



# COMMONWEALTH OF MASSACHUSETTS

## Office of Consumer Affairs and Business Regulation

### DIVISION OF BANKS

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September 19, 2018

## **INDUSTRY LETTER REGARDING EXEMPTIONS FOR CERTAIN NONPROFIT ENTITIES FROM MORTGAGE LICENSING REQUIREMENTS**

To All Interested Parties:

The Division of Banks (the Division) has issued this Industry Letter to provide guidance regarding *An Act Relative to Economic Development in the Commonwealth*, Chapter 228 of the Acts of 2018 (the Act), which included amendments to the mortgage licensing laws under M.G.L. c. 255E (Chapter 255E) and M.G.L. c. 255F (Chapter 255F). The amendments add a new mortgage licensing exemption to Chapter 255E for so-called “Bona fide nonprofit affordable homeownership organizations” (bona fide nonprofits). The Act also clarifies the existing mortgage licensing exemption for instrumentalities of the United States or any state (government instrumentalities) and adds corresponding exemptions for the mortgage loan originators who work for the specified nonprofit exempt entities.

### Historical Background

- The Division has previously issued guidance regarding nonprofit mortgage licensing requirements, including: the January 10, 2008 Letter to Nonprofit Agencies Concerning the Elimination of Licensing Exemption; the July 17, 2008 Opinion 08-018, Opinion on Exemption for Certain Nonprofits from Mortgage Licensing Statutes; and the June 15, 2017 Industry Letter Regarding Applicability of Mortgage Loan Originator Licensing to Individuals Employed by Nonprofit Entities.
- **This Industry Letter will supersede and replace the aforementioned guidance.**

### Bona Fide Nonprofit Mortgage License Exemption

- A bona fide nonprofit is defined as, “a Massachusetts nonprofit corporation with a primary purpose of helping qualified low-income individuals build, repair and purchase affordable housing and meets the definition of ‘bona fide nonprofit organization’ set forth in 12 CFR part 1008.103(e)(7)(ii).”
- Pursuant to M.G.L. c. 255E, § 2, as amended by the Act, the Commissioner of Banks (Commissioner) may make a determination that a bona fide nonprofit is exempt from licensure as a mortgage broker or mortgage lender under Chapter 255E.
- A nonprofit must apply to the Division for a determination that it meets the exemption criteria set forth in M.G.L. c. 255E. Nonprofits wishing to apply for the exemption must submit the attached application form. The form can also be located on the Division’s website at [www.mass.gov/dob](http://www.mass.gov/dob) by clicking on “Financial Industry Services and Resources”, and then clicking on “Forms and applications”.

- Upon a determination that the nonprofit meets the criteria of a bona fide nonprofit, individual mortgage loan originators who are employed by the bona fide nonprofit are exempt from mortgage loan originator license requirements. After the Division issues the determination, any licensed mortgage loan originators (MLO) may surrender their licenses or allow them to expire.

#### Government Instrumentality License Exemption

- M.G.L. c. 255E, § 2 provides a mortgage licensing exemption for government instrumentalities. This exemption has been in place since 1991; however, the term “instrumentalities of the United States or any state” was not defined therein. M.G.L. c. 255E, § 1, as amended by the Act, specifically defines that term to codify the Division’s longstanding position that 501(c)(3)/ 501(c)(4) nonprofits for which mortgage activities are exclusively limited to government programs and the use of public funds are to be considered government instrumentalities under the Chapter 255F exemption. Nonprofits that believe they are exempt for this reason are directed to consult the definition in the statute.
- Government instrumentalities are not required to submit an application for a determination of exemption to the Division, as the licensing exemption is self-executing and does not require an express determination by the Commissioner.
- Pursuant to M.G.L. c. 255F, § 2, as amended by the Act, MLOs who are employed by, or acting on behalf of, a government instrumentality are no longer required to be licensed under Chapter 255F. Any MLOs who work for government instrumentalities who are currently licensed are not required to renew their MLO licenses for 2019, and may surrender their license immediately.
- In accordance with the MLO exemption described above, government instrumentalities are no longer required to register as “exempt companies” in the Nationwide Multi-State Licensing System and Registry (NMLS). Such entities may allow their registration to expire at the end of the year.

#### All Other Nonprofits

- A nonprofit which regularly engages in the business of a mortgage lender or mortgage broker that does not meet either the criteria of a bona fide nonprofit or of a government instrumentality as described above (other nonprofit), is required to be licensed as a mortgage lender and/or broker through the NMLS.
- MLOs who are employed by other nonprofits are required to be licensed as MLOs through the NMLS.
- Pursuant to M.G.L. c. 255F, § 1, a mortgage loan originator is defined as “a person who for compensation or gain or in the expectation of compensation or gain: (i) takes a residential mortgage loan application; or (ii) offers or negotiates terms of a residential mortgage loan.” The Division interprets “compensation or gain” to include receiving a salary.
- An example of MLO activity is when an employee assists a borrower to refinance a mortgage loan, thus originating a new mortgage loan secured by the residential property. However, it is the Division’s position that a license would not be required in order to assist a borrower with a loan modification that does not result in a new mortgage loan.

Obtaining a Mortgage Company and/or Mortgage Loan Originator License

- In order to obtain a license to conduct business as a mortgage broker or mortgage lender in Massachusetts, applicants must satisfy the requirements of the Division's regulation [209 CMR 42.00](#). This includes a [business experience requirement](#). Please consult the [Division's How-to apply for a mortgage company](#) web page for more information on Massachusetts mortgage company requirements.
- Prior to obtaining an MLO license, individuals must pay licensing fees, complete pre-licensing coursework, and pass a written test. MLO applicants must apply for licensure through the NMLS and be "sponsored" by the licensed nonprofit employer. Please consult the Division's [How-to apply for a Mortgage Loan Originator](#) web page for more information on Massachusetts MLO licensing requirements.

Enforcement

- Any nonexempt entities engaging in unlicensed mortgage lending or brokering activity may be subject to enforcement action pursuant to the Division's Regulatory Bulletin 5.1-101 Enforcement Policy for Unlicensed Entities (Regulatory Bulletin 5.1-101).
- Any nonexempt individuals engaging in unlicensed MLO activity, and any nonprofit employing such unlicensed individuals, may be subject to enforcement action pursuant to Regulatory Bulletin 5.1-101.

Should you have any questions with regard to this Industry Letter, please contact Deputy Commissioner Kevin Cuff at (617) 956-1500 extension 61539, or [kevin.cuff@mass.gov](mailto:kevin.cuff@mass.gov).

Sincerely,



Terence A. McGinnis  
Commissioner of Banks

APPLICATION FOR DETERMINATION OF “BONA FIDE NONPROFIT AFFORDABLE  
HOMEOWNERSHIP ORGANIZATION” LICENSING EXEMPTION PURSUANT TO  
M.G.L. C. 255E, SECTION 2

**A. A bona fide nonprofit affordable homeownership organization as defined in M.G.L. c. 255E, section 1 (Organization), may apply to the Division of Banks (Division) to request a determination whether the organization meets the criteria set forth in M.G.L. c. 255E, section 2 to be exempt from mortgage company licensing. Such determination will also exempt the Organization’s employees from mortgage loan originator license requirements. To meet the criteria, the Division must be satisfied that the organization demonstrates that it:**

1. Is a nonprofit corporation with a primary purpose of helping qualified low-income individuals build, repair and purchase affordable housing;
2. Maintains tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986;
3. Promotes affordable housing or provides homeownership education, or similar services;
4. Conducts its activities in a manner that serves public or charitable purposes, rather than commercial services;
5. Receives funding and revenue and charges fees in a manner that does not incentivize the organization or its employees to act other than in the best interests of its clients;
6. Compensates employees in a manner that does not incentivize employees to act other than in the best interests of its clients;
7. Provides to, or identifies for, the borrower residential mortgage loans with terms that are favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs;
8. Does not charge loan origination fees;
9. Does not provide residential mortgage loans that do not fully amortize over the term of the loans;
10. Does not compensate employees based on the number or size of mortgage loans originated by the employee or otherwise incentivize any employees to act other than in the best interests of the borrower;
11. Provides mortgage products that meet the ability-to-repay and qualified mortgage standards pursuant to 12 CFR Part 1026;
12. Determines that a borrower has a reasonable ability to repay a mortgage before consummation; provided, however, that a borrower’s debt-to-income ratio shall not exceed 43 percent.

**B. The following must be submitted to the Division in support of the application. Please submit all application materials to the Massachusetts Division of Banks, 1000 Washington Street, 10<sup>th</sup> Floor, 02118-6400, Attn: Mortgage Licensing Unit**

1. Affirmation Letter issued by the IRS confirming the organization's 501(c)(3) tax-exempt status.
2. Formation documents (e.g. Charter, By-Laws, Articles of Incorporation, Articles of Organization, Operating Agreement etc.).
3. Management chart that displays the Organization's directors, officers, and managers by individual name and title.
4. A business plan that includes a description of the Organization's mortgage loan programs, including the policies and procedures for mortgage loan origination.
5. A written statement that describes how the Organization meets all of the criteria listed in Part A.
6. A list of the Organization's mortgage loan officers/originators and their office locations.
7. A completed application form and attestation (see Attachments 1 and 2).

***\*Pursuant to M.G.L. c. 255E, section 2, the Division may periodically examine an exempted bona fide nonprofit affordable homeownership organization to determine whether it continues to meet the criteria described in Part A\****

# Attachment 1

## Massachusetts Division of Banks

APPLICATION FORM FOR DETERMINATION OF "BONA FIDE NONPROFIT AFFORDABLE HOMEOWNERSHIP ORGANIZATION" LICENSING EXEMPTION PURSUANT TO M.G.L. C. 255E, SECTION 2

General Information	
Organization Name (Including DBAs)	
FEIN	
Street Address	
City/State/Zip	
Telephone Number	
Website Address	
Primary Contact Information	
Name	
Title	
Mailing Address	
Telephone Number	
Email	
Location of Books and Records	
Street Address	
City/State/Zip	

## Attachment 2

### Massachusetts Division of Banks

**“BONA FIDE NONPROFIT AFFORDABLE HOMEOWNERSHIP ORGANIZATION”  
LICENSING EXEMPTION PURSUANT TO M.G.L. C. 255E, SECTION 2**

### Attestation

#### Attestation

**I verify that I am authorized to attest to and submit this application for determination of “bona fide nonprofit affordable homeownership organization” licensing exemption pursuant to M.G.L. c. 255E, section 2 on behalf of \_\_\_\_\_ [the Organization], and I agree to, and represent the following:**

- (1) That the information and statements contained herein, including exhibits attached hereto, are true and complete to the best of my knowledge, information, and belief;
- (2) That the Division may conduct any investigation in accordance with state law, into the background of the organization for purposes of making the determination on the request for exemption;
- (3) To keep the information contained herein, including exhibits attached hereto, current and to file accurate supplementary information on a timely basis

Name (Print)	Signature	Date (MM/DD/YYYY)