

DEPARTMENT OF STATE
OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Section 121(b), 2112 & 2417;
(5 Del.C. §§121(b), 2112 & 2417)
5 DE Admin. Code 2101, 2201 and 2401

PROPOSED

Notice of Proposed Amendments to Regulations of the State Bank Commissioner

Summary

The State Bank Commissioner proposes to amend Regulation 2101 ("Mortgage Loan Brokers Operating Regulations") and Regulation 2201 ("Licensed Lenders Operating Regulations") by adding references in each of those regulations to two other regulations that are applicable to both licensed mortgage brokers and licensed lenders. These other two regulations (2107/2208 "Guidance on Nontraditional Mortgage Product Risks" and 2108/2209 "Statement on Subprime Mortgage Lending") were adopted after the effective dates of Regulations 2101 and 2201 and need to be referenced in the sections dealing with the regulations each licensed office must maintain or possess.

The State Bank Commissioner also proposes to amend Regulation 2401 ("Mortgage Loan Originator Licensing") by completely replacing the existing Regulation 2401 with an entirely new regulation. This proposed amended regulation implements a completely revised Chapter 24 of Title 5 of the Delaware Code dealing with the licensing of mortgage loan originators. See, the Delaware S.A.F.E. Mortgage Licensing Act of 2009, 77 Delaware Laws, Chapter 96. This statute was enacted to comply with the requirements of the United States Secure and Fair Enforcement for Mortgage Licensing Act of 2008, U.S. Public Law 110-289. The regulation establishes new criteria and procedures relating to, among other things, license applications, exemptions, denials, suspensions, revocations, enforcement, record keeping and reporting that are consistent with both the Delaware and federal statutes.

The State Bank Commissioner would adopt the proposed amended Regulations 2101, 2201, and 2401 on or after November 3, 2009. Other regulations issued by the State Bank Commissioner are not affected by this proposal. The State Bank Commissioner is issuing this regulation in accordance with Title 5 of the Delaware Code.

Comments

A copy of the proposed amended regulations is published in the Delaware Register of Regulations. A copy is also on file in the Office of the State Bank Commissioner, 555 E. Lookerman Street, Suite 210, Dover, DE 19901 and is available for inspection during regular office hours. Copies are available upon request.

Interested parties are invited to comment or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner as to whether these proposed amended regulations should be adopted, rejected or modified. Written materials submitted will be available for inspection at the above address. Comments must be received at or before the public hearing scheduled for 10:00 a.m. Tuesday, November 3, 2009.

Public Hearing

A public hearing on the proposed regulations will be held in the Office of the State Bank Commissioner, 555 E. Lookerman Street, Suite 210, Dover, DE 19901 on Tuesday, November 3, 2009, commencing at 10:00 a.m. This notice is issued pursuant to the requirements of Subchapter III of Chapter 11 and Chapter 101 of Title 29 of the Delaware Code.

2101 Mortgage Loan Brokers Operating Regulations
5 Del.C. §2102(b) and §2112

Formerly Regulation No.: 5.2112.0001

Effective Date: November 12, 1999

1.0 Application of Chapter

- 1.1 Chapter 21 of Title 5 of the **Delaware Code** governs persons who broker extensions of credit secured by a first or second mortgage on any one-to-four family residential owner-occupied property intended for personal, family, or household purposes. Chapter 21 of Title 5 of the **Delaware Code** does not apply to the brokering of commercial mortgage loans, including a first or second mortgage on any income producing property that does not fall into the aforementioned definition.

2.0 Maintenance of Copies of Applicable Regulations

- 2.1 All licensees shall conduct business in compliance with Chapter 21 of Title 5 of the **Delaware Code**, and all regulations issued thereunder. Each office licensed under Chapter 21 of Title 5 of the **Delaware Code** shall maintain copies of all applicable regulations. These regulations include:
 - 2.1.1 Regulation 2101 (formerly 5.2112.0001) - Mortgage Loan Brokers Operating Regulations;
 - 2.1.2 Regulation 2102 (formerly 5.2111(a).0002) - Mortgage Loan Brokers Minimum Requirements for Content of Books and Records;
 - 2.1.3 Regulation 2103 (formerly 5.2115.0003) - Mortgage Loan Brokers Itemized Schedule of Charges;
 - 2.1.4 Regulation 2104 (formerly 5.2113.0004) - Mortgage Loan Brokers Minimum Disclosure Requirements;
 - 2.1.5 Regulation 2105 (formerly 5.2111(b).0005) - Report of Delaware Loan Volume;
 - 2.1.6 Regulation 2106 (formerly 5.2111/2210/2906.0006) - Report of Delaware Assets; and
 - 2.1.7 Regulation 2107/2208 Guidance on Nontraditional Mortgage Product Risks;
 - 2.1.8 Regulation 2108/2209 Statement on Subprime Mortgage Lending; and
 - 2.1.79 Regulation 101 (formerly 5.141.0001.NC) - Retention of Financial Institution Records.
- 2.2 The manager and staff of each office shall familiarize themselves with all of the aforementioned regulations. The licensee shall inform the Office of the State Bank Commissioner if copies of the regulations are lost or misplaced and replacements will be furnished. Failure to maintain the aforementioned regulations shall constitute a violation of both §2111(a) of Title 5 of the **Delaware Code** and this regulation.

3.0 Fees for Examination and Supervisory Assessment

- 3.1 Mortgage Loan Broker licensees are subject to examination pursuant to §2110 of Title 5 of the **Delaware Code**. The costs of such examinations are assessed to the licensees in accordance with §127(a) of Title 5 of the **Delaware Code**. A licensee shall remit payment not later than 30 days after the date of the invoice for the fees for examination. In addition, the Commissioner assesses annually each licensee a supervisory assessment, due and payable on August 1 each year, as provided in §127(b) of Title 5 of the **Delaware Code**. Failure of a licensee to remit timely payment of the examination fee or supervisory assessment will result in a penalty of 0.05 percent for each day that the examination fee or supervisory assessment shall remain unpaid after the due date, as provided in §127(a) and §127(b) of Title 5 of the **Delaware Code**.

4.0 Representations at Mortgage Loan Closings

- 4.1 At no time shall a mortgage loan close in the name of the mortgage loan broker except for the sole purpose of satisfying requirements for VA government loans.

3 DE Reg. 653 (11/01/99)

2201 Licensed Lenders Operating Regulations

5 Del.C. §2210(d)

Formerly Regulation No.: 5.2210(d).0001
Effective Date: November 12, 1998

1.0 Application of Chapter

- 1.1 Chapter 22 of Title 5 of the **Delaware Code** applies to consumer credit transactions, including, but not limited to, mortgage lending secured by one to four family residential, owner-occupied property intended for personal, family or household purposes.

2.0 Maintenance of Operating Regulations for Licensed Lenders

- 2.1 All licensees shall conduct business in compliance with Chapter 22 of Title 5 of the **Delaware Code**. Each office licensed under Chapter 22 of Title 5 of the **Delaware Code** shall possess copies of all applicable regulations. These regulations include:
 - 2.1.1 Regulation 2201 (formerly 5.2210(d).0001) Licensed Lenders Operating Regulations;
 - 2.1.2 Regulation 2202 (formerly 5.2213.0002) Licensed Lenders Minimum Requirements for Content of Books and Records;
 - 2.1.3 Regulation 2203 (formerly 5.2218/2231.0003) Licensed Lenders Itemized Schedule of Charges;
 - 2.1.4 Regulation 2204 (formerly 5.2208.0004) Required Amount of Licensed Lender's Surety Bond or Irrevocable Letter of Credit;
 - 2.1.5 Regulation 2205 (formerly 5.2210(e).0005) Report of Delaware Loan Volume;
 - 2.1.6 Regulation 2206 (formerly 5.2111/2210/2906.0006) Report of Delaware Assets; ~~and~~
 - 2.1.7 Regulation 2107/2208 Guidance on Nontraditional Mortgage Product Risks;
 - 2.1.8 Regulation 2108/2209 Statement on Subprime Mortgage Lending; and
 - 2.1.79 Regulation 101 (formerly 5.141.0001.NC) Retention of Financial Institution Records.
- 2.2 The manager and staff of each office shall familiarize themselves with all of the aforementioned regulations. The licensee shall inform the Office of the State Bank Commissioner if copies of the regulations are lost or misplaced and replacements will be furnished. Failure to maintain the aforementioned regulations shall constitute a violation of both §2213 of Title 5 of the **Delaware Code** and this regulation.

3.0 Fees for Examination and Supervisory Assessment

- 3.1 Licensed Lenders licensees are subject to examination pursuant to §2210 of Title 5 of the **Delaware Code**. The costs of such examinations are assessed to the licensees in accordance with §127(a) of Title 5 of the **Delaware Code**. A licensee shall remit payment not later than 30 days after the date of the invoice for the examination. In addition, the Commissioner annually assesses each licensee a supervisory assessment, due and payable on August 1 each year, as provided in §127(b) of Title 5 of the **Delaware Code**. Failure of a licensee to remit timely payment of this examination fee or supervisory assessment will result in a penalty of 0.05 percent for each day that the examination fee or supervisory assessment shall remain unpaid after the due date, as provided in §127(a) and §127(b) of Title 5 of the **Delaware Code**.

4.0 Mortgage Satisfaction/Security Interest

- 4.1 A licensee shall cause an entry of the satisfaction or performance of a debt or duty secured by a mortgage or conveyance in the nature of a mortgage on real estate to be made as required by Chapter 21 of Title 25 of the **Delaware Code**. A licensee shall take the necessary action(s) to discharge or release any other security interest for loans under Chapter 22 of Title 5 of the **Delaware Code** within sixty days from the date the debt secured by such other collateral or security interest is satisfied or performed. Failure of a licensee to take such action within the period prescribed will be a violation of this regulation.

5.0 Principal Reduction

- 5.1 No loan shall be made under the provisions of this Chapter that does not allow for a reduction of principal over the term of the loan unless it is a product available through federal governmental or quasi-governmental entities.

6.0 Credit Life and Credit Health Insurance

- 6.1 Any lender may offer credit life and health insurance to qualified borrowers. Such insurance transactions shall conform to all statutes of the Insurance Code of the State of Delaware as well as rules and regulations that the Insurance Commissioner may prescribe from time to time.
- 6.2 Every lender offering credit life and health insurance whose charges do not conform to those authorized in the Insurance Commissioner's Regulation 2501 (formerly regulation No. 5) shall maintain in each office a copy of a letter filed with the Insurance Commissioner requesting the deviated rate as well as approval by the Insurance Commissioner of the rate.
- 6.3 Credit life insurance refunds shall be calculated as of the date of death.
- 6.4 Credit health insurance payments received by the lender shall be applied to the account for the period the payment actually covers regardless of the date of receipt. Additional interest charges shall not accrue should payment be received after the payment due date.
- 6.5 The Office of the State Bank Commissioner shall provide a copy of the Insurance Commissioner's Regulation 2501 (formerly regulation No. 5) and any subsequent applicable regulations promulgated to each licensee.

7.0 Other Insurance

- 7.1 Any lender may require proof of insurance coverage for any loan secured by a motor vehicle, real property (real estate), or other collateral. Borrower has the right to submit any existing policy(s) naming lender as beneficiary as his/her interest may appear, provided such policy is acceptable to the lender as to coverage, prepaid term and the carrier meets required financial standards. Upon notification to the lender of cancellation of any policy for non-payment, lender may place coverage to secure his/her interest. Borrower shall be informed of such placement and any amount expended shall be due and payable by the borrower before a loan may be satisfied. Any lender may, if requested by the borrower, place such insurance coverage as is necessary to secure his/her interest at the inception of the loan.
- 7.2 A licensee may offer, but not require, such other insurance products as the State Bank Commissioner may, upon written approval, permit. No such insurance may be offered without the State Bank Commissioner's written approval.

8.0 Borrower-Signed Authorization for Insurance

- 8.1 Any insurance authorized by this regulation, other than the insurance coverage authorized by section 7.1 of this regulation, must be supported by a specific request signed by the borrower. This request shall be attached to or made a part of the application documents.

9.0 Purchase or Sale of Accounts by Licensed Lenders

- 9.1 A licensee shall not sell or otherwise transfer contracts to any person or corporation not licensed under Chapter 22 of Title 5 of the **Delaware Code**, except at the discretion of the State Bank Commissioner.
- 9.2 Purchasers shall be limited to collecting balances due under the existing contract terms and shall be bound by applicable Delaware laws regarding legal fees and usury statutes if a loan is subsequently refinanced.
- 9.3 This section shall not apply to:
 - 9.3.1 The purchase or transfer of loan contracts between licensees under the same management or control;
 - 9.3.2 The sale or transfer of a loan contract to an out-of-state affiliate for collection or for the convenience of a consumer;

- 9.3.3 The transfer of a loan contract by a licensee to any maker or person secondarily liable on the contract; and,
- 9.3.4 The sale of a participation or a whole loan to a federal, state, or local government agency, or to a federal or state regulated bank, savings and loan association, mortgage banking company, insurance company or investment banking firm or their subsidiaries.

10.0 Origination of Mortgage Loans for Resale

- 10.1 Solely for the purposes of the loan limitation provisions contained in the last sentence of Section 2228(a) of Title 5 of the **Delaware Code**, the term "loans" shall not be deemed to include loans secured by mortgages on real property located in this state (or secured by certificates of stock or other evidence of ownership interest in, and proprietary leases from corporations or partnerships formed for the purpose of cooperative ownership of real estate in this State) if such loans are originated by a licensee for resale and the licensee in fact sells, assigns or otherwise conveys its entire interest in the loan (except servicing if servicing is retained) within 120 days following the date the loan is made. Additional time may be granted at the discretion of the State Bank Commissioner.

2 DE Reg. 781 (11/01/98)

2401 Mortgage Loan Originator Licensing 5 Del.C. §§121(b), 2422

Effective Date: Proposed

4.0 Definitions

~~For the purposes of this regulation, the following definitions apply unless the context otherwise requires:~~

~~"Commissioner" means the State Bank Commissioner or the Commissioner's designee.~~

~~"Exempt organization" means any insurance company, banking organization, bank holding company, federal credit union, national bank, state bank, federal savings bank, or any bank, trust company, savings bank, savings and loan association or credit union or any affiliate or subsidiary of the preceding entities organized under the laws of any state, or any instrumentality created by the United States or any state with the power to make mortgage loans.~~

~~"Mortgage loan" has the same meaning as that term is defined by 5 Del.C. §2101(4).~~

~~"Mortgage loan originating" means providing services to a customer of an originating entity by soliciting, negotiating, explaining or finalizing the terms of a mortgage loan; provided, however, that the term "soliciting" shall mean the discussion of a mortgage loan product or products with a customer or potential customer, but shall not be deemed to mean the taking of customer information or the referral of a customer or the customer's information to a person who engages in mortgage loan originating; provided further that a mortgage loan originator shall not be deemed to include any person who provides clerical or secretarial services or provides legally related services that are not provided directly by an attorney relating to mortgage loan originating activities of an originating entity.~~

~~"Mortgage loan originator" and "MLO" mean any person employed by or affiliated with an originating entity, who engages in mortgage loan originating in this State irrespective of how such person is compensated by the originating entity, or any person who, as an originating entity or any substantial equity owner of an originating entity, engages in mortgage loan originating in this State with respect to residential property; provided that "affiliated with an originating entity" shall mean any person who is an independent contractor and is compensated by such originating entity in whole or in part, either directly or indirectly. An MLO shall not mean any person who is an originating entity, or any substantial equity owner of an originating entity, or any officer or manager of an originating entity that supervises the activities of MLOs and does not communicate directly with the customers of the originating entity.~~

~~"Originating entity" means a person or entity licensed pursuant to 5 Del.C. Chapters 21 or 22.~~

~~"Person" means an individual.~~

"Statute" means ~~5 Del.C. Chapter 24.~~

2.0 Exemptions

- 2.1 ~~The statute and this regulation shall not apply to a person employed by an exempt organization or by a subsidiary or affiliate of an exempt organization, or to a person under an exclusive contract with an exempt organization or with a subsidiary or affiliate of an exempt organization to the extent that the person is acting within the scope of the person's employment or contract and the scope of the charter, license, authority, approval or certificate of the exempt organization or its affiliate or subsidiary; provided however, that any such affiliate or subsidiary licensed by the Commissioner pursuant to 5 Del.C. Chapters 21 or 22 shall provide an educational program or courses for its employees or persons under exclusive contract who engage in mortgage loan originating that are the substantial equivalent, as determined by the Commissioner, of the educational requirements applicable to mortgage loan originators required by the statute.~~
- 2.2 ~~Neither the statute nor this regulation shall require an attorney at law in good standing in this State who engages in mortgage loan originating to meet the licensing or education requirements prescribed by the statute.~~
- 2.3 ~~No employee of, or person affiliated with, an exempt organization shall be subject to the licensing or education requirements of the statute due solely to that employee or person assisting in the performance of any business activities of a mortgage broker or lender licensed under 5 Del.C. Chapters 21 or 22 respectively that is controlled by, or is a subsidiary of, the exempt organization.~~
- 2.4 ~~No employee of, or person affiliated with, an originating entity shall be subject to the licensing or education requirements of the statute due solely to that employee or person assisting in the performance of the business activities of the originating entity that are incidental to the performance of any mortgage loan originating activities performed by the originating entity.~~

3.0 License Required

- 3.1 ~~No person shall engage in mortgage loan originating without first being licensed by the Commissioner as an MLO pursuant to the statute and this regulation, unless otherwise exempt; provided however that:~~
 - 3.1.1 ~~a person who was employed by or affiliated with an originating entity as an MLO prior to the effective date of the statute and who has submitted a license application and required fees by March 31, 2009 may continue to engage in mortgage loan originating on a temporary basis until that person is licensed as an MLO or is notified by the Commissioner that the application has been denied; and~~
 - 3.1.2 ~~a person who is initially employed by or affiliated with any originating entity as an MLO on or after the effective date of the statute and who has submitted a license application and required fees may engage in mortgage loan originating on a temporary basis until the person is licensed as an MLO or notified by the Commissioner that the application has been denied.~~
- 3.2 ~~Licenses shall not be transferable or assignable.~~
- 3.3 ~~An MLO shall not be simultaneously employed by, or affiliated with, more than one originating entity or exempt organization.~~
- 3.4 ~~Every person licensed under the statute and this regulation shall be a financial institution for purposes of Part I of Title 5 of the Delaware Code.~~

4.0 Applications

- 4.1 ~~Any person seeking an initial license to engage in mortgage loan originating shall submit an application to the Commissioner as soon as practicable after employment by an originating entity. The application shall contain such information, and be submitted on such forms and in such manner as the Commissioner may designate.~~
- 4.2 ~~Any person seeking to renew an existing license as an MLO shall submit an application to the Commissioner at least 30 days before the expiration of the existing license. The application shall~~

contain such information, and be submitted on such forms and in such manner as the Commissioner may designate. A renewal application that is not received by that time shall be treated as an application for an initial license and shall be subject to the investigation fee.

- 4.3 All applications must be submitted with the multi-state automated system processing fee. The initial application must also be submitted with the investigation fee.
- 4.4 No application shall be deemed complete until the Commissioner has received all required information, documents and fees.
- 4.5 If an application is determined by the Commissioner to be incomplete, the Commissioner shall send written notification to the applicant indicating the items that must be addressed to continue the application review process. If the Commissioner does not receive a complete response fully addressing all such items within 30 days of the sending of such notice, the Commissioner may consider the application withdrawn.
- 4.6 Any person seeking an initial license following withdrawal of an application shall submit a new application that includes all information, documents and fees required for an initial license.
- 4.7 The Commissioner may require additional information in connection with any application.

5.0 Fees

- 5.1 An investigation fee of \$250.00 is to be submitted with the initial application and is non-refundable.
- 5.2 A multi-state automated licensing system processing fee of \$30.00 (or such other amount as the system may charge) is to be submitted with all applications and is non-refundable.
- 5.3 An annual license fee of \$250.00 is to be submitted upon the approval of an application and must be received before a license certificate is issued. The annual license fee shall not be reduced if the license is issued for less than one year; becomes inactive; or is surrendered, suspended, canceled or revoked prior to its expiration.

6.0 Issuance of License

- 6.1 The Commissioner shall issue a license to an applicant upon finding that the applicant's general character, fitness and educational qualifications are such as to warrant belief that the applicant will engage in mortgage loan originating honestly, fairly and efficiently within the purposes of the statute.
- 6.2 Upon approving a license application, the Commissioner shall:
 - 6.2.1 issue a numbered certificate attesting to that licensing;
 - 6.2.2 transmit a copy of the license certificate to the applicant;
 - 6.2.3 transmit a notice of the application's approval and a copy of the license certificate to the originating entity that employs the MLO, or with which the MLO is affiliated; and
 - 6.2.4 maintain copies of the license certificate and notice of approval.

7.0 Denial of License

- 7.1 The Commissioner may deny a license to an applicant upon finding that the applicant:
 - 7.1.1 does not possess sufficient general character, fitness and education qualifications to warrant belief that the applicant will engage in mortgage loan originating honestly, fairly and efficiently within the purposes of the statute;
 - 7.1.2 has been convicted of a felony;
 - 7.1.3 has had a registration or license revoked by the Commissioner or a regulatory person or entity of another state or the federal government that regulates persons engaging in mortgage loan originating;
 - 7.1.4 has been a director, partner, or substantial equity owner of an originating entity that has had a registration or license revoked by the Commissioner or a regulatory person or entity of another state or the federal government that regulates the originating entity;

- 7.1.5 has been an employee, officer or agent of, or a consultant to, an originating entity that has had a registration or license revoked by the Commissioner or a regulatory person or entity of another state or the federal government that regulates the originating entity where the person has been found by the Commissioner, or by such similar regulatory person or entity, to bear responsibility in connection with that revocation.
- 7.1.6 has failed to comply with any supervisory letter, directive or order of the Commissioner or of a regulatory person or entity of another state or the federal government; or
- 7.1.7 has failed to pay the State or the Commissioner any money when due.
- 7.2 If the Commissioner makes a preliminary determination to deny an application, the Commissioner shall promptly send the applicant a written notice to that effect stating the grounds for that determination. The applicant may request that the Commissioner hold a hearing to reconsider the determination in accordance with the ~~29 Del.C.~~ Chapter 101.
- 7.3 When a determination to deny a license application has become final, the Commissioner shall promptly send the originating entity with which the applicant is employed or affiliated a written notice that the application was denied and that the applicant may not engage in mortgage loan originating in this State.

8.0 Suspension and Revocation of License

- 8.1 The Commissioner may suspend or revoke a license upon finding that:
 - 8.1.1 the licensee has violated any provision of Title 5 of the ~~Delaware Code~~, any rule or regulation of the Commissioner, or any law, rule or regulation of this State, another state, or the federal government pertaining to mortgage lending, brokering or loan originating;
 - 8.1.2 any fact or condition exists which, if it had existed at the time of the original application for the license, would have warranted the Commissioner to refuse to issue the initial license; or
 - 8.1.3 the licensee has committed a crime against the laws of this State or any other state or of the United States involving moral turpitude or fraudulent or dishonest dealing, or a final judgment has been entered against the licensee in a civil action upon grounds of fraud, misrepresentation or deceit.
- 8.2 Any suspension order issued after notice and a hearing may include as a condition of reinstatement that restitution be made to consumers of fees or other charges which have been improperly charged or collected as determined by the Commissioner.
- 8.3 The Commissioner may temporarily suspend any license pending the issuance of a final order as provided in ~~29 Del.C.~~ Chapter 101.
- 8.4 If the Commissioner makes a preliminary determination to suspend or revoke a license, the Commissioner shall promptly send the licensee a written notice to that effect stating the grounds for that determination. The licensee may request that the Commissioner hold a hearing to reconsider the determination in accordance with the ~~29 Del.C.~~ Chapter 101.
- 8.5 Except as provided in section 8.3, no license shall be suspended or revoked except after notice and an opportunity for the licensee to request a hearing in accordance with ~~29 Del.C.~~ Chapter 101.
- 8.6 The Commissioner shall have authority to reinstate a suspended license or to issue a new license to an MLO whose license has been revoked if no fact or condition then exists which would have warranted the Commissioner to refuse to issue an initial license.

9.0 Considerations Relating to Denial, Suspension, and Revocation

- 9.1 In making a determination to deny, suspend, or revoke a license, the Commissioner may consider, among other things, the applicant's or licensee's employment history; educational background; financial responsibility; history of complaints or consumer abuse relating to real estate or lending transactions; regulatory fines and enforcement actions; revocation, suspension or denial of licenses, certifications, authorizations or registrations by any state or federal governmental agency; and criminal convictions.

- 9.2 A person shall be deemed to have been convicted of a crime if that person has pled guilty or nolo contendere before a court or magistrate, or has been found guilty by the decision or judgment of a court or magistrate or by the verdict of a jury, irrespective of the pronouncement or suspension of sentence.
- 9.3 A conviction shall not require the Commissioner to deny, suspend or revoke a license:
- 9.3.1 if the conviction has been set aside, reversed or otherwise abrogated by lawful judicial process;
 - 9.3.2 if the person has received a pardon from the President of the United States or the governor or other pardoning authority of the jurisdiction where the conviction occurred, or has received a certificate of good conduct granted by a board of parole pursuant to provisions of an executive law to remove the disability the statute and this regulation because of that conviction; or
 - 9.3.3 if the Commissioner determines that the conviction does not disqualify the person from holding a license.

10.0 Inactive Status

- 10.1 A license is not effective during any period when an MLO is not employed by, or affiliated with, an originating entity. The license of such MLO shall be immediately placed in inactive status until the Commissioner receives a written notice of the MLO's new employment or affiliation with an originating entity.
- 10.2 An MLO with an inactive license shall continue to take all required education courses, pay all required fees and assessments, maintain all required records, and file all required reports as if the license had remained in an active status.
- 10.3 An MLO with an inactive license may submit an application to the Commissioner for renewal of a license with that same status. The application shall request such information, and be submitted on such forms and in such manner as the Commissioner may designate.

11.0 Records and Reports

- 11.1 Every MLO shall promptly notify the Commissioner of the following:
- 11.1.1 any change of primary residence address;
 - 11.1.2 any pending felony charges or conviction;
 - 11.1.3 any pending charges or conviction for any crime involving financial services, a financial services related business, fraud, false statements or omissions, consumer deception, theft or wrongful taking of property, bribery, perjury; forgery or extortion;
 - 11.1.4 cessation of employment or affiliation with an originating entity;
 - 11.1.5 the initiation, settlement, or resolution of any complaint, action or proceeding against the MLO by a state or federal governmental unit or self-regulatory organization in connection with a financial services related activity or business or involving fraud, misrepresentation, consumer deception, theft or perjury; and
 - 11.1.6 the initiation, settlement or resolution of any other civil action or proceeding against the MLO in connection with a financial services related activity or business or involving fraud, misrepresentation, consumer deception, or theft.
- 11.2 Every MLO shall obtain certificates evidencing satisfactory completion of the education requirements for each education period under the statute and provide copies to the Commissioner and the MLO's originating entity. The MLO shall retain those certificates for six years.

12.0 Surrender of License

- 12.1 A license may be surrendered only by the person named on the license certificate. The originating entity that employs an MLO or with which an MLO is affiliated may not surrender the license of that MLO.
- 12.2 A license shall be surrendered by submitting to the Commissioner a written notice in such form and manner as the Commissioner may designate.

- 12.3 If the surrender occurs after the Commissioner issues a determination to suspend or revoke a license, the Commissioner may proceed against the MLO as if the surrender had not occurred.

13.0 Expiration of Licenses

- 13.1 All licenses expire on December 31 of each year; provided, however, that if a renewal application is received prior to that date, a license shall remain in effect until the Commissioner has made a determination on that application.
- 13.2 Whenever a license expires, the Commissioner shall send the licensee a written notice of that expiration stating that the licensee may no longer engage in mortgage loan originating in this State.
- 13.3 If a license expires after the Commissioner issues a determination to suspend or revoke that license, the Commissioner may proceed against the MLO as if the expiration had not occurred.

14.0 Duration of License

- 14.1 Every license shall remain in force and effect until it expires, becomes inactive, or is suspended, surrendered, or revoked.
- 14.2 Whenever a license ceases to be effective for any reason:
- 14.2.1 the Commissioner shall send a written notice to that effect to the originating entity for which the licensee had been providing services stating that the licensee may not engage in mortgage loan originating in this State; and
 - 14.2.2 the obligations of any pre-existing lawful contract between the licensee and any person or entity and the licensee's civil or criminal liability for acts committed while the license was in effect shall not be affected in any way.

15.0 Duties of Originating Entities

- 15.1 No originating entity shall permit any person to engage in mortgage loan originating on its behalf who does not have a license in effect under the statute and this regulation, except for persons who are allowed to engage in mortgage loan originating on a temporary basis pursuant to the statute and this regulation. In order to allow a person to engage in mortgage loan originating on such a temporary basis, the originating entity must have a notice from the Commissioner stating that the person has submitted a license application as required by this regulation.
- 15.2 An originating entity shall retain for six years copies of the education course completion certificates of the MLOs who are employed or affiliated with it. If an originating entity also maintains the original education certificates of an MLO, the originating entity shall provide those originals to the MLO when the MLO terminates employment or affiliation.
- 15.3 When an MLO ceases to be employed by or affiliated with an originating entity, the originating entity shall promptly send the Commissioner written notice stating the name and residence address of the MLO, the termination date of that employment or affiliation, and the reasons for the termination.
- 15.4 Every originating entity shall display at the location where an MLO is providing mortgage loan originating services copies of the license certificates of the MLOs who are employed affiliated with the originating entity at that location.
- 15.5 Every originating entity shall require that the license number of the MLO performing mortgage loan originating services with respect to a mortgage loan application is recorded on that application.

16.0 Multi State Automated Licensing System

The administrator of a multi state automated licensing system in which the Commissioner participates is authorized to act on behalf of the Commissioner to process applications, to collect payments, to receive information and to maintain records related to the administration of the statute and this regulation.

1.0 Definitions

For the purposes of this regulation, the following definitions apply unless the context otherwise requires:

“**Commissioner**” means the State Bank Commissioner.

“**Depository institution**” has the same meaning as in §3 of the United States Federal Deposit Insurance Act, and includes any credit union.

“**Dwelling**” has the same meaning as in §103(v) of the United States Truth in Lending Act.

“**Federal banking agencies**” means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

“**Immediate family member**” means a spouse, child, sibling, parent, grandparent or grandchild. This includes step-parents, step-children, step-siblings, and adoptive relationships.

“**Individual**” means a natural person.

“**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 Chapters 21 or 22 of Title 5 of the **Delaware Code**.

a. For purposes of this definition, ‘clerical or support duties’ may include subsequent to the receipt of an application:

1. the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and
2. communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

b. 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 such individual can or will perform any of the activities of a mortgage loan originator.

“**Mortgage loan originator**” means an individual who for compensation or gain or in the expectation of compensation or gain:

a. takes a residential mortgage loan application; or

b. offers or negotiates terms of a residential mortgage loan;

c. but does not include:

1. an individual engaged solely as a loan processor or underwriter, except as otherwise provided in §3.2.
2. a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with Delaware law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; and
3. a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in §101(53D) of Title 11, United States Code.

“**Nationwide Mortgage Licensing System and Registry**” means the mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators.

“**Nontraditional mortgage product**” means any mortgage product other than a 30 year fixed rate mortgage.

“**Person**” means a natural person, corporation, company, limited liability company, partnership, association, or other entity.

“**Real estate brokerage activity**” means any activity that involves offering or providing real estate brokerage services to the public, including:

- 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 portion 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 any such transaction);
- 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; and
- e. offering to engage in any activity, or act in any capacity, described in a., b., c., or d. of this definition.

“Registered mortgage loan originator” means any individual who:

- a. meets the definition of mortgage loan originator and is an employee of:
 - 1. a depository institution;
 - 2. a subsidiary that is:
 - A. owned and controlled by a depository institution; and
 - B. regulated by a federal banking agency; or
 - 3. an institution regulated by the Farm Credit Administration; and
- b. is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

“Residential mortgage loan” means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling.

“Residential real estate” means any real property located in Delaware, upon which is constructed, or intended to be constructed, a dwelling.

“Statute” means the Delaware S.A.F.E. Mortgage Licensing Act of 2009, 5 **Del.C.** Ch. 24, as amended.

“Unique identifier” means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

2.0 Exemptions

The following are exempt from the statute and this regulation:

- 2.1 registered mortgage loan originators, when acting for an entity that is:
 - 2.1.1 a depository institution;
 - 2.1.2 a subsidiary that is:
 - 2.1.2.1 owned and controlled by a depository institution; and
 - 2.1.2.2 regulated by a federal banking agency; or
 - 2.1.3 an institution regulated by the Farm Credit Administration;
- 2.2 any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;
- 2.3 any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual’s residence; and
- 2.4 a licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney’s representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator.

3.0 License and Registration Required

- 3.1 Unless specifically exempted from the statute and this regulation, an individual shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this State without first obtaining and then annually maintaining a license issued by the Commissioner under the statute and this regulation.
- 3.2 A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter without first obtaining and then annually maintaining a license issued by the Commissioner under the statute and this regulation.
- 3.3 Each licensed mortgage loan originator must register with the Nationwide Mortgage Licensing System and Registry and maintain a valid unique identifier.
- 3.4 Licenses shall not be transferable or assignable.
- 3.5 Every person licensed under the statute and this regulation shall be a financial institution for purposes of Part I of Title 5 of the Delaware Code.

4.0 Applications

- 4.1 Any person seeking an initial license to engage in the business of a mortgage loan originator with respect to any dwelling located in this State shall submit an application to the Commissioner through the Nationwide Mortgage Licensing System and Registry. All such applicants shall furnish to that System information concerning the applicant's identity, including:
 - 4.1.1 fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a state, national and international criminal history background check; and
 - 4.1.2 personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authorization for that System and the Commissioner to obtain:
 - 4.1.2.1 an independent credit report obtained from a consumer reporting agency described in §603(p) of the United States Fair Credit Reporting Act; and
 - 4.1.2.2 information related to any administrative, civil or criminal findings by any governmental jurisdiction.
- 4.2 Any individual seeking to renew an existing license to engage in the business of a mortgage loan originator with respect to any dwelling located in this State shall submit an application to the Commissioner through the Nationwide Mortgage Licensing System and Registry at least 30 days before the expiration of the existing license. A renewal application that is not received by that time shall be treated as an application for an initial license and shall be subject to the investigation fee, but not the pre-licensing education and testing requirements.
- 4.3 All applications shall contain such information, and be submitted on such forms and in such manner as the Commissioner may designate. The Commissioner may change and update application forms as the Commissioner deems appropriate. The Commissioner may also require additional information in connection with any particular application.
- 4.4 All applications must be submitted with the annual license fee and the Nationwide Mortgage Licensing System and Registry processing fee. Initial applications must also be submitted with the investigation fee.
- 4.5 No application shall be deemed complete until the Commissioner has received all required information, documents and fees.
- 4.6 If the Commissioner determines that an application is incomplete, the Commissioner shall send written notification to the applicant indicating the items that must be addressed to continue the application review process. If the Commissioner does not receive a complete response fully addressing all such items within 30 days after sending that notice, the Commissioner may consider the application withdrawn.
- 4.7 Any person seeking an initial license following withdrawal of an application shall submit a new application that includes all information, documents and fees required for an initial license.

5.0 Fees

- 5.1 An investigation fee of \$250.00 must be submitted with the application for an initial license. This fee is non-refundable.
- 5.2 An annual license fee of \$250.00 must be submitted with all applications. This fee shall be refunded if the application is denied, but shall not be reduced or refunded in any amount if the license is issued for less than one year; or is surrendered, suspended, canceled or revoked prior to its expiration.
- 5.3 A Nationwide Mortgage Licensing System and Registry processing fee of \$30.00 (or such other amount as that System may charge) must be submitted with all applications. This fee is non-refundable.

6.0 Issuance of Initial License

- 6.1 The Commissioner shall issue a mortgage loan originator license only upon finding, at a minimum, that:
 - 6.1.1 The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacating of a revocation shall not be deemed a revocation.
 - 6.1.2 The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court:
 - 6.1.2.1 during the 7-year period preceding the date of the application for licensing and registration; or
 - 6.1.2.2 at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, breach of trust, or money laundering;
 - 6.1.2.3 provided that any conviction that has been pardoned shall not be a conviction for the purposes of this section.
 - 6.1.3 The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the applicant will operate as a mortgage loan originator honestly, fairly, and efficiently within the purposes of the statute and this regulation. For purposes of this section, applicants have demonstrated that they are not financially responsible when they have shown a disregard in the management of their own financial condition. A determination that an applicant has not shown financial responsibility may include, but not be limited to:
 - 6.1.3.1 current outstanding judgments, except judgments solely as a result of medical expenses;
 - 6.1.3.2 current outstanding tax liens or other government liens and filings;
 - 6.1.3.3 foreclosures within the past three years;
 - 6.1.3.4 a pattern of seriously delinquent accounts within the past three years; or
 - 6.1.3.5 failure to pay the State or the Commissioner any money when due.
 - 6.1.4 The applicant has completed the pre-licensing education requirements described in §8.0.
 - 6.1.5 The applicant has passed a written test that meets the test requirements described in §9.0; and
 - 6.1.6 The applicant has met the surety bond requirements described in §12.0.

7.0 Denial of Initial License

- 7.1 If the Commissioner refuses to issue an initial license, the Commissioner shall notify the applicant in writing of that refusal, of the reasons for the refusal, and of the applicant's right to request a hearing; provided however, the Commissioner shall retain any investigation or other fee charged for the expense of processing an initial application, notwithstanding that the application was rejected.
- 7.2 The Commissioner shall send a copy of the notice to the applicant at that individual's last known mailing address by certified mail, return receipt requested. If the applicant sends the Commissioner a written request for a hearing within 10 days of the notice's mailing date, the Commissioner shall then hold that hearing in accordance with Chapter 101 of Title 29 of the **Delaware Code**.

8.0 Pre-Licensing Education

- 8.1 To meet the pre-licensing education requirements of §6.1.4, an applicant must complete at least 20 hours of education that include:
 - 8.1.1 federal law and regulations – 3 hours;
 - 8.1.2 ethics, to include instruction on fraud, consumer protection, and fair lending issues – 3 hours; and
 - 8.1.3 lending standards for the nontraditional mortgage product marketplace – 2 hours.
- 8.2 All pre-licensing education courses must be approved by the Nationwide Mortgage Licensing System and Registry.
- 8.3 Pre-licensing education may be offered either in a classroom, online or by any other means and at any location approved by the Nationwide Mortgage Licensing System and Registry.
- 8.4 Any pre-licensing education courses specified in §8.1.1 to §8.1.3 that are approved by the Nationwide Mortgage Licensing System and Registry for any other state shall be accepted as credit towards completion of the pre-licensing education requirements in this State.
- 8.5 A person previously licensed under the statute and this regulation subsequent to the effective date of the statute and this regulation applying to be licensed again must have completed all of the continuing education requirements for the year in which the previous license was last held.

9.0 Testing

- 9.1 To meet the written test requirements of §6.1.5, an applicant must pass a written test developed by the Nationwide Mortgage Licensing System and Registry that adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:
 - 9.1.1 ethics;
 - 9.1.2 federal law and regulation pertaining to mortgage origination;
 - 9.1.3 state law and regulation pertaining to mortgage origination; and
 - 9.1.4 federal and state law and regulation, pertaining to fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.
- 9.2 An applicant must achieve a score of at least 75 percent correct answers to the test questions for a passing grade.
- 9.3 The test must be administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry, and may be taken at any location approved by that System.
- 9.4 An applicant may take a test 3 consecutive times, with each consecutive test occurring at least 30 days after the preceding test.
- 9.5 After failing 3 consecutive tests, an applicant must wait at least 6 months before taking the test again.
- 9.6 A licensed mortgage loan originator who fails to maintain a valid license for a period of 5 years or longer must retake the test, not taking into account any time during which such individual is a registered mortgage loan originator.

10.0 License Renewal

- 10.1 The Commissioner shall renew a mortgage loan originator's license only upon finding, at a minimum, that:
 - 10.1.1 the mortgage loan originator continues to meet the minimum standards for initial license issuance under §6.0;
 - 10.1.2 the mortgage loan originator has satisfied the annual continuing education requirements described in §11.0; and
 - 10.1.3 the mortgage loan originator has paid all required fees for renewal of the license.
- 10.2 The Commissioner may refuse to renew a mortgage loan originator's license pursuant to §13.0.

11.0 Continuing Education

- 11.1 To meet the annual continuing education requirements of §10.1.2, a licensed mortgage loan originator must complete during every calendar year after initial licensing at least 8 hours of education that include:
 - 11.1.1 federal law and regulations – 3 hours;
 - 11.1.2 ethics, to include instruction on fraud, consumer protection, and fair lending issues – 2 hours; and
 - 11.1.3 lending standards for the nontraditional mortgage product marketplace – 2 hours.
- 11.2 All continuing education courses must approved by the Nationwide Mortgage Licensing System and Registry.
- 11.3 Continuing education may be offered either in a classroom, online or by any other means and at any location approved by the Nationwide Mortgage Licensing System and Registry.
- 11.4 A licensed mortgage loan originator:
 - 11.4.1 except as provided in §11.8, may only receive credit for a continuing education course in the calendar year in which the course is taken; and
 - 11.4.2 may not take the same course in the same or successive calendar years to meet the annual requirements for continuing education.
- 11.5 A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of 2 hours credit for every 1 hour taught.
- 11.6 Any continuing education courses specified in §11.1.1 to §11.1.3 that are approved by the Nationwide Mortgage Licensing System and Registry for any other state shall be accepted as credit towards completion of the continuing education requirements in this State.
- 11.7 A licensed mortgage loan originator who subsequently becomes unlicensed must complete the continuing education requirements for the last year in which a license was held prior to issuance of a new or renewed license.
- 11.8 A mortgage loan originator who applies for a license renewal and meets the requirements of §10.1 and §10.3, but fails to complete the required continuing education credits by December 31 shall submit to the Commissioner by that date a specific plan for making up the deficiency of necessary credits by March 1 of the succeeding year.
 - 11.8.1 Unless the Commissioner notifies the mortgage loan originator to the contrary by January 31, the plan shall be deemed accepted by the Commissioner and the mortgage loan originator's license will be renewed provisionally until March 15.
 - 11.8.2 Not later than March 15, the mortgage loan originator shall submit to the Commissioner a written certification of completion of the plan that includes the title, date, and number of credits earned at each course.
 - 11.8.3 The Commissioner may refuse to renew pursuant to §13.0 the license of a mortgage loan originator with a continuing education deficiency who fails to submit either the plan or certification required by this section.

12.0 Surety Bonds

- 12.1 All licensed mortgage loan originators and applicants for an initial license under the statute and this regulation shall file with the Commissioner an original corporate surety bond in a form satisfactory to the Commissioner in accordance the requirements of this section.
- 12.2 The surety bond for an applicant for an initial license shall be a minimum of \$25,000. The surety bond for a licensed mortgage loan originator shall be in a minimum amount in accordance with the following table based upon the volume of Delaware mortgage loans which that licensee originated for the year ending December 31 that precedes the effective year of the license. The amount of a surety bond that is effective for more than one year shall be adjusted as of December 31 of each year to ensure that the minimum required amount is maintained.

<u>Annual Volume of Delaware Mortgage Loans</u>	<u>Minimum Required Amount of Surety Bond</u>
<u>not more than \$11,000,000</u>	<u>\$25,000</u>
<u>\$11,000,001 - \$23,000,000</u>	<u>\$50,000</u>
<u>\$23,000,001 - \$35,000,000</u>	<u>\$75,000</u>
<u>\$35,000,001 - \$47,000,000</u>	<u>\$100,000</u>
<u>\$47,000,001 - \$59,000,000</u>	<u>\$125,000</u>
<u>\$59,000,001 - \$71,000,000</u>	<u>\$150,000</u>
<u>\$71,000,001 - \$83,000,000</u>	<u>\$175,000</u>
<u>\$83,000,001 and over</u>	<u>\$200,000</u>

- 12.3 The Commissioner may require a larger surety bond based upon the particular circumstances of the applicant or licensee.
- 12.4 No bond shall be accepted unless the following requirements are satisfied:
- 12.4.1 The aggregate value of the bond shall be equal to, or greater than, the amount determined in accordance with §12.2;
- 12.4.2 The term of the bond shall be commensurate with the license period or continuous;
- 12.4.3 The expiration date of the bond shall not be earlier than midnight of the date on which the license expires; and
- 12.4.4 The bond shall run to the State for the benefit of the Office of the State Bank Commissioner and for the benefit of all consumers injured by any wrongful act, omission, default, fraud or misrepresentation by the mortgage loan originator in the course of that individual's activity as such. Compensation under the bond shall be for amounts which represent actual losses and shall not be payable for claims made by business creditors, third-party service providers, agents or persons otherwise in the employ of the mortgage loan originator. Surety claims shall be paid to the Office of the State Bank Commissioner by the insurer not later than 90 days after receipt of a claim. Claims paid after 90 days shall be subject to daily interest at the legal rate. The aggregate liability of the surety on the bond, exclusive of any interest which accrues for payments made after 90 days, shall in no event exceed the amount of such bond.
- 12.5 If a mortgage loan originator changes surety company or the bond is otherwise amended, the mortgage loan originator shall immediately provide the Commissioner with the amended original copy of the surety bond. No cancellation of an existing bond by a surety shall be effective unless written notice of its intention to cancel is filed with the Commissioner at least 30 days before the date upon which cancellation shall take effect.
- 12.6 The Commissioner may require potential claimants to provide such documentation and affirmations as the Commissioner may determine to be necessary and appropriate. In the event the Commissioner determines that multiple consumers have been injured by a mortgage loan originator, the Commissioner shall cause a notice to be published for the purpose of identifying all relevant claims.
- 12.7 When a surety company receives a claim against the bond of a mortgage loan originator, it shall immediately notify the Commissioner and shall not pay any claim unless and until it receives notice to do so from the Commissioner.
- 12.8 The Commissioner shall have a period of 2 calendar years after the effective date of cancellation or termination of the surety bond by the insurer to submit claims to the insurer.
- 12.9 A new bond shall be filed when an action is commenced on an existing bond.
- 12.10 Mortgage loan originators who are employees or exclusive agents of a licensee under Chapters 21 or 22 of Title 5 of the Delaware Code can use the surety bond of their employer or principal in lieu of their surety bond requirement under this section, if the surety bond of the employer or principal is in a minimum amount as provided in §12.2 based on the total annual volume of Delaware mortgage loans

originated by all mortgage loan originators covered by that surety bond, that surety bond meets all the requirements of this section, and the employer or principal consents to that use. Licensees under those Chapters shall notify the Commissioner in writing of the names of the mortgage loan originators who are covered by their bond, and of any changes in that coverage.

13.0 Revocation, Suspension, Reprimand and Other Discipline

- 13.1 The Commissioner may revoke, suspend, condition, or refuse to renew any license, or publicly reprimand a licensee under the statute and this regulation upon finding that the licensee:
 - 13.1.1 has violated or failed to comply with any provision of the statute; this regulation; any rule, regulation, order, or supervisory letter promulgated by the Commissioner under the authority of Title 5 of the Delaware Code; or any other law, rule or regulation of this State or the federal government;
 - 13.1.2 has failed at any time to meet the requirements of §§6.0 or 10.0; or
 - 13.1.3 has withheld information or made a material misstatement in an initial or renewal application for a license.
- 13.2 Whenever the Commissioner determines to take any action under this section, the Commissioner shall issue a written order that shall include a statement of the facts upon which the action is based and a notice that the licensee may request a hearing in accordance with Chapter 101 of Title 29 of the Delaware Code.
- 13.3 Except as provided in §13.4, an order under this section shall not become effective less than 10 days after its mailing date.
- 13.4 The Commissioner may issue an order under this section which shall become effective immediately upon issuance whenever in the opinion of the Commissioner, the public health, safety or welfare clearly requires emergency action and the Commissioner's order so states.
- 13.5 Upon its issuance, the Commissioner shall send a copy of the order to the licensee at that individual's last known mailing address by certified mail, return receipt requested.
 - 13.5.1 If the licensee sends the Commissioner a written request for a hearing within 10 days of the order's mailing date, the Commissioner shall then hold a hearing in accordance with Chapter 101 of Title 29 of the Delaware Code, and except as provided in §13.4, the order then shall not become effective until the conclusion of the hearing.
 - 13.5.2 At the conclusion of the hearing, the Commissioner may affirm the order as originally issued, or modify, amend or rescind the order.
- 13.6 No action taken under this section shall in any way impair or otherwise affect either the obligations of any pre-existing lawful contract between the licensee and any person, or the licensee's civil or criminal liability.
- 13.7 If the expiration or surrender of a license occurs after the Commissioner issues a written order under §13.2, the Commissioner may proceed as if the expiration or surrender had not occurred.
- 13.8 The conditions that may be imposed pursuant to this section on a license and on the reinstatement of a suspended license may include the payment of restitution to consumers for fees or other charges that the licensee improperly charged or collected.

14.0 Information Challenges

- 14.1 A mortgage loan originator may challenge information that the Commissioner has entered into the Nationwide Mortgage Licensing System and Registry by submitting to the Commissioner a written statement that identifies the specific information being challenged and provides evidence that this information is incorrect.
- 14.2 Upon receipt of an information challenge, the Commissioner shall consider the merits of the challenge and issue a written preliminary determination.

- 14.3 Upon issuance, the Commissioner shall send a copy of the determination to the mortgage loan originator initiating the challenge at that individual's last known address by certified mail, return receipt requested.
- 14.4 The Commissioner's preliminary determination will be the final resolution of the challenge, unless the mortgage loan originator sends the Commissioner a written request for a hearing within 10 days of the mailing date of the preliminary determination. The Commissioner shall then hold that hearing in accordance with Chapter 101 of Title 29 of the **Delaware Code**; provided, however, that if the subject matter of the information at issue is a decision issued pursuant to such a hearing or by a court of competent jurisdiction, then the Commissioner shall only confirm that the decision was correctly entered into the Nationwide Mortgage Licensing System and Registry and inform the mortgage loan originator of that confirmation without holding a hearing.

15.0 Records and Reports

- 15.1 Every licensed mortgage loan originator shall promptly notify the Commissioner of the following:
- 15.1.1 any change of primary residence address;
 - 15.1.2 any pending felony charges or conviction;
 - 15.1.3 any pending criminal charges or conviction involving financial services, a financial services related business, fraud, dishonesty, breach of trust, false statements or omissions, consumer deception, theft, wrongful taking of property, identity theft, bribery, perjury, forgery, extortion, or money laundering;
 - 15.1.4 cessation of employment or termination of affiliation with any person for whom the mortgage loan originator had been providing residential mortgage loan origination services;
 - 15.1.5 the initiation, settlement, or other resolution of any complaint, litigation, administrative action, or other proceeding against the mortgage loan originator by any person, governmental unit or self-regulatory organization involving residential mortgage loans, financial services, a financial services related business, fraud, dishonesty, breach of trust, false statements or omissions, consumer deception, theft, wrongful taking of property, identity theft, bribery, perjury, forgery, extortion, or money laundering;
 - 15.1.6 the filing of any bankruptcy petition in which the mortgage loan originator is the debtor in the proceeding;
 - 15.1.7 the entry of any judgment, tax lien, other government lien or similar filing against the mortgage loan originator; and
 - 15.1.8 the initiation of any foreclosure action against the mortgage loan originator.
- 15.2 Every licensed mortgage loan originator shall maintain a journal of residential mortgage loan applications, which shall include, at a minimum, the following information:
- 15.2.1 the full name and address of all proposed borrowers and co-borrowers;
 - 15.2.2 the address of the residential real estate to be used as security for the loan;
 - 15.2.3 the date the mortgage loan originator took the loan application for the mortgage loan;
 - 15.2.4 the name and the unique identifier or other unique identifying number of the mortgage loan originator's employer or other person for whom the mortgage loan originator was providing residential mortgage loan origination services; and
 - 15.2.5 the disposition of the loan application and date of disposition. The disposition of the application shall be categorized as either loan closed, loan denied, application withdrawn, application in process, or other (with an explanation provided).
 - 15.2.6 The journal shall be kept current, updated no less frequently than every 10 business days.
- 15.3 All licensed mortgage loan originators who maintain their own surety bond coverage must keep copies of their bonds and also provide copies to their employer or other person for whom the mortgage loan originator was providing residential mortgage loan origination services.
- 15.4 All records required by this section shall be maintained for a period of five (5) years.

16.0 Surrender of License

A mortgage loan originator may surrender a license issued under the statute and this regulation by submitting a written notice of license surrender to the Commissioner or the Nationwide Mortgage Licensing System and Registry. A license may be surrendered only by the individual to whom the license was issued.

17.0 Expiration of Licenses

- 17.1 All licenses issued under the statute and this regulation expire on December 31 of each year; provided however, that if a renewal application is received prior to that date, the applicant may continue to act as a mortgage loan originator until the Commissioner has made a determination on that application.
- 17.2 Whenever a license expires, the Commissioner shall send the licensee a written notice of that expiration stating that the licensee may no longer engage in the business of a mortgage loan originator with respect to any dwelling located in this State.

18.0 Duration of License

- 18.1 Every license issued under the statute and this regulation shall remain in effect until it expires, or is surrendered, suspended, or revoked.
- 18.2 When a mortgage loan originator's Delaware license becomes ineffective, the Commissioner may send a written notice of that fact to the mortgage loan originator's employer or other person for whom the mortgage loan originator had been providing residential mortgage loan origination services.
- 18.3 Whenever a mortgage loan originator's Delaware license ceases to be effective for any reason, neither the obligations of any pre-existing lawful contract between the mortgage loan originator and any person, nor the mortgage loan originator's civil or criminal liability for acts committed while that license was in effect shall be affected in any way.

19.0 Nationwide Mortgage Licensing System and Registry

The administrator of the Nationwide Mortgage Licensing System and Registry is authorized to act on behalf of the Commissioner to process applications, to collect payments, to receive information and to maintain records related to the administration of the statute and this regulation.

20.0 Examination Fees and Supervisory Assessments

- 20.1 The Commissioner may conduct investigations and examinations pursuant to §122 and §2417 of Title 5 of the **Delaware Code**.
- 20.2 The cost of such investigations and examinations is assessed in accordance with §127(a) and §2417(b)(6) of Title 5 of the **Delaware Code**. A person subject to investigation or examination shall remit payment not later than 30 days of the examination invoice.
- 20.3 The Commissioner shall assess each licensee under the statute and this regulation a supervisory assessment that is due and payable on August 1 of each year, in accordance with §127(b) of Title 5 of the **Delaware Code**.
- 20.4 Failure to remit timely payment of any examination fee or supervisory assessment will result in a penalty of 0.05 percent of the amount unpaid for each day the such fee or assessment remains unpaid after the due date, in accordance with §127(a) and §127 (b) of Title 5 of the **Delaware Code**, and may also result in license revocation, suspension or other disciplinary action under §13.0.

21.0 Unique Identifiers

The unique identifier of any individual originating a residential mortgage loan on a dwelling located in this State shall be clearly shown on all residential mortgage loan application forms for all such loans originated by that individual, and on all solicitations, advertisements, business cards, and websites listing the name of that individual.

22.0 Prohibited Acts And Practices

A person subject to the statute and this regulation shall not:

- 22.1 directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;
- 22.2 engage in any unfair or deceptive practice toward any person;
- 22.3 obtain property by fraud or misrepresentation;
- 22.4 solicit or enter into a contract with a borrower that provides in substance that the person subject to the statute and this regulation may earn a fee or commission through 'best efforts' to obtain a loan even though no loan is actually obtained for the borrower;
- 22.5 solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;
- 22.6 conduct any business covered by the statute and this regulation without holding a valid license as required under the statute and this regulation, or assist or aid and abet any person in the conduct of business under the statute and this regulation without a valid license as required under the statute and this regulation;
- 22.7 fail to make disclosures as required by the statute and this regulation and any other applicable federal or State law including regulations thereunder;
- 22.8 fail to comply with the statute and this regulation or rules or regulations promulgated under the statute, or fail to comply with any other federal or State law, including the rules and regulations thereunder, applicable to any business authorized or conducted under this the statute and this regulation;
- 22.9 make, in any manner, any false or deceptive statement or representation, or engage in 'bait and switch' advertising;
- 22.10 negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the Nationwide Mortgage Licensing System and Registry or in connection with any investigation or examination conducted by the Commissioner or another governmental agency;
- 22.11 make any payment, threat or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment threat or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;
- 22.12 collect, charge, attempt to collect or charge or use or propose any agreement purporting to collect or charge any fee prohibited by the statute and this regulation;
- 22.13 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; or
- 22.14 fail to truthfully account for monies belonging to a party to a residential mortgage loan transaction.

23.0 Transition

Pursuant to §2404(e) of the statute and Section 2 of 77 Delaware Laws Chapter 96, the Commissioner may annually renew any license issued pursuant to Chapter 24 of Title 5 of the Delaware Code as it existed immediately prior to the enactment of the statute until such time as the statute is fully implemented; and also issue new licenses pursuant to that prior chapter until the later of either July 31, 2010, or until the Nationwide Mortgage Licensing System and Registry develops the qualified written test required for initial license applicants as specified by §2408(a) of the statute and §9.0 of this regulation, and the System is fully able to process applications pursuant to the statute.

12 DE Reg. 818 (12/01/08)

13 DE Reg. 468 (10/01/09) (Prop.)