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Sixty-eighth
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1068

Introduced by

Industry, Business and Labor Committee

(At the request of the Department of Financial Institutions)

A BILL for an Act to create and enact chapter 13-13 of the North Dakota Century Code, relating to residential mortgage loan servicers; to provide a penalty; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 13-13 of the North Dakota Century Code is created and enacted as follows:

13-13-01. Administration.

The department of financial institutions shall administer and enforce this chapter. The department has the power to promulgate rules and regulations having the force and effect of law, reasonably necessary to carry out the provisions of this chapter, in accordance with chapter 28-32. Any hearing held and any orders issued pursuant to this chapter must be in accordance with chapter 28-32. In addition to those powers set forth in chapter 28-32, the department has additional powers as set forth in this chapter.

13-13-02. Definitions.

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Allowable assets for liquidity" means those assets that may be used to satisfy the liquidity requirements in this chapter, including unrestricted cash and cash equivalents and unencumbered investment grade assets held for sale or trade, which include mortgage-backed securities, obligations of government-sponsored enterprises, and United States treasury obligations.
2. "Board of directors" means the formal body established by an applicant or licensee that is responsible for corporate governance and compliance with this chapter.
3. "Commissioner" means the commissioner of the department of financial institutions.

4. "Corporate governance" means the structure of the institution and how it is managed, including the corporate rules, policies, processes, and practices used to oversee and manage the institution.

5. "Government-sponsored enterprises" means the federal national mortgage association (fannie mae), the government national mortgage association (ginnie mae), and the federal home loan mortgage corporation (freddie mac).

6. "Interim serviced prior to sale" means the activity of collecting a limited number of contractual mortgage payments immediately after origination on loans held for sale but prior to the loans being sold into the secondary market.

7. "Internal audit" means the internal activity of performing independent, objective assurance and consulting to evaluate and improve the effectiveness of company operations, risk management, internal controls, and governance processes.

8. "Large servicer" means a residential mortgage servicer with servicing portfolios of two thousand or more one-to-four unit residential mortgage loans serviced or subserviced for others, excluding whole loans owned, and loans being "interim" serviced prior to sale as of the most recent calendar year end, reported in the nationwide multistate licensing system and registry mortgage call report, and that operates in two or more states, districts, or territories of the United States either currently or as of the prior calendar year end. For entities within a holding company or affiliated group of companies' applicability must be at the large servicer level. This definition excludes servicers solely owning or conducting reverse mortgage servicing, or both, or the reverse mortgage portfolio administered by the large servicer.

9. "Lender" means any person that extends money to a borrower with the expectation of being repaid.

10. "Liquidity risk" means the potential that the servicer will be unable to meet its obligations as they come due because of an inability to liquidate assets or obtain adequate funding or that it cannot easily unwind or offset specific exposures.

11. "Mortgage call report" means the quarterly or annual report of residential real estate loan origination, servicing, and financial information completed by companies licensed in the nationwide multistate licensing system and registry.

12. "Mortgage servicing rights" refers to the contractual right to service residential mortgage loans on behalf of the owner of the associated mortgage in exchange for specified compensation in accordance with the servicing contract.

13. "Mortgage servicing rights investor" means entities that invest in and own mortgage servicing rights and rely on subservicers to administer the loans on their behalf. Mortgage servicing rights investors are often referred to as master servicers.

14. "Nationwide multistate licensing system and registry" means the registry developed by the conference of state bank supervisors and the American association of residential mortgage regulators and owned and operated by the state regulatory registry, LLC, or any successor or affiliated entity, for the licensing and registration of persons in financial services industries.

15. "Operating liquidity" means the funds necessary to perform normal business operations, such as payment of rent, salaries, interest expense, and other typical expenses associated with operating the entity.

16. "Records" means books, accounts, papers, records, and files, no matter in what format they are kept, which are used in conducting business under this chapter.

17. "Residential mortgage loan servicing" means receiving any scheduled periodic payments from a borrower pursuant to the terms of any federally related mortgage loan, including amounts for escrow accounts under section 10 of the Real Estate Settlement Procedures Act [12 U.S.C. 2609], and making the payments to the owner of the loan or other third parties of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the mortgage servicing loan documents or servicing contract. In the case of a home equity conversion mortgage or reverse mortgage as referenced in this section, servicing includes making payments to the borrower.

18. "Reverse mortgage" means a loan collateralized by real estate, typically made to borrowers over fifty-five years of age, which does not require contractual monthly payments and is typically repaid upon the death of the borrower through the sale of the home or refinance by the heirs.

19. "Risk management assessment" means the functional evaluations performed under the risk management program and reports provided to the board of directors under the relevant governance protocol.

20. "Risk management program" means the policies and procedures designed to identify, measure, monitor, and mitigate risk sufficient for the level of sophistication of the residential mortgage loan servicer.

21. "Service or servicing a loan" means on behalf of the lender or investor of a residential mortgage loan:

    a. Collecting or receiving payments on existing obligations due and owing to the lender or investor, including payments of principal, interest, escrow amounts, and other amounts due;

    b. Collecting fees due to the servicer;

    c. Working with the borrower and the licensed lender or servicer to collect data and make decisions necessary to modify certain terms of those obligations either temporarily or permanently;

    d. Otherwise finalizing collection through the foreclosure process; or

    e. Servicing a reverse mortgage loan.

22. "Servicer" means the entity performing the routine administration of residential mortgage loans on behalf of the owner or owners of the related mortgages under the terms of a servicing contract.

23. "Servicing liquidity or liquidity" means the financial resources necessary to manage liquidity risk arising from servicing functions required in acquiring and financing mortgage servicing rights, hedging costs, including margin calls, associated with the mortgage servicing rights asset and financing facilities, and advances or costs of advance financing for principal, interest, taxes, insurance, and any other servicing-related advances.

24. "Subservicer" means the entity performing the routine administration of residential mortgage loans as agent of a servicer or mortgage servicing rights investor under the terms of a subservicing contract.

25. "Tangible net worth" means total equity less receivables due from related entities, less goodwill, and other intangibles less pledged assets.

26. "Whole loans" means loans where a mortgage and the underlying credit risk is owned and held on the balance sheet of the entity with all ownership rights.

13-13-03. Residential mortgage loan servicing license required.

Except as otherwise provided, a person other than a residential mortgage loan servicer licensed and authorized under this chapter may not engage in residential mortgage loan servicing, either as a servicer, subservicer, or mortgage servicing rights investor, in the state without a residential mortgage loan servicer license issued by the commissioner. A person engages in residential mortgage loan servicing in the state if the borrower resides in North Dakota.

13-13-04. Entities exempted from licensing requirements.

This chapter does not apply to:

1. Banks;
2. Credit unions;
3. Savings and loan associations;
4. State or federal housing finance agencies;
5. Institutions chartered by the farm credit administration; or
6. Not-for-profit mortgage servicers.

13-13-05. Application for residential mortgage loan servicer license.

Every application for a residential mortgage loan servicer license, branch registration, or a renewal, must be made upon forms designed and furnished by the department of financial institutions and must contain any information which the department deems necessary and proper. The department may further require any applicant to provide additional information that is not requested on the application form. The applicant shall register with the North Dakota secretary of state if so required.

13-13-06. Fee to accompany application for residential mortgage loan servicer license.

The application for license must be in writing, under oath, and in the form prescribed by the commissioner. The application must give the location or locations where the business is to be conducted and must contain any further information the commissioner requires, including the names and addresses of the partners, officers, directors, trustees, and the principal owners or members, and will provide the basis for the investigation and findings contemplated under

section 13-13-05. At the time of making an application, the applicant shall include payment in the sum of four hundred dollars, which is not subject to refund, as a fee for investigating the application, and the sum of four hundred dollars for a license fee.

13-13-07. Financial condition.

This section applies to large servicers as defined in subsection 9 of section 13-13-02.

1. A large servicer must maintain capital and liquidity in compliance with this section.
2. For the purposes of complying with the capital and liquidity requirements of this section, all financial data must be determined in accordance with generally accepted accounting principles.
3. A large servicer that meets the federal housing finance agency eligibility requirements for enterprise single-family seller or servicers for capital, net worth ratio, and liquidity, regardless of whether the servicer is approved for government-sponsored enterprises servicing, meets the requirements of subsections 1 and 2 of this section. Large servicers shall maintain written policies and procedures implementing the capital and servicing liquidity requirements of this section. Such policies and procedures must include a sustainable written methodology for satisfying the requirements of this subsection and be available to the commissioner upon request.
4. Large servicers shall maintain sufficient allowable assets for liquidity in addition to the amounts required for servicing liquidity to cover normal business operations. Large servicers shall have sound cash management and business operating plans that match the size and sophistication of the institution to ensure normal business operations. Management must develop, establish, and implement plans, policies, and procedures for maintaining operating liquidity sufficient for the ongoing needs of the institution. The plans, policies, and procedures must contain sustainable, written methodologies for maintaining sufficient operating liquidity and be available to the commissioner upon request.

13-13-08. Financial condition for applicant or licensee not subject to section 13-13-07.

1. An applicant or licensee not subject to section 13-13-07 which is operating as an approved servicer by one or more government-sponsored enterprises must maintain liquidity to include operating reserves, and tangible net worth that meet the standards set by the entity. If approved by more than one entity, the applicant or licensee must

meet the highest standard of the entities for which they are approved. Applicants or licensees with a combined portfolio are subject to this standard.

2. An applicant or licensee with a portfolio of loans not subject to any government-sponsored enterprises requirements must maintain liquidity to include operating reserves of 0.00035 times the unpaid principal balance of the portfolio and maintain a minimum tangible net worth as set forth in paragraph a of this subsection or, in lieu of the tangible net worth, maintain a one million dollar surety bond.

a. Minimum tangible net worth, based on nationwide portfolio:

0-199 loans	$100,000
200-299 loans	$200,000
300-399 loans	$300,000
400-499 loans	$400,000
500-599 loans	$500,000
600-699 loans	$600,000
700-799 loans	$700,000
800-899 loans	$800,000
900-999 loans	$900,000
1,000 plus loans	$1,000,000

b. An applicant or licensee servicing North Dakota residential mortgage accounts may apply to the commissioner to waive or adjust one or more of these capital or liquidity requirements. In considering such a request, the commissioner will consider the number and types of loans being serviced and whether the licensee has a positive net worth and adequate operating reserves. For purposes of this section, "operating reserves" are funds set aside in anticipation of future payments or obligations and are included in liquidity.

c. Licensees subject to this section must annually or more frequently report, as prescribed by the commissioner, on liquidity, including operating reserves, and tangible net worth.

13-13-09. Corporate governance.

This section applies to large servicers as defined in section 13-13-02.

1. Large servicers shall establish and maintain a board of directors responsible for its oversight. For large servicers that are not approved to service loans by a government-sponsored enterprise, or where these federal agencies have granted approval for a board alternative, an institution may establish a similar body constituted to exercise oversight and fulfill the board of directors' responsibilities in subsection 2.

2. The board of directors shall be responsible for:

   a. Establishing a written corporate governance framework, including appropriate internal controls designed to monitor corporate governance and assess compliance with the corporate governance framework.

   b. Monitoring and ensuring institution compliance with the corporate governance framework and this chapter.

   c. Reporting, accurately and timely, regulatory reports, including the requirements for filing the mortgage call report as required by section 13-13-23.

   d. Establishing internal audit requirements that are appropriate for the size, complexity, and risk profile of the servicer, with appropriate independence to provide a reliable evaluation of the servicer's internal control structure, risk management, and governance.

3. Licensees subject to this section shall obtain an external opinion audit, including audited financial statements and audit reports conducted by an independent public accountant annually, including at a minimum:

   a. Annual financial statements, including balance sheet, statement of operations or income statement, cashflows, notes, and supplemental schedules prepared in accordance with generally accepted accounting principles.

   b. Assessment of the internal control structure.

   c. Computation of tangible net worth.

   d. Validation of mortgage servicing rights valuation and reserve methodology, if applicable.

   e. Verification of adequate fidelity and errors and omissions insurance.

   f. Testing of controls related to risk management activities, including compliance and stress testing, where applicable.

4. Licensees subject to this section shall establish a risk management program under the oversight of the board of directors that identifies, measures, monitors, and controls risk sufficient for the level of sophistication of the servicer. The risk management program must:

   a. Have appropriate processes and models in place to measure, monitor, and mitigate financial risk and changes to the risk profile of the servicer and assets being serviced.

   b. Be scaled to the complexity of the organization, but be sufficiently robust to manage risks in several areas, including:

      (1) Credit risk. The potential that a borrower or counterparty will fail to perform on an obligation.

      (2) Liquidity risk. The potential that the servicer will be unable to meet its obligations as they come due because of an inability to liquidate assets or obtain adequate funding or that it cannot easily unwind or offset specific exposures.

      (3) Operational risk. The risk resulting from inadequate or failed internal processes, people, and systems or from external events.

      (4) Market risk. The risk to the servicer's condition resulting from adverse movements in market rates or prices.

      (5) Compliance risk. The risk of regulatory sanctions, fines, penalties, or losses resulting from failure to comply with laws, rules, regulations, or other supervisory requirements applicable to the servicer.

      (6) Legal risk. The potential that actions against the institution that result in unenforceable contracts, lawsuits, legal sanctions, or adverse judgments can disrupt or otherwise negatively affect the operations or condition of the servicer.

      (7) Reputation risk. The risk to earnings and capital arising from negative publicity regarding the servicer's business practices.

5. Licensees subject to this section shall conduct a risk management assessment on an annual basis, concluding with a formal report to the board of directors. Evidence of risk

management activities throughout the year must be maintained and made part of the report, including findings of issues and the response to address those findings.

6. Licensees subject to this section must maintain the audits, policies and procedures, and assessment results as part of their books and records available to the commissioner upon request.

13-13-10. Expiration and renewal of license.

All licenses required under this chapter expire on December thirty-first of each year and may be renewed. Renewals are effective the succeeding January first. Applications for renewal must be submitted no later than thirty days before the expiration of the license and must be accompanied by the required annual renewal fee, which is not subject to refund. The renewal fee must equal five hundred dollars or two dollars and forty cents per one hundred thousand dollars of North Dakota mortgage loans serviced, whichever is greater. The renewal fee shall be based on the average mortgage loans serviced over the previous four quarters ending June thirtieth of the current year as reported on the mortgage call report. The renewal fee may not exceed one hundred thousand dollars. Fees must be paid to the department of financial institutions and be deposited in the financial institutions regulatory fund. The form and content of renewal applications must be determined by the department of financial institutions, and a renewal application may be denied upon the same grounds as would justify denial of an initial application. When a licensee has been delinquent in renewing its license, the department of financial institutions may charge an additional fee of fifty dollars for the renewal of the license. A residential mortgage loan servicer license is not transferable. If the commissioner determines that an ownership change has occurred in a sole proprietorship, partnership, limited liability partnership, corporation, or limited liability corporation that was previously granted a residential mortgage loan servicer license, the commissioner may require a new application from the purchaser. The application must be filed within forty-five days from the date change of ownership is consummated. The residential mortgage loan servicer license granted to the previous owner continues in effect to the new purchaser until the application is either granted or denied.

13-13-11. Powers of the department of financial institutions.

The department of financial institutions has the power to:

1. Determine the qualifications of all applicants based on financial responsibility, financial condition, business experience, character, and general fitness which must reasonably warrant the belief that the applicant's business will be conducted lawfully and fairly. In determining whether this qualification is met, and for the purpose of investigating compliance with the chapter, the commissioner may review and consider the relevant business records and capital adequacy of the applicant and the competence, experience, integrity, and financial ability of a person who is a member, partner, director, officer, or twenty-five percent or more shareholder of the applicant.
2. Establish codes of ethical conduct for licensees.
3. The commissioner may:
   a. Order or direct the licensee subject to this chapter to satisfy additional conditions necessary to ensure that the institution will continue to operate in a safe and sound manner and be able to continue to service loans in compliance with state and federal law or regulation where risk to the institution or borrower is extremely high, as determined by a formal review.
   b. Provide notice that all or part of this chapter is not applicable to an institution where risk to the institution is extremely low, as determined by a formal review.
   c. Provide public notice of a temporary suspension of all or certain sections of this chapter where economic, environmental, or societal events are determined to be of such severity to warrant a temporary suspension.

13-13-12. Manner in which records to be kept.

Every residential mortgage loan servicer licensed under this chapter shall keep a record of all sums collected and all loans serviced by the residential mortgage loan servicer for a period of six years from the date of last entry. If the records can be reproduced upon request by the department of financial institutions within the required statutory time period provided in this section, the records of a licensee may be maintained electronically. When a licensee ceases operations for any reason, the licensee shall inform the department of the location of the records. In addition, the licensee shall provide the name of the individual responsible for maintenance of the records. The licensee shall notify the department within ten business days of the change of the location of the records or the change of the individual responsible for maintenance of the records.

13-13-13. Revocation of license - Suspension of license - Surrender of license.

1. The commissioner may issue upon any licensee an order suspending or revoking a licensee's license if the commissioner finds that:
   a. The licensee has failed to pay the annual license fee under this chapter or any examination fee imposed by the commissioner under the authority of this chapter.
   b. The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provision of this chapter or any regulation or order lawfully made pursuant to and within the authority of this chapter.
   c. Any fact or condition existing at the time of the original application for such license which clearly would have warranted the department of financial institutions in refusing originally to issue such license.
   d. The licensee has failed to maintain the required bond.
   e. The licensee has failed to maintain registration with the secretary of state if so required.
2. The order must contain a notice of opportunity for hearing pursuant to chapter 28-32.
3. If a hearing is not requested within twenty days of the date the order is served upon the licensee, the order is final. If a hearing is held and the commissioner finds that the record warrants, the commissioner may enter a final order. The final order is final suspending or revoking the license.
4. If the commissioner finds that probable cause for revocation of any license exists and that enforcement of the chapter requires immediate suspension of the license pending investigation, it may, upon issuance, enter an order suspending the license pending the holding of a hearing as prescribed in this chapter.
5. Any licensee may surrender its license, but surrender does not affect the licensee's civil or criminal liability for acts committed before the surrender.

13-13-14. Suspension and removal of residential mortgage loan servicer officers and employees.

1. The commissioner of financial institutions may issue upon a current or former residential mortgage loan servicer officer or employee and upon the licensee involved an order stating:

a. The current or former officer or employee is engaging or has engaged in any of the following conduct:

(1) Violating a law, rule, order, or written agreement with the commissioner.

(2) Engaging in harassment or abuse, the making of false or misleading representations, or engaging in unfair practices involving servicing activity.

(3) Performing an act of commission or omission or practice which is a breach of trust or a breach of fiduciary duty.

b. The term of the suspension or removal from employment and participation within the conduct or the affairs of a residential mortgage loan servicer.

2. The order must contain a notice of opportunity for hearing pursuant to chapter 28-32.

3. If a hearing is not requested within twenty days of the date the order is served, the order is final. If a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter a final order. The final order suspending or removing the current or former employee is final. The current or former officer or employee may request a termination of the final order after a period of no less than three years.

4. A contested or default suspension or removal order is effective immediately upon issuance on the current or former officer or employee and upon the licensee. A consent order is effective as agreed. Any current or former officer or employee suspended or removed from employment and participation within the conduct or the affairs of a residential mortgage loan servicer pursuant to this section is not eligible, while under suspension or removal, to be employed or otherwise participate in the affairs of any financial corporation, financial institution, credit union, or any other entity licensed by the department of financial institutions.

5. When any current or former officer or employee, or other person participating in the conduct of the affairs of a licensee is charged with a felony in state or federal court which involves dishonesty or breach of trust, the commissioner may immediately suspend the person from office or prohibit the person from further participation in the affairs of any entity licensed or chartered by the department. The order is effective upon issuance and remains in effect until the criminal charge is finally disposed of or until modified by the commissioner. If a judgment of conviction, federal pretrial

diversion, conviction or agreement to plea to lesser charges, or similar state order or judgment is entered, the suspension or prohibition is permanent. A finding of not guilty or other disposition of the charge does not preclude the commissioner from pursuing administrative or civil remedies.

13-13-15. Prohibited acts and practices.

It is a violation of this chapter for a person subject to this chapter to:

1. Make or cause to be made any materially false statement or representation in any document or statement required to be filed under any provision of this chapter, or to omit any material statement or fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.
2. Directly or indirectly, employ any device, scheme, or artifice to defraud or mislead borrowers or lenders to defraud any person.
3. Directly or indirectly, make any untrue statement of a material fact or to omit a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading in connection with the procurement or promise of procurement of any lender or loan funds.
4. Engage in any unfair or deceptive practice toward any person.
5. Obtain property by fraud or misrepresentation.
6. Conduct any business covered by this chapter without holding a valid license as required under this chapter or assist or aid and abet any person in the conduct of business under this chapter without a valid license as required under this chapter.
7. Fail to make disclosures as required by this chapter and any other applicable state or federal law and regulations.
8. Fail to comply with this chapter or rules adopted under this chapter or fail to comply with any other state or federal law, including the rules and regulations, applicable to any business authorized or conducted under this chapter.
9. Negligently make any false statement or make any omission of material fact in connection with any information or reports filed with a governmental agency, the nationwide multistate licensing system and registry, or in connection with any investigation conducted by the commissioner or another governmental agency.

10. Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this chapter.

11. Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer.

12. Fail to truthfully account for moneys belonging to a party to a loan transaction.

13. Conduct another business within the same office, suite, room, or place of business at which the licensee engages in residential mortgage loan servicer business unless the commissioner provides written authorization after a determination the other business is not contrary to the best interests of any borrower.

14. Enter any agreement that constitutes a precomputed loan.

13-13-16. Orders and injunctions.

Whenever it appears to the department of financial institutions either upon complaint or otherwise, that any person has engaged in, is engaging in, or is about to engage in any act or practice or transaction which is prohibited by this chapter, or by any order of the department issued pursuant to any section of this chapter or which is declared to be illegal in this chapter, the department may, in its discretion:

1. Issue an order that is effective upon issuance, including cease and desist, stop, and suspension orders, which it deems necessary or appropriate in the public interest or for the protection of the public. Any person aggrieved by an order issued pursuant to this subsection may request a hearing before the department if the request is made within ten days after receipt of the order. The hearing must be held in accordance with chapter 28-32 as must any appeal.

2. Apply to the district court of Burleigh County for an injunction restraining a person and the agents, employees, partners, officers, and directors of the person from continuing the act, practice, or transaction of engaging or doing any acts in furtherance of, and for other and further relief as the facts may warrant. In any proceeding for an injunction, the department may apply for and on due showing be entitled to have issued the court's subpoena requiring the appearance of any defendants and their agents, employees, partners, officers, or directors, and the production of documents, books, and records as may appear necessary for the hearing upon the petition for an

injunction. Upon proof of any of the offenses described in this section, the court may grant an injunction as the facts may warrant. The court may not require the department to post a bond.

13-13-17. Investigations, subpoenas, and examination authority.

In addition to any authority allowed under this chapter, the commissioner may conduct investigations and examinations as follows:

1. The department of financial institutions may:
   a. Make a public or private investigation or examination within or outside this state as it deems necessary to determine whether any person has violated or is about to violate any provision of this chapter or any rule or order, or to aid in the enforcement of this chapter or in the prescribing of rules and forms. The licensee shall pay an investigation or examination fee and must be charged by the department of financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the visitation provided for by this section. Fees must be deposited in the financial institutions regulatory fund.
   b. Require or permit any person to file a statement in writing, under oath or otherwise as the department determines, as to all the facts and circumstances concerning the matter to be investigated or examined.
   c. Publish information concerning any violation of this chapter or any rule or order.
2. For the purpose of any investigation, examination, or proceeding under this chapter, the department of financial institutions may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the department deems relevant or material to the inquiry.
3. The district court, upon application by the department of financial institutions, may issue an order requiring a witness to appear before the department, to produce documentary evidence if so ordered or to give evidence touching the matter in question under investigation or examination. Failure to obey the order of the court may be punished by the court as a contempt of court.

4. No person is excused from attending and testifying or from producing any document or record before the department of financial institutions, or in obedience to the subpoena of the department, or in any proceeding instituted by the department, on the grounds that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty forfeiture, but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person is compelled, after claiming the privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

5. For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation to determine compliance with this chapter, the commissioner may access, receive, and use any books, accounts, records, files, documents, information, or evidence, including:

   a. Criminal, civil, and administrative history information, including nonconviction data;

   b. Personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act [15 U.S.C. Section 1681 et seq.]; and

   c. Any other documents, information, or evidence the commissioner deems relevant to the inquiry or investigation regardless of the location, possession, control, or custody of such documents, information, or evidence.

6. For purposes of investigating violations or complaints arising under this chapter, or for purposes of examination, the commissioner may review, investigate, or examine any licensee or person subject to this chapter, as often as necessary in order to carry out the purposes of this chapter.

7. Each licensee or person subject to this chapter shall make available to the commissioner upon request the books and records relating to the operations of the licensee or person subject to this chapter. The commissioner shall have access to the books and records and interview the officers, principals, employees, independent

contractors, agents, and customers of the licensee or person subject to this chapter concerning their business.

8. Each licensee or person subject to this chapter shall make or compile reports or prepare other information as directed by the commissioner in order to carry out the purposes of this section, including:

   a. Accounting compilations;

   b. Information lists and data concerning loan transactions in a format prescribed by the commissioner; or

   c. Other information deemed necessary to carry out the purposes of this section.

9. In making any investigation or examination authorized by this chapter, the commissioner may control access to any documents and records of the licensee or person under investigation or examination. The commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, a person may not remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the commissioner. Unless the commissioner has reasonable grounds to believe the documents or records of the licensee have been, or are at risk of being altered or destroyed for purposes of concealing a violation of this chapter, the licensee or owner of the documents and records may have access to the documents or records as necessary to conduct its ordinary business affairs.

10. In order to carry out the purposes of this section, the commissioner may:

   a. Retain accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

   b. Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;

c. Use, hire, contract, or employ publicly or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to this chapter;

d. Accept and rely on examination or investigation reports made by other government officials, within or without this state; and

e. Accept audit reports made by an independent certified public accountant for the licensee or person subject to this chapter in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the commissioner.

11. The authority of this section remains in effect, whether such a licensee or person subject to this chapter acts or claims to act under any licensing or registration law of this state or claims to act without authority.

12. A licensee or person subject to investigation or examination under this section may not knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

13-13-18. Response to department requests.

An applicant, licensee, or other person subject to the provisions of this chapter shall comply with requests for information, documents, or other requests from the department of financial institutions within the time specified in the request, which must be a minimum of ten days, or, if no time is specified, within thirty days of the mailing of the request by the department of financial institutions. If the request for information is in regard to a new application or renewal of an existing application and is not received within the time specified in the request, or within thirty days of the mailing of the request, the department may deny the application.

13-13-19. Remedies not exclusive.

The remedies provided for in this chapter are in addition to and not exclusive of any other remedies provided by law.

13-13-20. Penalty.

Any person violating any of the provisions of this chapter or any rule or order of the department of financial institutions made pursuant to the provisions of this chapter or who engages in any act, practice, or transaction declared by any provision of this chapter to be

unlawful is guilty of a class C felony. The commissioner may impose a civil money penalty against any person who violates a law, rule, written agreement, or order under this chapter. The commissioner may not impose a civil money penalty in excess of one hundred thousand dollars for each occurrence and one thousand dollars per day for each day that the violation continues after issuance of an order. An interested party may appeal the assessment of a civil money penalty under the provisions of chapter 28-32 by filing a written notice of appeal within twenty days after service of the assessment of civil money penalties. A civil money penalty collected under this section must be deposited in the financial institutions regulatory fund.

13-13-21. Confidentiality.

To promote more effective regulation and reduce regulatory burden through supervisory information sharing:

1. Except as otherwise provided in Public Law 110-289, section 1512, the requirements under any federal law, chapter 44-04, or section 6-01-07.1, regarding the privacy or confidentiality of any information or material provided to the nationwide multistate licensing system and registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to information or material, continue to apply to information or material after the information or material has been disclosed to the nationwide multistate licensing system and registry. Information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law, chapter 44-04, or section 6-01-07.1.
2. For these purposes, the commissioner may enter agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators, or other associations representing governmental agencies.
3. Information or material that is subject to a privilege or confidentiality under subsection 1 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 or discovery, or admission into evidence, in any administrative process, unless with respect to any privilege held by the nationwide multistate licensing system and registry with respect to such information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.

4. The commissioner shall take all necessary steps, under any applicable law or rule, to protect the disclosure of information or material that is subject to a privilege or confidentiality under subsection 1. Records subject to a privilege or confidentiality under subsection 1 may be required to be disclosed only pursuant to an order of the court. The court ordering the disclosure shall issue a protective order to protect the confidential nature of the records.

5. Application of chapter 44-04 or section 6-01-07.1, relating to the disclosure of confidential supervisory information or any information or material described in subsection 1 which is inconsistent with subsection 1, is superseded by the requirements of this section.

13-13-22. Change of name or address.

A licensee is required to submit within twenty business days of the date of change notification of a change of name or change of address. The notification must be in the form prescribed by the commissioner.

13-13-23. Call reports.

Each licensee shall submit to the nationwide multistate licensing system and registry reports of condition which must be in the prescribed form and must contain the information as the nationwide multistate licensing system and registry may require. Failure to accurately report information required by this section is deemed to be a violation of subsection 1 of section 13-13-15.

13-13-24. Report to nationwide multistate licensing system.

Notwithstanding state privacy law, the commissioner shall regularly report violations of this chapter, as well as enforcement actions and other relevant information, to the nationwide multistate licensing system and registry subject to the provisions contained in section 13-12-15.

13-13-25. Disclosure of customer information.

Except for provisions of chapter 6-08.1 which are inconsistent with this chapter, chapter 6-08.1 applies to all residential mortgage loan servicers licensed under this chapter.

SECTION 2. APPROPRIATION - DEPARTMENT OF FINANCIAL INSTITUTIONS - AUTHORIZATION - FULL-TIME EQUIVALENT POSITION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated from special funds derived from licensing and examination fees, to the department of financial institutions for the purpose of administering and enforcing laws, rules, and regulations relating to residential mortgage loan servicers, for the biennium beginning July 1, 2023, and ending June 30, 2025.

Salaries and wages	$200,000
Operating expenses	25,000
Total special funds	$225,000
Full-time equivalent positions	1.00