless the creditor, servicer, or creditor's agent obtains:

- (a) the following statement: "The debtor remains liable for any amount still owed under the first lien mortgage transaction."; or
- (b) a statement substantially similar to the statement set forth in subdivision (a);

acknowledged by the initials or signature of the debtor, on or before the date on which the short sale payment is accepted. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a first lien mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the first lien mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

(4) This section is not intended to provide the owner of real estate subject to the issuance of process under a judgment or decree of foreclosure any protection or defense against a deficiency judgment for purposes of the borrower protections from liability that must be disclosed under 12 CFR 1026.38(p)(3) on the form required by 12 CFR 1026.38 ("Closing Disclosures" form under the Amendments to the 2013 Integrated Mortgage Disclosures Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z) and the 2013 Loan Originator Rule Under the Truth in Lending Act (Regulation Z)).

SECTION 4. IC 24-4.5-1-102, AS AMENDED BY P.L.186-2015, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 102. (1) This article shall be liberally construed and applied to promote its underlying purposes and policies.

- (2) The underlying purposes and policies of this article are:
 - (a) to simplify, clarify, and modernize the law governing retail installment sales, consumer credit, small loans, and usury;
 - (b) to provide rate ceilings to assure an adequate supply of credit to consumers;
 - (c) to further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost;

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- (d) to protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors;
- (e) to permit and encourage the development of fair and economically sound consumer credit practices;
- (f) to conform the regulation of consumer credit transactions to the policies of the Federal Consumer Credit Protection Act and to applicable state and federal laws, rules, regulations, policies, and guidance; and
- (g) to make uniform the law, including administrative rules among the various jurisdictions.

(3) A reference to a requirement imposed by this article includes reference to a related rule or guidance of the department adopted pursuant to this article.

(4) A reference to a federal law in this article is a reference to the law as in effect December 31, ~~2014~~ **2015**.

(5) This article applies to a transaction if the director determines that the transaction:

- (a) is in substance a disguised consumer credit transaction; or
- (b) involves the application of subterfuge for the purpose of avoiding this article.

A determination by the director under this ~~paragraph~~ **subsection** must be in writing and shall be delivered to all parties to the transaction. IC 4-21.5-3 applies to a determination made under this ~~paragraph~~ **subsection**.

(6) The authority of this article remains in effect, whether a licensee, an individual, or a person subject to this article acts or claims to act under any licensing or registration law of this state, or claims to act without such authority.

(7) A violation of a state or federal law, regulation, or rule applicable to consumer credit transactions is a violation of this article.

(8) The department may enforce penalty provisions set forth in 15 U.S.C. 1640 for violations of disclosure requirements applicable to mortgage transactions.

SECTION 5. IC 24-4.5-1-301.5, AS AMENDED BY P.L.137-2014, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 301.5. In addition to definitions appearing in subsequent chapters in this article, the following definitions apply throughout this article:

(1) "Affiliate", with respect to any person subject to this article, means a person that, directly or indirectly, through one (1) or more intermediaries:

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(a) controls;
(b) is controlled by; or
(c) is under common control with;
the person subject to this article.

(2) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance.

(3) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products. "Agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(4) "Average daily balance" means the sum of each of the daily balances in a billing cycle divided by the number of days in the billing cycle, and if the billing cycle is a month, the creditor may elect to treat the number of days in each billing cycle as thirty (30).

(5) "Closing costs" with respect to a subordinate lien mortgage transaction includes:

- (a) fees or premiums for title examination, title insurance, or similar purposes, including surveys;
- (b) fees for preparation of a deed, settlement statement, or other documents;
- (c) escrows for future payments of taxes and insurance;
- (d) fees for notarizing deeds and other documents;
- (e) appraisal fees; and
- (f) fees for credit reports.

(6) "Conspicuous" refers to a term or clause when it is so written that a reasonable person against whom it is to operate ought to have noticed it.

(7) "Consumer credit" means credit offered or extended to a consumer primarily for a personal, family, or household purpose.

(8) "Consumer credit sale" is a sale of goods, services, or an interest in land in which:

- (a) credit is granted by a person who regularly engages as a seller in credit transactions of the same kind;
- (b) the buyer is a person other than an organization;
- (c) the goods, services, or interest in land are purchased primarily for a personal, family, or household purpose;
- (d) either the debt is payable in installments or a credit service



charge is made; and

(e) with respect to a sale of goods or services, either:

(i) the amount of credit extended, the written credit limit, or the initial advance does not exceed ~~fifty-three thousand five hundred dollars (\$53,500)~~ **or another the exempt threshold amount**, as adjusted in accordance with the annual adjustment of the exempt threshold amount, specified in Regulation Z (12 CFR 226.3 or 12 CFR 1026.3(b), as applicable); or

(ii) the debt is secured by personal property used or expected to be used as the principal dwelling of the buyer.

Unless the sale is made subject to this article by agreement (IC 24-4.5-2-601), "consumer credit sale" does not include a sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card or similar arrangement or except as provided with respect to disclosure (IC 24-4.5-2-301), debtors' remedies (IC 24-4.5-5-201), providing payoff amounts (IC 24-4.5-2-209), and powers and functions of the department (IC 24-4.5-6) a sale of an interest in land which is a first lien mortgage transaction.

(9) "Consumer loan" means a loan made by a person regularly engaged in the business of making loans in which:

(a) the debtor is a person other than an organization;

(b) the debt is primarily for a personal, family, or household purpose;

(c) either the debt is payable in installments or a loan finance charge is made; and

(d) either:

(i) the amount of credit extended, the written credit limit, or the initial advance does not exceed ~~fifty-three thousand five hundred dollars (\$53,500)~~ **or another the exempt threshold amount**, as adjusted in accordance with the annual adjustment of the exempt threshold amount, specified in Regulation Z (12 CFR 226.3 or 12 CFR 1026.3(b), as applicable); or

(ii) the debt is secured by an interest in land or by personal property used or expected to be used as the principal dwelling of the debtor.

Except as described in IC 24-4.5-3-105, the term does not include a first lien mortgage transaction.

(10) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(11) "Creditor" means a person:

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- (a) who regularly engages in the extension of consumer credit that is subject to a credit service charge or loan finance charge, as applicable, or is payable by written agreement in more than four (4) installments (not including a down payment); and
- (b) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is not a note or contract.

(12) "Depository institution" has the meaning set forth in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)) and includes any credit union.

(13) "Director" means the director of the department of financial institutions or the director's designee.

(14) "Dwelling" means a residential structure that contains one (1) to four (4) units, regardless of whether the structure is attached to real property. The term includes an individual:

- (a) condominium unit;
- (b) cooperative unit;
- (c) mobile home; or
- (d) trailer;

that is used as a residence.

(15) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments under a pension or retirement program.

(16) "Employee" means an individual who is paid wages or other compensation by an employer required under federal income tax law to file Form W-2 on behalf of the individual.

(17) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(18) "First lien mortgage transaction" means:

- (a) a consumer loan; or
- (b) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage or a land contract (or another consensual security interest equivalent to a mortgage or a land contract) that constitutes a first lien on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed.

(19) "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. The term includes stepparents,



stepchildren, stepsiblings, and adoptive relationships.

(20) "Individual" means a natural person.

(21) "Lender credit card or similar arrangement" means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a debtor the privilege of using a credit card, letter of credit, or other credit confirmation or identification in transactions out of which debt arises:

- (a) by the lender's honoring a draft or similar order for the payment of money drawn or accepted by the debtor;
- (b) by the lender's payment or agreement to pay the debtor's obligations; or
- (c) by the lender's purchase from the obligee of the debtor's obligations.

(22) "Licensee" means a person licensed as a creditor under this article.

(23) "Loan brokerage business" means any activity in which a person, in return for any consideration from any source, procures, attempts to procure, or assists in procuring, a mortgage transaction from a third party or any other person, whether or not the person seeking the mortgage transaction actually obtains the mortgage transaction.

(24) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of, and subject to the supervision and instruction of, a person licensed or exempt from licensing under this article. For purposes of this subsection, the term "clerical or support duties" may include, after the receipt of an application, the following:

- (a) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a mortgage transaction.
- (b) The communication with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that the communication does not include:
 - (i) offering or negotiating loan rates or terms; or
 - (ii) counseling consumers about mortgage transaction rates or terms.

An individual engaging solely in loan processor or underwriter activities shall not represent to the public through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

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(25) "Mortgage loan originator" means an individual who, for compensation or gain, or in the expectation of compensation or gain, regularly engages in taking a mortgage transaction application or in offering or negotiating the terms of a mortgage transaction that either is made under this article or under IC 24-4.4 or is made by an employee of a person licensed or exempt from licensing under this article or under IC 24-4.4, while the employee is engaging in the loan brokerage business. The term does not include the following:

(a) An individual engaged solely as a loan processor or underwriter as long as the individual works exclusively as an employee of a person licensed or exempt from licensing under this article.

(b) Unless the person or entity is compensated by:

(i) a creditor;

(ii) a loan broker;

(iii) another mortgage loan originator; or

(iv) any agent of the creditor, loan broker, or other mortgage loan originator described in items (i) through (iii);

a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law.

(c) A person solely involved in extensions of credit relating to timeshare plans (as defined in 11 U.S.C. 101(53D)).

(26) "Mortgage servicer" means the last person to whom a mortgagor or the mortgagor's successor in interest has been instructed by a mortgagee to send payments on a loan secured by a mortgage.

(27) "Mortgage transaction" means:

(a) a consumer loan; or

(b) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage or a land contract (or another consensual security interest equivalent to a mortgage or a land contract) on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed.

(28) "**Nationwide Multistate Licensing System and Registry**" (or "Nationwide Mortgage Licensing System and Registry" or "NMLSR") means a ~~mortgage~~ **multistate** licensing system ~~developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators~~ **owned and operated by the State Regulatory Registry, LLC, or by any successor or affiliated entity**, for the licensing and registration of creditors, ~~and~~ mortgage loan originators, **and other persons in the**



mortgage or financial services industries. The term includes any other name or acronym that may be assigned to the system by the State Regulatory Registry, LLC, or by any successor or affiliated entity.

(29) "Nontraditional mortgage product" means any mortgage product other than a thirty (30) year fixed rate mortgage.

(30) "Official fees" means:

(a) fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest related to a consumer credit sale, consumer lease, or consumer loan; or

(b) premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale, lease, or loan, if the premium does not exceed the fees and charges described in **paragraph subdivision** (a) that would otherwise be payable.

(31) "Organization" means a corporation, a government or governmental subdivision, an agency, a trust, an estate, a partnership, a limited liability company, a cooperative, an association, a joint venture, an unincorporated organization, or any other entity, however organized.

(32) "Payable in installments" means that payment is required or permitted by written agreement to be made in more than four (4) installments not including a down payment.

(33) "Person" includes an individual or an organization.

(34) "Person related to" with respect to an individual means:

(a) the spouse of the individual;

(b) a brother, brother-in-law, sister, or sister-in-law of the individual;

(c) an ancestor or lineal descendants of the individual or the individual's spouse; and

(d) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(35) "Person related to" with respect to an organization means:

(a) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(b) a director, an executive officer, or a manager of the organization or a person performing similar functions with respect to the organization or to a person related to the organization;

(c) the spouse of a person related to the organization; and

(d) a relative by blood or marriage of a person related to the



organization who shares the same home with the person.

(36) "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed, unless and until evidence is introduced that would support a finding of its nonexistence.

(37) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including the following:

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

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

(c) Negotiating, on behalf of any party, any part of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to the sale, purchase, lease, rental, or exchange of real property).

(d) Engaging in any activity for which a person is required to be registered or licensed as a real estate agent or real estate broker under any applicable law.

(e) Offering to engage in any activity, or act in any capacity, described in this subsection.

(38) "Registered mortgage loan originator" means any individual who:

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

(i) a depository institution;

(ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or

(iii) an institution regulated by the Farm Credit Administration; and

(b) is registered with, and maintains a unique identifier through, the NMLSR.

(39) "Regularly engaged", with respect to a person who extends consumer credit, refers to a person who:

(a) extended consumer credit:

(i) more than twenty-five (25) times; or

(ii) more than five (5) times for a mortgage transaction secured by a dwelling;

in the preceding calendar year; or

(b) extends or will extend consumer credit:

(i) more than twenty-five (25) times; or

(ii) more than five (5) times for a mortgage transaction secured



by a dwelling;
 in the current calendar year, if the person did not meet the numerical standards described in subdivision (a) in the preceding calendar year.

(40) "Residential real estate" means any real property that is located in Indiana and on which there is located or intended to be constructed a dwelling.

(41) "Seller credit card" means an arrangement that gives to a buyer or lessee the privilege of using a credit card, letter of credit, or other credit confirmation or identification for the purpose of purchasing or leasing goods or services from that person, a person related to that person, or from that person and any other person. The term includes a card that is issued by a person, that is in the name of the seller, and that can be used by the buyer or lessee only for purchases or leases at locations of the named seller.

(42) "Subordinate lien mortgage transaction" means:

- (a) a consumer loan; or
- (b) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage or a land contract (or another consensual security interest equivalent to a mortgage or a land contract) that constitutes a subordinate lien on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed.

(43) "Unique identifier" means a number or other identifier assigned by protocols established by the NMLSR.

(44) "Land contract" means a contract for the sale of real estate in which the seller of the real estate retains legal title to the real estate until the total contract price is paid by the buyer.

(45) "Bona fide nonprofit organization" means an organization that does the following, as determined by the director under criteria established by the director:

- (a) Maintains tax exempt status under Section 501(c)(3) of the Internal Revenue Code.
- (b) Promotes affordable housing or provides home ownership education or similar services.
- (c) Conducts the organization's activities in a manner that serves public or charitable purposes.
- (d) Receives funding and revenue and charges fees in a manner that does not encourage the organization or the organization's employees to act other than in the best interests of the organization's clients.



(e) Compensates the organization's employees in a manner that does not encourage employees to act other than in the best interests of the organization's clients.

(f) Provides to, or identifies for, debtors mortgage transactions with terms that are favorable to the debtor (as described in section 202(b)(15) of this chapter) and comparable to mortgage transactions and housing assistance provided under government housing assistance programs.

(g) Maintains certification by the United States Department of Housing and Urban Development or employs counselors who are certified by the Indiana housing and community development authority.

SECTION 6. IC 24-4.5-2-106, AS AMENDED BY P.L.137-2014, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 106. (1) "Consumer lease" means a lease of goods:

(a) which a lessor regularly engaged in the business of leasing makes to a person, other than an organization, who takes under the lease primarily for a personal, family, or household purpose;

(b) in which the amount payable under the lease does not exceed ~~fifty-three thousand five hundred dollars (\$53,500)~~ or another the **exempt threshold** amount, as adjusted in accordance with the annual adjustment of the exempt threshold amount, specified in Regulation Z (12 CFR 226.3 or 12 CFR 1026.3(b), as applicable); and

(c) which is for a term exceeding four (4) months.

(2) "Consumer lease" does not include a lease made pursuant to a lender credit card or similar arrangement.

SECTION 7. IC 24-4.5-2-207 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 207. Credit Service Charge for Revolving Charge Accounts — (1) With respect to a consumer credit sale made pursuant to a revolving charge account, the parties to the sale may contract for the payment by the buyer of a credit service charge not exceeding that permitted in this section.

(2) A charge may be made in each billing cycle which is a percentage of an amount no greater than:

(a) the average daily balance of the account,

(b) the unpaid balance of the account on the same day of the billing cycle, or

(c) the median amount within a specified range within which the average daily balance of the account or the unpaid balance of the account on the same day of the billing cycle is included. A charge



may be made pursuant to this ~~paragraph~~ **subdivision** only if the seller, subject to classification and differentiations ~~he~~ **the seller** may reasonably establish, makes the same charge on all balances within the specified range and if the percentage when applied to the median amount within the range does not produce a charge exceeding the charge resulting from applying that percentage to the lowest amount within the range by more than eight percent (8%) of the charge on the median amount.

(3) If the billing cycle is monthly, the charge may not exceed ~~one two and three-fourths~~ **eighty-three thousandths** percent (~~+ 3/4%~~) **(2.083%)** of the amount pursuant to subsection (2). If the billing cycle is not monthly, the maximum charge is that percentage which bears the same relation to the applicable monthly percentage as the number of days in the billing cycle bears to thirty (30). For the purposes of this section, a variation of not more than four (4) days from month to month is "the same day of the billing cycle".

(4) Notwithstanding subsection (3), if there is an unpaid balance on the date as of which the credit service charge is applied, the seller may contract for and receive a charge not exceeding fifty cents (\$.50), if the billing cycle is monthly or longer, or the pro rata part of fifty cents (\$.50) which bears the same relation to fifty cents (\$.50) as the number of days in the billing cycle bears to thirty (30) if the billing cycle is shorter than monthly.

SECTION 8. IC 24-4.5-2-209, AS AMENDED BY P.L.27-2012, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 209. (1) Subject to the provisions on rebate upon prepayment (section 210 of this chapter), the buyer may prepay in full the unpaid balance of a consumer credit sale, refinancing, or consolidation at any time without penalty.

(2) At the time of prepayment of a credit sale not subject to the provisions of rebate upon prepayment (section 210 of this chapter), the total credit service charge, including the prepaid credit service charge, may not exceed the maximum charge allowed under this chapter for the period the credit sale was in effect.

(3) The creditor or mortgage servicer shall provide, in writing, an accurate payoff amount for the consumer credit sale to the debtor within seven (7) business days (excluding legal public holidays, Saturdays, and Sundays) after the creditor or mortgage servicer receives the debtor's written request for the accurate consumer credit sale payoff amount. A payoff statement provided by a creditor or mortgage servicer under this subsection must show the date the statement was prepared and itemize the unpaid principal balance and

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each fee, charge, or other sum included within the payoff amount. A creditor or mortgage servicer who fails to provide the accurate consumer credit sale payoff amount is liable for:

(A) one hundred dollars (\$100) if an accurate consumer credit sale payoff amount is not provided by the creditor or mortgage servicer within seven (7) business days (excluding legal public holidays, Saturdays, and Sundays) after the creditor or mortgage servicer receives the debtor's first written request; and

(B) the greater of:

(i) one hundred dollars (\$100); or

(ii) the credit service charge that accrues on the sale from the date the creditor or mortgage servicer receives the first written request until the date on which the accurate consumer credit sale payoff amount is provided;

if an accurate consumer credit sale payoff amount is not provided by the creditor or mortgage servicer within seven (7) business days (excluding legal public holidays, Saturdays, and Sundays) after the creditor or mortgage servicer receives the debtor's second written request, and the creditor or mortgage servicer failed to comply with clause (A).

A liability under this subsection is an excess charge under IC 24-4.5-5-202.

(4) As used in this subsection, "mortgage transaction" means a consumer credit sale in which a mortgage or a land contract (or another consensual security interest equivalent to a mortgage or a land contract) that constitutes a lien is created or retained against land upon which there is constructed or intended to be constructed a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes. This subsection applies to a mortgage transaction with respect to which any installment or minimum payment due is delinquent for at least sixty (60) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than five (5) business days (excluding legal public holidays, Saturdays, and Sundays) after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days (excluding legal public holidays, Saturdays, and Sundays) after receipt of an offer under this subsection,

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the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. The thirty (30) day period described in this subsection may be extended for not more than fifteen (15) business days (excluding legal public holidays, Saturdays, and Sundays) if, before the end of the thirty (30) day period, the creditor, the servicer, or the creditor's agent notifies the debtor of the extension and the reason the extension is needed. Payment accepted by a creditor, servicer, or creditor's agent in connection with a short sale constitutes payment in full satisfaction of the mortgage transaction unless the creditor, servicer, or creditor's agent obtains:

- (a) the following statement: "The debtor remains liable for any amount still owed under the mortgage transaction."; or
- (b) a statement substantially similar to the statement set forth in subdivision (a);

acknowledged by the initials or signature of the debtor, on or before the date on which the short sale payment is accepted. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

(5) This section is not intended to provide the owner of real estate subject to the issuance of process under a judgment or decree of foreclosure any protection or defense against a deficiency judgment for purposes of the borrower protections from liability that must be disclosed under 12 CFR 1026.38(p)(3) on the form required by 12 CFR 1026.38 ("Closing Disclosures" form under the Amendments to the 2013 Integrated Mortgage Disclosures Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z) and the 2013 Loan Originator Rule Under the Truth in Lending Act (Regulation Z)).

SECTION 9. IC 24-4.5-2-602, AS AMENDED BY P.L.137-2014, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 602. (1) A "consumer related sale" is a sale of goods, services, or an interest in land in which:

- (a) credit is granted by a person that is not regularly engaged as a seller in credit transactions of the same kind;
- (b) the buyer is a person other than an organization;
- (c) the goods, services, or interest in land are purchased primarily for a personal, family, or household purpose;

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(d) either the debt is payable in installments or a credit service charge is made; and

(e) with respect to a sale of goods or services:

(i) either the amount of credit extended, the written credit limit, or the initial advance does not exceed ~~fifty-three thousand five hundred dollars (\$53,500)~~ or **another the exempt threshold** amount, as adjusted in accordance with the annual adjustment of the exempt threshold amount, specified in Regulation Z (12 CFR 226.3 or 12 CFR 1026.3(b), as applicable); or

(ii) the debt is secured by personal property used or expected to be used as the principal dwelling of the buyer.

(2) With respect to a consumer related sale not made pursuant to a revolving charge account, the parties may contract for an amount comprising the amount financed and a credit service charge not in excess of ~~twenty-one~~ **twenty-five** percent (~~21%~~) (**25%**) per year calculated according to the actuarial method on the unpaid balances of the amount financed.

(3) With respect to a consumer related sale made pursuant to a revolving charge account, the parties may contract for a credit service charge not in excess of that permitted by the provisions on credit service charge for revolving charge accounts (IC 24-4.5-2-207).

(4) A person engaged in consumer related sales is not required to comply with IC 24-4.5-6-201 through IC 24-4.5-6-203.

SECTION 10. IC 24-4.5-2-604 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 604. Limitation on Default Charges in Consumer Related Sales — (1) The agreement with respect to a consumer related sale may provide for only the following charges as a result of the buyer's default:

(a) reasonable attorney's fees and reasonable expenses incurred in realizing on a security interest;

(b) deferral charges not in excess of ~~twenty-one~~ **twenty-five** percent (~~21%~~) (**25%**) per year of the amount deferred for the period of deferral; and

(c) other charges that could have been made had the sale been a consumer credit sale.

(2) A provision in violation of this section is unenforceable.

SECTION 11. IC 24-4.5-3-209, AS AMENDED BY P.L.27-2012, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 209. Right to Prepay - (1) Subject to the provisions on rebate upon prepayment (section 210 of this chapter), the debtor may prepay in full the unpaid balance of a consumer loan,

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refinancing, or consolidation at any time without penalty. With respect to a consumer loan that is primarily secured by an interest in land, a lender may contract for a penalty for prepayment of the loan in full, not to exceed two percent (2%) of any amount prepaid within sixty (60) days of the date of the prepayment in full, after deducting all refunds and rebates as of the date of the prepayment. However, the penalty may not be imposed:

- (a) if the loan is refinanced or consolidated with the same creditor;
- (b) for prepayment by proceeds of any insurance or acceleration after default; or
- (c) after three (3) years from the contract date.

(2) At the time of prepayment of a consumer loan not subject to the provisions of rebate upon prepayment (section 210 of this chapter), the total finance charge, including the prepaid finance charge but excluding the loan origination fee allowed under ~~section 201~~ of this chapter, may not exceed the maximum charge allowed under this chapter for the period the loan was in effect. For the purposes of determining compliance with this subsection, the total finance charge does not include the following:

- (a) The loan origination fee allowed under ~~section 201~~ of this chapter.
- (b) The debtor paid mortgage broker fee, if any, paid to a person who does not control, is not controlled by, or is not under common control with, the creditor holding the loan at the time a consumer loan is prepaid.

(3) The creditor or mortgage servicer shall provide, in writing, an accurate payoff amount for the consumer loan to the debtor within seven (7) business days (excluding legal public holidays, Saturdays, and Sundays) after the creditor or mortgage servicer receives the debtor's written request for the accurate consumer loan payoff amount. A payoff statement provided by a creditor or mortgage servicer under this subsection must show the date the statement was prepared and itemize the unpaid principal balance and each fee, charge, or other sum included within the payoff amount. A creditor or mortgage servicer who fails to provide the accurate consumer loan payoff amount is liable for:

- (a) one hundred dollars (\$100) if an accurate consumer loan payoff amount is not provided by the creditor or mortgage servicer within seven (7) business days (excluding legal public holidays, Saturdays, and Sundays) after the creditor or mortgage servicer receives the debtor's first written request; and

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(b) the greater of:

(i) one hundred dollars (\$100); or

(ii) the loan finance charge that accrues on the loan from the date the creditor or mortgage servicer receives the first written request until the date on which the accurate consumer loan payoff amount is provided;

if an accurate consumer loan payoff amount is not provided by the creditor or mortgage servicer within seven (7) business days (excluding legal public holidays, Saturdays, and Sundays) after the creditor or mortgage servicer receives the debtor's second written request, and the creditor or mortgage servicer failed to comply with subdivision (a).

A liability under this subsection is an excess charge under IC 24-4.5-5-202.

(4) As used in this subsection, "mortgage transaction" means a consumer loan in which a mortgage or a land contract (or another consensual security interest equivalent to a mortgage or a land contract) that constitutes a lien is created or retained against land upon which there is constructed or intended to be constructed a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes. This subsection applies to a mortgage transaction with respect to which any installment or minimum payment due is delinquent for at least sixty (60) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than five (5) business days (excluding legal public holidays, Saturdays, and Sundays) after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days (excluding legal public holidays, Saturdays, and Sundays) after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. The thirty (30) day period described in this subsection may be extended for not more than fifteen (15) business days (excluding legal public holidays, Saturdays, and Sundays) if, before the end of the thirty (30) day period, the creditor, the servicer, or the creditor's agent notifies the debtor of the extension and the reason the extension is needed. Payment accepted by a creditor, servicer, or creditor's agent in connection with a short sale constitutes

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payment in full satisfaction of the mortgage transaction unless the creditor, servicer, or creditor's agent obtains:

- (a) the following statement: "The debtor remains liable for any amount still owed under the mortgage transaction."; or
- (b) a statement substantially similar to the statement set forth in subdivision (a);

acknowledged by the initials or signature of the debtor, on or before the date on which the short sale payment is accepted. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

(5) This section is not intended to provide the owner of real estate subject to the issuance of process under a judgment or decree of foreclosure any protection or defense against a deficiency judgment for purposes of the borrower protections from liability that must be disclosed under 12 CFR 1026.38(p)(3) on the form required by 12 CFR 1026.38 ("Closing Disclosures" form under the Amendments to the 2013 Integrated Mortgage Disclosures Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z) and the 2013 Loan Originator Rule Under the Truth in Lending Act (Regulation Z)).

SECTION 12. IC 24-4.5-3-602, AS AMENDED BY P.L.137-2014, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 602. (1) A "consumer related loan" is a loan in which the following apply:

- (a) The loan is made by a person who is not regularly engaged as a lender in credit transactions of the same kind.
- (b) The debtor is a person other than an organization.
- (c) The debt is primarily for a personal, family, or household purpose.
- (d) Either the debt is payable in installments or a loan finance charge is made.
- (e) Either:
 - (i) the amount of credit extended, the written credit limit, or the initial advance does not exceed ~~fifty-three thousand five hundred dollars (\$53,500)~~ **or another the exempt threshold amount**, as adjusted in accordance with the annual adjustment of the exempt threshold amount, specified in Regulation Z (12

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CFR 226.3 or 12 CFR 1026.3(b), as applicable); or
 (ii) the debt is secured by an interest in land or by personal property used or expected to be used as the principal dwelling of the debtor.

(2) With respect to a consumer related loan, including one made pursuant to a revolving loan account, the parties may contract for the payment by the debtor of a loan finance charge not in excess of that permitted by the provisions on loan finance charge for consumer loans other than supervised loans (IC 24-4.5-3-201).

(3) A person engaged in consumer related loans is not required to comply with:

- (a) the licensing requirements set forth in section 503 of this chapter; or
- (b) IC 24-4.5-6-201 through IC 24-4.5-6-203.

SECTION 13. IC 24-4.5-3-604 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 604. Limitation on Default Charges in Consumer Related Loans — (1) The agreement with respect to a consumer related loan may provide for only the following charges as a result of the debtor's default:

- (a) reasonable attorney's fees and reasonable expenses incurred in realizing on a security interest;
- (b) deferral charges not in excess of ~~twenty-one~~ **twenty-five** percent (~~21%~~) (**25%**) per year of the amount deferred for the period of deferral; and
- (c) other charges that could have been made had the loan been a consumer loan.

(2) A provision in violation of this section is unenforceable.

SECTION 14. IC 28-1-2-6.5, AS ADDED BY P.L.57-2006, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.5. (a) A financial institution (as defined in IC 28-1-1-3(1)), except for a licensee under **IC 24-4.4**, IC 24-4.5, **or 750 IAC 9**, shall comply with all state and federal money laundering statutes and regulations, including the following:

- (1) The Bank Secrecy Act (31 U.S.C. 5311 et seq.).
- (2) The USA Patriot Act of 2001 (P.L. 107-56).
- (3) Any regulations, policies, or reporting requirements established by the Financial Crimes Enforcement Network of the United States Department of the Treasury.
- (4) Any other state or federal money laundering statutes or regulations that apply to a financial institution (as defined in IC 28-1-1-3(1)) other than a licensee under **IC 24-4.4**, IC 24-4.5, **or 750 IAC 9**.

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- (b) The department shall do the following:
- (1) To the extent authorized or required by state law, investigate potential violations of, and enforce compliance with, state money laundering statutes or regulations.
 - (2) Investigate potential violations of federal money laundering statutes or regulations and, to the extent authorized or required by federal law:
 - (A) enforce compliance with the federal statutes or regulations; or
 - (B) refer suspected violations of the federal statutes or regulations to the appropriate federal regulatory agencies.

SECTION 15. IC 28-1-7-4, AS AMENDED BY P.L.27-2012, SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 4. (a) After the resolutions approving a joint agreement of merger have been adopted by the board of directors of each of the corporations, such resolutions and joint agreement shall be submitted for approval by the department. Subject to any approvals required under federal law, the department may, in its discretion, approve or disapprove the resolution and joint agreement.

(b) In deciding whether to approve or disapprove a resolution and joint agreement under this section, the department shall consider the following factors:

- (1) Whether the ~~institutions subject to~~ **institution resulting from** the proposed transaction ~~are will be~~ operated in a safe, sound, and prudent manner.
- (2) Whether the financial condition of any institution subject to the proposed transaction will jeopardize the financial stability of any other institutions subject to the proposed transaction.
- (3) Whether the proposed transaction under this chapter will result in an institution that has inadequate capital, unsatisfactory management, or poor earnings prospects.
- (4) Whether the proposed transaction, in the department's judgment and considering the available information under the prevailing circumstances, will result in an institution that is more favorable to the stakeholders than if the entities were to remain separate.
- (5) Whether the management or other principals of the institution that will result from the proposed transaction under this chapter are qualified by character and financial responsibility to control and operate in a legal and proper manner the resulting institution.
- (6) Whether the institutions subject to the proposed transaction under this chapter furnish all the information the department

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requires in reaching the department's decision.

SECTION 16. IC 28-1-7-12, AS AMENDED BY P.L.90-2008, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 12. (a) After the resolution approving a joint agreement of consolidation has been adopted by the board of directors of each of the corporations, the resolutions and joint agreement shall be submitted to the department. The department may, in its discretion, approve or disapprove the resolutions and joint agreement.

(b) In deciding whether to approve or disapprove a transaction under this chapter, the department shall consider the following factors:

- (1) Whether the ~~institutions subject to~~ **institution resulting from** the proposed transaction ~~are~~ **will be** operated in a safe, sound, and prudent manner.
- (2) Whether the financial condition of any institution subject to the proposed transaction will jeopardize the financial stability of any other institutions subject to the proposed transaction.
- (3) Whether the proposed transaction under this chapter will result in an institution that has inadequate capital, unsatisfactory management, or poor earnings prospects.
- (4) Whether the management or other principals of the institution that will result from the proposed transaction under this chapter are qualified by character and financial responsibility to control and operate in a legal and proper manner the resulting institution.
- (5) Whether the public convenience and advantage will be served by the resulting institution after the proposed transaction.
- (6) Whether the institutions subject to the proposed transaction under this chapter furnish all the information the department requires in reaching the department's decision.

SECTION 17. IC 28-1-11-3.1, AS AMENDED BY P.L.27-2012, SECTION 50, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 3.1. (a) Any bank or trust company shall have the power to discount, negotiate, sell and guarantee promissory notes, bonds, drafts, acceptances, bills of exchange, and other evidences of debt; to buy and sell, exchange, coin and bullion; to loan money; to borrow money and to issue its notes, bonds, or debentures to evidence any such borrowing and to mortgage, pledge, or hypothecate any of its assets to secure the repayment thereof; to receive savings deposits and deposits of money subject to check, and deposits of securities or other personal property from any person or corporation, upon such terms as may be agreed upon by the parties; to contract for and receive on loans and discounts the highest rate of interest allowed by the laws of this state to be contracted for and received by individuals; to accept, for



payment at a future date, drafts drawn upon it by its customers and to issue letters of credit authorizing the holders thereof to draw drafts upon it or its correspondents at sight or on time, however, the letter of credit must state a specific expiration date; and to exercise all the powers incidental and proper or which may be necessary and usual in carrying on a general banking business, but it shall have no right to issue bills to circulate as money.

(b) Subject to such regulations, rules, policies, and guidance as the department finds to be necessary and proper, any bank or trust company shall have the following powers:

(1) To make such loans and advances of credit and purchases of obligations representing loans and advances of credit as are eligible for insurance by the federal housing administrator, and to obtain such insurance.

(2) To make such loans secured by mortgages on real property or leasehold, as the federal housing administrator insures or makes a commitment to insure, and to obtain such insurance.

(3) To purchase, invest in, and dispose of notes or bonds secured by mortgage or trust deed insured by the federal housing administrator or debentures issued by the federal housing administrator, or bonds or other securities issued by national mortgage associations.

(4) To extend credit to any state agency, with the approval of the department, notwithstanding any other provisions or limitations of IC 28-1. No law of this state prescribing the nature, amount, or form of security or requiring security upon which loans or advances of credit may be made, or prescribing or limiting interest rates upon loans or advances of credit, or prescribing or limiting the period for which loans or advances of credit may be made, shall be deemed to apply to loans, advances of credit, or purchases made pursuant to subdivisions (1), (2), and (3) and this subdivision.

(5) To purchase, take, hold, and dispose of notes, and mortgages securing such notes, made to any joint stock land bank heretofore incorporated, in any case in which not less than ninety-nine percent (99%) of the stock of said joint stock land bank is owned by the bank or trust company at the time such notes or mortgages be acquired by the bank or trust company; and upon dissolution of any such joint stock land bank, or at any stage in the process of such dissolution, any bank or trust company then owning not less than ninety-nine percent (99%) of the stock of such joint stock land bank may take, hold, and dispose of any notes, mortgages, or



other assets of such joint stock land bank of whatsoever nature, including real estate, wheresoever situated, which such joint stock land bank shall assign, transfer, convey, or otherwise make over to such bank or trust company by way of final or partial distribution of its assets to its stockholders upon such dissolution or in connection with the process of such dissolution. No law of this state prescribing the nature, amount, location, or form of security, or requiring security upon which loans or advances of credit may be made, or prescribing or limiting interest rates upon loans or advances of credit, or prescribing or limiting the period for which loan or advances of credit may be made, or prescribing any ratio between the amount of any loan and the appraised value of the security for such loan, or requiring periodical reductions of the principal of any loan, shall be deemed to apply to loans, notes, mortgages, real estate, or other assets mentioned in this subdivision.

(6) To adopt stock purchase programs for employees and to grant options to purchase, and to issue and sell, shares of its capital stock to its employees, or to a trustee on their behalf (which may be the bank or trust company issuing such capital stock), without first offering the same to its shareholders, for such consideration, not less than par value, and upon such terms and conditions as shall be approved by its board of directors and by the holders of a majority of its shares entitled to vote with respect thereto, and by the department. In the absence of actual fraud in the transaction, the judgment of the directors as to the consideration for the issuances of such options and the sufficiency thereof shall be conclusive. Any bank or trust company exercising the powers granted in this subsection may, to the extent approved by the department, have authorized and unissued stock required to fulfill any stock option or other arrangement authorized herein.

(7) Subject to such restrictions as the department may impose, to become the owner or lessor of personal or real property acquired upon the request and for the use of a customer and to incur such additional obligations as may be incident to becoming an owner or lessor of such property.

(8) To purchase or construct buildings and hold legal title thereto to be leased to municipal corporations or other public authorities, for public purposes, having resources sufficient to make payment of all rentals as they become due. Each lease agreement shall provide that upon expiration, the lessee will become the owner of the building.



(8.1) Subject to the prior written approval of the department, and notwithstanding section 5 of this chapter, To purchase, hold, and convey real estate which is:

(A) improved or to be improved by a single, freestanding building; and

(B) to be used, in part, as a branch or the principal office of that bank or trust company and, in part, as rental property for one (1) or more lessees.

Unless a written extension of time is given by the department, the bank or trust company shall open the branch or principal office within two (2) years from the acquisition date of the real estate. If the bank or trust company does not open a branch or its principal office on the real estate in that time period or if the bank or trust company removes its branch or principal office from the real estate, the bank or trust company shall divest itself of all interest in the real estate within five (5) years from the acquisition date of the real estate, if a branch was not opened, or five (5) years from the removal date of the branch office, whichever applies. Except with the written approval of the department, the sum invested in real estate and buildings used for the convenient transaction of its business as provided in this subdivision shall not exceed fifty percent (50%) of the capital and surplus of the bank or trust company as provided in section 5 of this chapter. **in accordance with section 5 of this chapter.**

(9) Subject to section 3.2 of this chapter, to exercise the rights and privileges (as defined in section 3.2(a) of this chapter) that are or may be granted to national banks domiciled in Indiana.

(c) Any rule made and promulgated under and pursuant to this section may apply to one (1) or more banks or trust companies or to one (1) or more localities in the state as the department, in its discretion, may determine.

SECTION 18. IC 28-1-11-5, AS AMENDED BY P.L.216-2013, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 5. (a) **In addition to the powers set forth in section 3.1 of this chapter**, any bank or trust company shall have power to purchase, hold, and convey real estate for the following purposes, and for no others:

(1) Such as shall be necessary for the convenient transaction of its business.

(2) Such as shall be mortgaged to it or to its assignor immediate or remote, in good faith by way of security for debts.

(3) Such as shall be conveyed to it in satisfaction of debts

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contracted in the course of its dealings, or in satisfaction of debts, notes, or mortgages purchased by or assigned to it, or in exchange for real estate so conveyed to it.

(4) Such as it shall purchase at sales under judgments, decrees, or mortgages held by the bank or trust company or shall purchase to secure debts due it.

(b) Except with the approval in writing of the department, after July 1, 1933, the sum invested in real estate and buildings used for the convenient transaction of its business shall not exceed fifty percent (50%) of the capital and surplus of such bank or trust company. Such investment may be made in the stock of a corporation organized to own and hold the real estate and building occupied and used wholly or in part by such bank or trust company.

(c) No bank or trust company shall hold the title or possession of any real estate purchased or otherwise acquired to secure any debts due to it for a longer period than ten (10) years after such real estate is or has been purchased or otherwise acquired, or after July 1, 1933, without the consent in writing of the director unless the bank or trust company has entered into a bona fide contract that is being performed in accordance with its terms.

(d) For the purposes of subsection (a)(1), real estate purchased or held for the convenient transaction of the business of a bank or trust company includes the following:

- (1) Real estate on which the principal office or a branch office of the bank or trust company is located.
- (2) Real estate that is the location of facilities supporting the operations of the bank or trust company, such as parking facilities, data processing centers, loan production offices, automated teller machines, night depositories, facilities necessary for the operations of a bank or trust company subsidiary, or other facilities that are approved by the director.
- (3) Real estate that the board of directors of the bank or trust company expects, in good faith, to use as a bank or trust company office or facility in the future.

(e) If real estate referred to in subsection (d)(3) is held by a bank or trust company for one (1) year without being used as a bank or trust company office or facility, the board of directors of the bank or trust company shall state, by resolution, definite plans for the use of the real estate. A resolution adopted under this subsection shall be made available for inspection by the director.

(f) Real estate referred to in subsection (d)(3) may not be held by a bank or trust company for more than three (3) years without being used

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as a bank or trust company office or facility unless:

(1) the board of directors of the bank or trust company, by resolution:

(A) reaffirms annually that the bank or trust company expects to use the real estate as a bank or trust company office or facility in the future; and

(B) explains the reason why the real estate has not yet been used as a bank or trust company office or facility; and

(2) the director determines that:

(A) the continued holding of the real estate by the bank or trust company does not endanger the safety and soundness of the bank or trust company; and

(B) the bank or trust company is holding the real estate to use the real estate in the future for one (1) of the purposes set forth in subsection (d)(1) ~~and~~ or (d)(2).

(g) Real estate referred to in subsection (d)(3) may not be held by a bank or trust company for more than ten (10) years without being used as a bank or trust company office or facility unless the director consents in writing to the continued holding of the real estate by the bank or trust company.

(h) If a bank or trust company closes a principal or branch office or a facility on, or discontinues operations on, real estate described in subsection (d)(1) or (d)(2), the bank or trust company shall divest itself of the real estate not later than five (5) years from the date of the closing or discontinuation.

SECTION 19. IC 28-1-11-14, AS ADDED BY P.L.27-2012, SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. (a) As used in this section, "community based economic development" refers to activities that seek to address **economic development through affordable housing development or the rehabilitation of qualified rehabilitated buildings or certified historic structures, or that seeks to address** economic causes of poverty within specific geographic areas, revitalizing the economic and social base of low income communities through activities that include:

~~(1)~~ **(1)** affordable housing development;

~~(2)~~ **(1)** small business and micro-enterprise support;

~~(3)~~ **(2)** commercial, industrial, and retail revitalization, retention, and expansion;

~~(4)~~ **(3)** capacity development and technical assistance support for community development corporations;

~~(5)~~ **(4)** employment and training efforts;

~~(6)~~ **(5)** human resource development; and

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(7) (6) social service enterprises.

(b) As used in this section, "community development corporation" means a private, nonprofit corporation:

- (1) whose board of directors is comprised primarily of community representatives and business, civic, and community leaders; and
- (2) whose principal purpose includes the provision of:
 - (A) housing;
 - (B) community based economic development projects; and
 - (C) social services;

that primarily benefit low-income individuals and communities.

(c) As used in this section, "capital and surplus" has the meaning set forth in IC 28-1-1-3(10).

(d) Subject to the limitations of this section, other laws, and any regulation, rule, policy, or guidance adopted by the department concerning investments in community based economic development, any bank or trust company may invest directly or indirectly in equity investments in a corporation, a limited partnership, a limited liability company, or another entity organized as:

- (1) a community development corporation;
- (2) an entity formed primarily to support community based economic development;
- (3) an entity qualifying for the new markets tax credits under 26 U.S.C. 45D; **or**
- (4) an entity approved by the director as being formed for a predominantly civic, community, or public purpose and that:
 - (A) primarily benefits low and moderate income individuals;
 - (B) primarily benefits low and moderate income areas;
 - (C) primarily benefits areas targeted for redevelopment by a government entity; or
 - (D) is a qualified investment under 12 CFR 25.23 for purposes of the Community Reinvestment Act of 1977 (12 U.S.C. 2901 et seq.); **or**

(5) an entity making qualified rehabilitation expenditures with respect to a qualified rehabilitated building or certified historic structure, as such terms are defined in section 47 of the Internal Revenue Code of 1986 or a similar state historic tax credit program, as provided for in Section 619(d)(1)(E) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 1851(d)(1)(E)).

(e) Except as provided in subsection (f), the aggregate of all equity investments by a bank or trust company under subsection (d) may not exceed:

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(1) five percent (5%) of the capital and surplus of the bank or trust company without the prior written approval of the director; and

(2) fifteen percent (15%) of the capital and surplus of the bank or trust company under any circumstances.

(f) In determining whether to permit the aggregate of all equity investments by a bank or trust company under subsection (d) to exceed five percent (5%) of the capital and surplus of the bank or trust company under subsection (e)(1), the director shall consider whether:

(1) the aggregate of all equity investments under subsection (d) will pose a significant risk to the affected deposit insurance fund; and

(2) the bank or trust company is adequately capitalized.

(g) A bank or trust company shall not make any investment under this section if the investment would expose the bank or trust company to unlimited liability.

SECTION 20. IC 28-1-13-1.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 1.6. The limitations contained in section 1.5 of this chapter are subject to the following exceptions (1) Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse are not subject to any limitation based on capital and surplus. (2) The purchase of bankers' acceptances of the kind described in 12 U.S.C. 372 and issued by other banks are not subject to any limitation based on capital and surplus. (3) Loans and extensions of credit secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples are subject to a limitation of thirty-five percent (35%) of capital and surplus in addition to the general limitations if the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds one hundred fifteen percent (115%) of the outstanding amount of the loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure such staples. (4) Loans or extensions of credit secured by bonds, notes, certificates of indebtedness, or Treasury bills of the United States or by other such obligation fully guaranteed as to principal and interest by the United States are not subject to any limitation based on capital and surplus. (5) Loans or extensions of credit to or secured by unconditional takeout commitment or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States are not subject to any limitation based on capital and

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surplus. (6) Loans or extensions of credit secured by a segregated deposit account in the lending bank are not subject to any limitation based on capital and surplus. (7) Loans or extensions of credit to any financial institution or to any receiver, conservator, superintendent of banks, or other agent in charge of the business and property of the financial institution, when such loans or extensions of credit are approved by the director, are not subject to any limitation based on capital and surplus: **set forth in 12 CFR 32.3.**

SECTION 21. IC 28-1-29-5.5, AS ADDED BY P.L.137-2014, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 5.5. (a) As used in this section, "**Nationwide Multistate Licensing System and Registry**" (or "Nationwide Mortgage Licensing System and Registry" or "NMLSR") means a mortgage multistate licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators **owned and operated by the State Regulatory Registry, LLC, or by any successor or affiliated entity**, for the licensing and registration of creditors, mortgage loan originators, and other mortgage or financial services entities and their employees and agents. **The term includes any other name or acronym that may be assigned to the system by the State Regulatory Registry, LLC, or by any successor or affiliated entity.**

(b) Subject to subsection (g), the director may designate the NMLSR to serve as the sole entity responsible for:

- (1) processing applications and renewals for licenses under this chapter;
- (2) issuing unique identifiers for licensees and entities exempt from licensing under this chapter; and
- (3) performing other services that the director determines are necessary for the orderly administration of the department's licensing system under this chapter.

(c) Subject to the confidentiality provisions contained in IC 5-14-3 and this section, the director shall regularly report significant or recurring violations of this chapter to the NMLSR.

(d) Subject to the confidentiality provisions contained in IC 5-14-3 and this section, the director may report complaints received regarding licensees under this chapter to the NMLSR.

(e) The director may report publicly adjudicated licensure actions against a licensee to the NMLSR.

(f) The director shall establish a process by which licensees may challenge information reported to the NMLSR by the department.

(g) The director's authority to designate the NMLSR under

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subsection (b) is subject to the following:

(1) Information stored in the NMLSR is subject to the confidentiality provisions of IC 5-14-3. A person may not:

(A) obtain information from the NMLSR, unless the person is authorized to do so by statute;

(B) initiate any civil action based on information obtained from the NMLSR if the information is not otherwise available to the person under any other state law; or

(C) initiate any civil action based on information obtained from the NMLSR if the person could not have initiated the action based on information otherwise available to the person under any other state law.

(2) Documents, materials, and other forms of information in the control or possession of the NMLSR that are confidential under state or federal law and that are:

(A) furnished by the director, the director's designee, or a licensee; or

(B) otherwise obtained by the NMLSR;

are confidential and privileged by law and are not subject to inspection under IC 5-14-3, subject to subpoena, subject to discovery, or admissible in evidence in any civil action. However, the director may use the documents, materials, or other information available to the director in furtherance of any action brought in connection with the director's duties under this chapter.

(3) Disclosure of documents, materials, and information:

(A) to the director; or

(B) by the director;

under this subsection does not result in a waiver of any applicable privilege or claim of confidentiality with respect to the documents, materials, or information.

(4) Information provided to the NMLSR is subject to IC 4-1-11.

(5) This subsection does not limit or impair a person's right to:

(A) obtain information;

(B) use information as evidence in a civil action or proceeding; or

(C) use information to initiate a civil action or proceeding;

if the information may be obtained from the director or the director's designee under any law.

(6) The requirements under any federal law or IC 5-14-3 regarding the privacy or confidentiality of any information or material provided to the NMLSR, and any privilege arising under federal or state law, including the rules of any federal or state



court, with respect to the information or material, continue to apply to the information or material after the information or material has been disclosed to the NMLSR. The information and material may be shared with all state and federal regulatory officials with financial services industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or IC 5-14-3.

(7) For purposes of this section, the director may enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, or other associations representing governmental agencies, as established by rule or order of the director.

(8) Information or material that is subject to a privilege or confidentiality under subdivision (6) is not subject to:

- (A) disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or
- (B) subpoena, discovery, or admission into evidence in any private civil action or administrative process, unless with respect to any privileged information or material held by the NMLSR, the person to whom the information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.

(9) Any provision of IC 5-14-3 that concerns the disclosure of:

- (A) confidential supervisory information; or
 - (B) any information or material described in subdivision (6);
- and that is inconsistent with subdivision (6) is superseded by this section.

(10) This section does not apply with respect to information or material that concerns the employment history of, and publicly adjudicated disciplinary and enforcement actions against, a person described in section 5(b)(2), 5(b)(3), or 5(b)(4) of this chapter and that is included in the NMLSR for access by the public.

(11) The director may require a licensee required to submit information to the NMLSR to pay a processing fee considered reasonable by the director. In determining whether the NMLSR processing fee is reasonable, the director shall:

- (A) require review of; and
- (B) make available;

the audited financial statements of the NMLSR.

(12) Notwithstanding any other provision of law, any:

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(A) application, renewal, or other form or document that:

- (i) relates to licenses issued under this chapter; and
- (ii) is made or produced in an electronic format;

(B) document filed as an electronic record in a multistate automated repository established and operated for the licensing or registration of financial services entities and their employees; or

(C) electronic record filed through the NMLSR;

is considered a valid original document when reproduced in paper form by the department.

SECTION 22. IC 28-1-29-8, AS AMENDED BY P.L.186-2015, SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 8. (a) An agreement between a licensee and a debtor must:

- (1) be in a written form;
- (2) be dated and signed by the licensee and the debtor;
- (3) include the name of the debtor and the address where the debtor resides;
- (4) include the name, business address, and telephone number of the licensee;
- (5) be delivered to the debtor immediately upon formation of the agreement; and
- (6) disclose the following:
 - (A) The services to be provided.
 - (B) The amount or method of determining the amount of all fees and charges, individually itemized, to be paid by the debtor.
 - (C) The schedule of payments to be made by or on behalf of the debtor, including the amount of each payment, the date on which each payment is due, and an estimate of the date of the final payment.
 - (D) If a plan provides for regular periodic payments to creditors:
 - (i) each creditor of the debtor to which payment will be made, the amount owed to each creditor, and any concessions the licensee reasonably believes each creditor will offer; and
 - (ii) the schedule of expected payments to each creditor, including the amount of each payment and the date on which the payment will be made.
 - (E) Each creditor that the licensee believes will not participate in the plan and to which the licensee will not direct payment.



(F) The manner in which the licensee will comply with the licensee's obligations under section 9(k) of this chapter.

(G) ~~A statement~~ That:

- (i) the licensee may terminate the agreement for good cause, upon return of unexpended money of the debtor; and
- (ii) the debtor may contact the department with any questions or complaints regarding the licensee.

(H) The address, telephone number, and Internet address or web site of the department.

(I) That the debtor has a right to terminate the agreement at any time without penalty (notwithstanding the close-out fee as permitted by section 8.3(d) of this chapter) or obligation.

(J) That the debtor authorizes any bank insured by the Federal Deposit Insurance Corporation in which the licensee or the licensee's agent has established a trust account to disclose to the department any financial records relating to the trust account.

(K) That the licensee shall notify the debtor within five (5) days after learning of a creditor's final decision to reject or withdraw from a plan under the agreement.

(b) For purposes of subsection (a)(5), delivery of an electronic record occurs when:

- (1) the record is made available in a format in which the debtor may retrieve, save, and print the record; and
- (2) the debtor is notified that the record is available.

(c) ~~An agreement must provide that: (1) the A~~ **debtor has a may exercise the debtor's** right to terminate the agreement at any time without penalty (notwithstanding the close-out fee as permitted by section 8.3(d) of this chapter) or obligation, **as described in subsection (a)(6)(I)**, by giving the licensee written or electronic notice, in which event:

~~(A)~~ **(1)** the licensee shall:

(A) refund all unexpended money that the licensee or the licensee's agent has received from or on behalf of the debtor for the reduction or satisfaction of the debtor's debt; and

(B) **notify immediately in writing all creditors in the debt management plan of the cancellation by the contract debtor; and**

~~(B)~~ **(2)** all powers of attorney granted by the debtor to the licensee are revoked and ineffective.

~~(2)~~ the debtor authorizes any bank insured by the Federal Deposit



Insurance Corporation in which the licensee or the licensee's agent has established a trust account to disclose to the department any financial records relating to the trust account;

(3) the licensee shall notify the debtor within five (5) days after learning of a creditor's final decision to reject or withdraw from a plan under the agreement; and

~~(4)~~ **(d)** A licensee's notice under subdivision (3) of a creditor's final decision to reject or withdraw from a plan under the agreement, as described in subsection (a)(6)(K) must include:

~~(A)~~ **(1)** the identity of the creditor; and

~~(B)~~ **(2)** a statement that the debtor has the right to modify or terminate the agreement.

~~(4)~~ **(e)** All creditors included in the plan must be notified of the contract debtor's and licensee's relationship.

~~(e)~~ **(f)** A licensee shall give to the contract debtor a dated receipt for each payment, at the time of the payment, unless the payment is made by check, money order, or automated clearinghouse withdrawal as authorized by the contract debtor.

~~(f)~~ A licensee shall, upon cancellation by a contract debtor of the agreement, notify immediately in writing all creditors in the debt management plan of the cancellation by the contract debtor.

(g) A licensee may not enter into an agreement with a debtor unless a thorough, written budget analysis of the debtor indicates that the debtor can reasonably meet the payments required under a proposed plan. The following must be included in the budget analysis:

(1) Documentation and verification of all income considered. All income verification must be dated not more than sixty (60) days before the completion of the budget analysis.

(2) Monthly living expense figures, which must be reasonable for the particular family size and part of Indiana. If expenditure reductions are part of the planned budget for the debtor, details of the expected savings must be documented in the debtor's file and set forth in the budget provided to the debtor.

(3) Documentation and verification, by a current credit bureau report, current debtor account statements, or direct documentation from the creditor, of monthly debt payments and balances to be paid outside the plan.

(4) Documentation and verification, by a current credit bureau report, current debtor account statements, or direct documentation from the creditor, of the monthly debt payments and current balances to be paid through the plan.

(5) The date of the budget analysis and the signature of the debtor.

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(h) A licensee may not enter into an agreement with a debtor for a period longer than sixty (60) months.

(i) A licensee may provide services under this chapter in the same place of business in which another business is operating, or from which other products or services are sold, if the director issues a written determination that:

- (1) the operation of the other business; or
- (2) the sale of other products and services;

from the location in question is not contrary to the best interests of debtors.

(j) A licensee without a physical location in Indiana may:

- (1) solicit sales of; and
- (2) sell;

additional products and services to Indiana residents if the director issues a written determination that the proposed solicitation or sale is not contrary to the best interests of debtors.

(k) A licensee shall maintain a toll free communication system, staffed at a level that reasonably permits a contract debtor to speak to a counselor, debt specialist, or customer service representative, as appropriate, during ordinary business hours.

(l) A debt management company shall act in good faith in all matters under this chapter.

SECTION 23. IC 28-5-1-11, AS AMENDED BY P.L.217-2007, SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 11. (a) Any such company shall have the power to purchase, hold and convey real estate for the following purposes and for no others:

- (1) Such as shall be necessary for the convenient transaction of its business, but the cost or value of such real estate as carried on its books shall not exceed fifty percent (50%) of the amount of its capital and surplus, without the written consent of the department.
- (2) Such as shall be conveyed to it in satisfaction of debts or obligations previously contracted in the course of its dealings, or in exchange for real estate so conveyed to it.
- (3) Such as it shall purchase at sales under judgments or decrees of foreclosure on mortgages held by such company or shall acquire as additional security for obligations due such company.
- (4) Such as shall have been sold under a title-retaining, installment, real estate sales contract, the term of which does not exceed twelve (12) years, where such contract is either purchased by it or taken as collateral security for a loan. However, the total cost of all real estate sold on title-retaining installment sales

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contracts as carried on the books of the company shall not at any one (1) time exceed five percent (5%) of the total resources of the company when such real estate title-retaining installment sales contracts were acquired without the written approval of the department.

(b) No such company shall hold the title or possession of any real estate purchased or otherwise acquired to secure any debts or obligations due to it, for a longer period than ten (10) years after such real estate is or has been purchased or otherwise acquired without the consent in writing of the department. However, any such company may sell any real estate so purchased or otherwise acquired by it under a title-retaining installment real estate sales contract, the term of which shall not exceed twelve (12) years, and hold title or possession thereof until the same is conveyed to the purchaser thereof under the terms and provisions of any such contract.

(c) For the purposes of subsection (a)(1), real estate purchased or held for the convenient transaction of the business of a company includes the following:

(1) Real estate on which the principal office or a branch office of the company is located.

(2) Real estate that is the location of facilities supporting the operations of the company, such as parking facilities, data processing centers, loan production offices, automated teller machines, night depositories, facilities necessary for the operations of a company subsidiary, or other facilities that are approved by the director.

(3) Real estate that the board of directors of the company expects, in good faith, to use as a company office or facility in the future.

(d) If real estate referred to in subsection (c)(3) is held by a company for one (1) year without being used as a company office or facility, the board of directors of the company shall state, by resolution, definite plans for the use of the real estate. A resolution adopted under this subsection shall be made available for inspection by the department.

(e) Real estate referred to in subsection (c)(3) may not be held by a company for more than three (3) years without being used as a company office or facility unless:

(1) the board of directors of the company, by resolution:

(A) reaffirms annually that the company expects to use the real estate as a company office or facility in the future; and

(B) explains the reason why the real estate has not yet been used as a company office or facility; and

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(2) the director determines that:

(A) the continued holding of the real estate by the company does not endanger the safety and soundness of the company; and

(B) the company is holding the real estate to use the real estate in the future for one (1) of the purposes set forth in subsection (c)(1) ~~and~~ or (c)(2).

(f) Real estate referred to in subsection (c)(3) may not be held by a company for more than ten (10) years without being used as a company office or facility unless the department consents in writing to the continued holding of the real estate by the company.

(g) If a company closes a principal or branch office or a facility on, or discontinues operations on, real estate described in subsection (c)(1) or (c)(2), the company shall divest itself of the real estate not later than five (5) years from the date of the closing or discontinuation.

SECTION 24. IC 28-5-1-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 18. Every company shall make provision for adequate fidelity coverage for all officers and employees having access to money or bonds of the company. The amount and form of fidelity coverage must be approved **annually** by the board of directors of the company. Coverage may be provided:

(1) in the form of a blanket fidelity bond issued by a corporate surety authorized to transact business in Indiana; or

(2) through the establishment of a separate reserve fund within the company for that purpose.

SECTION 25. IC 28-7-1-12, AS AMENDED BY P.L.35-2010, SECTION 153, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 12. (a) Every credit union and every affiliate of a credit union shall be subject to examination **in accordance with IC 28-11-3-1** by the department. A credit union shall be examined by the department as often as the department shall deem necessary. The department shall at all times be given free access to all of the books, papers, securities, and other sources of information, including audit reports and audit working papers for any such credit union. The director, the members of the department, and the supervisor in charge of the division shall have the power to subpoena documents and examine witnesses under oath pertaining to the business of the credit union. The department may accept an audit by a certified public accountant and govern its examination procedures and examination fees accordingly. At the close of each examination, a conference shall be conducted to disclose to the board of directors the findings of the

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examination.

(b) If a credit union contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the credit union and be subject to the department's routine examination procedures, the person that provides the service to the credit union shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order any credit union that receives services from the person refusing the examination to:

- (1) discontinue receiving one (1) or more services from the person; or
- (2) otherwise cease conducting business with the person.

SECTION 26. IC 28-7-1-33, AS AMENDED BY P.L.35-2010, SECTION 169, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 33. (a) **Except as provided in section 33.1 of this chapter**, any two (2) or more credit unions may, with the approval of the department, merge. This section authorizes the merger of a credit union organized under this chapter with a credit union organized under any other law.

(b) The board of directors of each credit union participating in the merger must by majority vote approve a joint agreement of merger.

(c) After the resolutions approving a joint agreement of merger have been adopted by the board of directors of each credit union, the credit unions shall submit the resolutions and joint agreement to the department for approval. The department may, in the department's discretion, approve or disapprove the resolution and joint agreement. In deciding whether to approve or disapprove the resolution and joint agreement under this section, the department shall consider the following factors:

- (1) Whether the **surviving credit unions subject to union resulting from** the proposed transaction **are will be** operated in a safe, sound, and prudent manner.
- (2) Whether the financial condition of any credit union subject to the proposed transaction will jeopardize the financial stability of any other credit unions subject to the proposed transaction.
- (3) Whether the proposed transaction will result in a credit union that has inadequate capital, unsatisfactory management, or poor earnings prospects.
- (4) Whether the proposed transaction, in the department's

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judgment and considering the available information under the prevailing circumstances, will result in an institution that is more favorable to the stakeholders than if the entities were to remain separate.

(5) Whether the management or other principals of the credit union that will result from the proposed transaction are qualified by character and financial responsibility to control and operate in a legal and proper manner the resulting credit union.

(6) Whether the credit unions subject to the proposed transaction furnish all the information the department requires in reaching the department's decision.

(d) If the joint agreement is approved by the department, any credit union whose existence will terminate as a result of the merger shall submit the joint agreement to a vote of its shareholders at the meeting directed by the resolution of the board of directors. A majority of the shareholders present at the meeting may approve the joint agreement. However, the department may permit the merger to become effective without the affirmative vote of the membership of a credit union if that credit union is in danger of insolvency or if the qualified group or groups associated with the credit union either have ceased or will soon cease to exist.

(e) After approval of the joint agreement by the shareholders of the merging credit unions, each credit union shall execute in triplicate articles of merger, on forms furnished by the department, which shall set forth the following:

(1) The time and place of the meeting of the board of directors at which the plan was approved.

(2) The vote by which the plan was approved by the board.

(3) A copy of the resolution or other action by which the plan was agreed upon.

(4) The time and place of the meeting of the members at which the plan was approved.

(5) The vote by which the plan was approved by the members.

(f) The articles, joint agreement, and resolutions shall be delivered to the department for certification, which shall be evidenced in the manner prescribed in IC 28-12-5, and shall be presented to the secretary of state for **recording, filing**. The secretary of state shall file one (1) copy of the articles of merger and shall issue a certificate of merger and two (2) copies of the articles of merger to the surviving credit union. The date on which the secretary of state issues the certificate of merger is the effective date of the merger.

(g) The articles of merger shall be filed with the county recorder of

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the county in which the principal office of the surviving credit union is located.

SECTION 27. IC 28-7-1-33.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 33.1. The approval of the department of the merger of two (2) or more credit unions is not required under this chapter if the credit union surviving the merger is an institution organized or reorganized under the laws of the United States or a state (as defined in IC 28-2-17-19) other than Indiana. However, the surviving credit union shall:**

- (1) notify the department of the merger;**
- (2) provide satisfactory evidence to the department of compliance with the requirements of IC 28-1-22 relating to foreign corporations, if applicable; and**
- (3) provide satisfactory evidence to the department of compliance with the requirements of section 34 of this chapter relating to credit unions organized in other states, if applicable.**

SECTION 28. IC 28-10-1-1, AS AMENDED BY P.L.186-2015, SECTION 50, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 1. A reference to a federal law or federal regulation in this title is a reference to the law or regulation as in effect December 31, ~~2014~~ **2015**.

SECTION 29. IC 28-13-4-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 5. (a) A corporation may not declare or pay any dividends to its shareholders in any form if, by the payment of the dividends, its capital stock will be thereby impaired.

(b) **Unless approved by the director**, a corporation may **never not** pay a dividend in an amount greater than the remainder of undivided profits then on hand after deducting losses, bad debts, or depreciation that the department may have determined, and all other expenses.

(c) A corporation must obtain department approval before reducing the corporation's capital stock, capital surplus, or preferred stock.

SECTION 30. IC 32-29-7-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. **(a)** The owner of the real estate subject to the issuance of process under a judgment or decree of foreclosure may, with the consent of the judgment holder endorsed on the judgment or decree of foreclosure, file with the clerk of the court a waiver of the time limitations on issuance of process set out in section 3 of this chapter. If the owner files a waiver under this section, process shall issue immediately. The consideration for waiver,

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whether or not expressed by its terms, shall be the waiver and release by the judgment holder of any deficiency judgment against the owner.

(b) This section is not intended to provide the owner of real estate subject to the issuance of process under a judgment or decree of foreclosure any protection or defense against a deficiency judgment for purposes of the borrower protections from liability that must be disclosed under 12 CFR 1026.38(p)(3) on the form required by 12 CFR 1026.38 ("Closing Disclosures" form under the Amendments to the 2013 Integrated Mortgage Disclosures Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z) and the 2013 Loan Originator Rule Under the Truth in Lending Act (Regulation Z)).

SECTION 31. An emergency is declared for this act.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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