

## Proposed Amendments – 10/18/19

### 209 CMR 41.00: THE LICENSING OF MORTGAGE LOAN ORIGINATORS

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#### 41.01: Purpose and Scope

The purpose of 209 CMR 41.00 is to establish procedures and requirements for the licensing and supervision of Mortgage Loan Originators under the provisions of M.G.L. c. 255F.

Nothing contained in 209 CMR 41.00 shall limit the ability of the Commissioner to consider other information in determining whether or not to approve an application, or to require information in addition to that required by the application form completed by the applicant.

#### 41.02: Definitions

As used in 209 CMR 41.00 the following words shall, unless the context otherwise requires, have the following meanings:

Applicant means any Mortgage Loan Originator who is required to be licensed under the provisions of M.G.L. c. 255F, § 2.

Bona fide nonprofit affordable homeownership organization, 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).

Clerical or Support Duties may include the following activities, conducted subsequent to the receipt of an application:

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

(b) 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.

Commissioner means the Commissioner of Banks.

Depository Institution means “depository institution” as defined in § 3 of the Federal Deposit Insurance Act, and shall include credit unions.

Division means the Division of Banks.

Employing Entity means the Entity with whom the Mortgage Loan Originator is employed.

Entity means a mortgage broker and/or mortgage lender that is licensed under M.G.L. c. 255E.

Federal Banking Agencies means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

Immediate Family Member means a spouse, child, step child, adopted child, sibling, step sibling, adopted sibling, parent, step parent, adopted parent, grandparent, or grandchild.

Individual means a natural person.

Instrumentality Created by the United States or any State means a federal, state, municipal government, quasi-governmental entity or a nonprofit agency or corporation incorporated under the laws of the commonwealth that has a tax exempt status granted under the provisions of section 501(c)(3) of the federal Internal Revenue Code, which exclusively makes or issues commitments for mortgage loans on residential property to be financed with public funds, or negotiates, places, assists in the placement of, finds, or offers to negotiate, place, assist in the placement of or find mortgage loans on residential property to be financed with public funds only under a contract with a federal, state, or municipal government, any instrumentality thereof or any quasi-governmental entity as determined by the commissioner. The making of a mortgage loan shall include being named as the lender or mortgagee on the note, mortgage or other loan documents.

Licensee means any person who is licensed by the Commissioner as a Mortgage Loan Originator under M.G.L. c. 255F and 209 CMR 41.00.

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 209 CMR 41.00; provided, however, that said person shall not represent to the public, through advertising or other means of communicating or providing information including, but not limited to, the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual is licensed or otherwise authorized by law to perform any of the activities of a Mortgage Loan Originator or that such person intends to perform any of the activities of a Mortgage Loan Originator.

Mortgage Loan Originator means a natural person who is employed by no more than one entity and 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.

NMLS means the Nationwide Multi-state Licensing System & Registry, a multistate licensing system owned and operated by the State Regulatory Registry LLC (SRR), a wholly owned subsidiary of the Conference of State Bank Supervisors (CSBS), an association of state financial services regulators.

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, or association.

Real Estate Brokerage Activity means any activity involving offering or providing real estate brokerage services to the public, including without limitation:

- (a) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;
- (b) facilitating the sale, purchase, lease, rental, or exchange of real property;
- (c) negotiating, on behalf of any person, 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 registration or license as a real estate agent or real estate broker is required; and
- (e) offering to engage in any activity, or act in any capacity, described in 209 CMR 41.02: Real Estate Brokerage Activity(a) through (d).

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 NMLS.

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 as defined in § 103(v) of the Truth in Lending Act, 15 U.S.C. § 1602(v) or residential real estate upon which is constructed or intended to be constructed a dwelling as so defined.

Residential Real Estate means any real property located in the Commonwealth upon which is constructed or intended to be constructed a dwelling.

Termination means the ending of a Mortgage Loan Originator's employment with an Employing Entity, including but not limited to: voluntary resignation; discharge for cause; dismissal; forced resignation; layoff.

Unique Identifier means a number or other identifier assigned by protocols established by the NMLS.

#### 41.03: Licensing Exemptions

The following are not required to obtain a Mortgage Loan Originator license:

- (1) Registered Mortgage Loan Originators.
- (2) Any person offering or negotiating a residential mortgage loan with or on behalf of an immediate family member.
- (3) Any person offering or negotiating a residential mortgage loan secured by a dwelling that served as the individual's primary residence.
- (4) Any person admitted to practice law in the Commonwealth negotiating the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the person's representation of the client,

unless the person 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.

(5) Any person engaged solely as a loan processor or underwriter, unless:

- (a) said person is acting as an independent contractor; or
- (b) said person is employed by an independent contractor that provides loan processing and underwriting services for entities.

(6) Any person that performs only real estate brokerage activities and is licensed or registered pursuant to M.G.L. c. 112, §§ 87PP through 1/2 87DDD<sup>1</sup>/<sub>2</sub>, unless the person 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.

(7) Any person solely involved in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. § 101(53D).

(8) Any person who otherwise meets the definition of a Mortgage Loan Originator but who is employed by an organization determined by the Commissioner to be a bona fide nonprofit affordable homeownership organization pursuant to section M.G.L. c. 255E, §2.

(9) Any person who otherwise meets the definition of a Mortgage Loan Originator, but who is employed by, or is operating on behalf of, an instrumentality created by the United States or any state as defined in 209 CMR 41.02.

#### 41.04: Application Procedure

(1) Application. Each Applicant for a license as a Mortgage Loan Originator shall submit an application on a form prescribed by the Commissioner through the NMLS, containing such information as the Commissioner may require.

(2) License Requirements. An Applicant shall be required to submit detailed information supporting the following requirements:

(a) Financial Responsibility. An Applicant shall provide the Commissioner with evidence of his or her financial responsibility. Such information shall include an independent credit report obtained from a consumer reporting agency described in § 603(p) of the Fair Credit Reporting Act, which shall be evaluated pursuant to the policies and standards determined by the Commissioner. A person shall have failed to demonstrate that he or she is financially responsible when he or she has shown a

disregard in the management of his or her own financial condition; and provided further, that a determination that an individual has not shown financial responsibility may include, but shall not be limited to:

1. current outstanding judgments, except judgments solely as a result of medical expenses;
2. current outstanding tax liens or other government liens and filings;
3. foreclosure within the past three years; or
4. a pattern of seriously delinquent accounts within the past three years.

(b) Bond Coverage. An Applicant shall submit evidence of sufficient surety bond coverage in such form and with such sureties as may be determined by the Commissioner. The surety bond of the employing entity may be used to satisfy the Applicant's surety bond requirement.

(c) Criminal Background. An Applicant shall consent to a state and federal criminal history record check and furnish to the NMLS a set of the Applicant's fingerprints, in a form acceptable for such purpose, 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.

(d) Character and Fitness. An Applicant shall submit information demonstrating that the Applicant possesses the character, reputation, integrity, and general fitness such as to command the confidence of the community and to warrant a determination that the Applicant will engage in the business of a Mortgage Loan Originator in an honest, fair, sound, and efficient manner.

(e) Pre-licensing Coursework. An Applicant shall submit information demonstrating that he/she has completed a minimum of 20 hours of pre-licensing education, approved by the NMLS, which shall include, without limitation:

1. three hours of federal law and regulations;
2. three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues;
3. two hours of training related to lending standards for the nontraditional mortgage product marketplace; and
4. three hours of state law and regulation, which shall include instruction on state consumer protection laws and other related statutes.

(f) Written Examination. An Applicant must pass a qualified written test developed by the NMLS and administered by a test provider approved by the NMLS. An applicant must pass with a test

score of not less than 75% correct answers to questions. An applicant may retake the qualified examination three consecutive times with each consecutive taking occurring at least 30 days after the preceding examination. Upon failing three consecutive written examinations, a person shall not be eligible to sit for another written examination for a period of at least six months.

(g) Payment of Fees. An Applicant shall pay all applicable fees as a condition of obtaining the Mortgage Loan Originator license. Such fees are nonrefundable.

(h) Other Information. An Applicant shall submit such other information relating to the Applicant's personal history and experience as the Commissioner may require. In evaluating an application and requesting information from an Applicant, the Commissioner may be guided by or rely upon the standards set forth in the CSBS/American Association of Residential Mortgage Regulators NMLS Policy Guidebook, as published by the SRR.

(3) Incomplete Applications. Mortgage loan originator license applications which are missing material information shall be held in an incomplete status for a period of 14 calendar days after written notice to the Applicant specifying the nature of the deficiency. If any such deficiency remains outstanding for more than 14 days, the license application may be considered abandoned by the Applicant and terminated by the Commissioner, and the Applicant shall be required to submit a new application and pay all fees associated therewith.

#### 41.05: Licensing Standards

(1) A license to engage in the activity of a Mortgage Loan Originator will be issued to an Applicant if the Commissioner, upon review of the application and all other relevant information, determines that all of the requirements of M.G.L. c. 255F and 209 CMR 41.04 have been met.

(2) A mortgage loan originator may be employed by no more than one entity.

(3) (a) The Commissioner shall deny an application for a Mortgage Loan Originator license if the Commissioner upon review of the application and any other relevant information, determines that the Applicant has:

1. had a mortgage loan originator license revoked in any governmental jurisdiction; provided, however, that a subsequent formal vacation of such revocation shall not be deemed a revocation;

2. been convicted of, or pled guilty, admitted to sufficient facts or *nolo contendere* to, a felony in a domestic, foreign, or military court:

- a. during the seven-year period preceding the date of the application for licensing;

b. at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering; or

c. has other convictions or admissions to sufficient facts involving fraud, dishonesty, or a breach of trust, or that the applicant has had any adverse civil judgments involving fraudulent dealings;

3. failed to demonstrate financial responsibility, character, reputation, integrity and general fitness such as to command the confidence of the community and to warrant a determination that such Applicant will operate honestly, fairly, soundly and efficiently in the public interest;

4. failed to complete the pre-licensing education requirement described in 209 CMR 41.04(2)(e);

5. failed to pass a written test that meets the test requirement described in 209 CMR 41.04(2)(f); or

6. failed to satisfy the requirements of M.G.L. c. 255F or 209 CMR 41.04.

(b) The Commissioner may also deny such an application if the Applicant has:

1. violated any provision of M.G.L. c. 255F or 209 CMR 41.00;

2. violated or engaged in a pattern of violations of any state or federal law applicable to the conduct of the business of a mortgage loan originator, mortgage broker, mortgage lender, or other financial services provider including, but not limited to, M.G.L. chs. 93A, 183, 183C, 184, 255E;

3. withheld information or made a material misstatement in the license application; or

4. engaged, or will engage, in mortgage origination activities in an unsafe and unsound manner.

(4) An Applicant whose application has been denied under 209 CMR 41.05(3) may seek judicial review of the denial under M.G.L. c. 255F, § 4 in accordance with M.G.L. c. 30A, § 14.

#### 41.06: Termination and Reassignment

(1) Upon the termination of the relationship between an Employing Entity and the Mortgage Loan Originator, the Employing Entity shall notify the Division within five business days after the termination. The Employing Entity shall set forth the reason(s) for termination and shall submit such statement through the NMLS; provided, however, that if the Employing Entity is unable to submit such statement through the NMLS, it may submit the statement in writing directly to the Division.



(2) For a period of one year after the termination of employment or association, the Mortgage Loan Originator may request re-assignment of the mortgage loan originator license to another Entity by submitting an application for a change of sponsorship through the NMLS to the Division and paying the required fee, as determined by the Commissioner.

(3) When the relationship between the Employing Entity and the Mortgage Loan Originator is terminated, the license shall become inactive and the Mortgage Loan Originator shall not be authorized to engage in any residential mortgage loan origination activity unless and until the Mortgage Loan Originator's license has been re-assigned to another Entity and all Division procedures have been followed to re-assign and reactivate such license. A Licensee shall be required to continue to submit a completed renewal application, with the applicable renewal fee, and to complete the required continuing education courses while the license is in an inactive status.

(4) A Mortgage Loan Originator license that has been in an inactive status for over one year shall be cancelled.

#### 41.07: License Renewal and Expiration

(1) The license of a Mortgage Loan Originator shall not be transferable or assignable and shall be valid for a period of not more than one year, with an expiration date of December 31<sup>st</sup> of each year.

(2) The Division may renew a Mortgage Loan Originator license if the Licensee fulfills the following requirements:

(a) Timely submission of a complete application for renewal, in the form and manner established under the NMLS.

(b) Continuing compliance with M.G.L. c. 255F and 209 CMR 41.00.

(c) Satisfaction of annual continuing education requirements, as described in 209 CMR 41.08.

(d) Payment of all required fees for the renewal of the license, including but not limited to, investigation fees, license fees, and any other outstanding fees, late penalties, or administrative penalties owed to the Division or refunds ordered by the Division to be returned to consumers.

(3) Failure of the Licensee to timely satisfy the minimum standards for license renewal as set forth in 209 CMR 41.07(2) shall result in the expiration of his or her Mortgage Loan Originator License as of January 1st of that year.

(4) A Mortgage Loan Originator license that has expired may be reinstated by the Commissioner if the individual requests such reinstatement through the NMLS no later than the last day of February of the license year and has satisfied the minimum standards for license renewal as set forth in 209 CMR 41.07(2).

#### 41.08: Continuing Education

(1) A Licensee shall, annually, complete a minimum of eight hours of continuing education approved by the NMLS, which shall include, without limitation:

(a) three hours of federal law and regulation;

(b) two hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues;

(c) two hours of training related to lending standards for the nontraditional mortgage product marketplace; and

(d) one hour of Massachusetts state law and regulation, which shall include instruction on Massachusetts consumer protection laws and other related statutes.

(2) A Licensee who is an approved instructor of an approved continuing education course may receive credit to satisfy such Licensee's annual continuing education requirement at the rate of two hours credit for every one hour taught.

(3) A Licensee shall:

(a) only receive credit for a continuing education course in the year in which the course is taken; and

(b) not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

#### 41.09: Notice of Significant Events

A Licensee shall notify the Commissioner immediately, in writing, and amend the Licensee's information and disclosures in the NMLS, within two business days of the occurrence of any of the following significant developments:

(a) Being charged with or convicted of any criminal felony offense.

(b) Being charged with or convicted of any criminal misdemeanor offense involving financial services or a financial services related business; or any charge involving fraud, false statements or omissions, theft or wrongful taking of property, bribery, perjury, forgery, counterfeiting, or extortion.

(c) Receiving notification of the institution of license denial, cease and desist, suspension or revocation procedures, or other formal or informal regulatory action, in any state against the Licensee.

(d) Receiving notification of the initiation of any action against the Licensee by the Attorney General of the Commonwealth or of any other state, pursuant to M.G.L. c. 93A, or any other comparable consumer protection statute.

(e) The settlement or resolution of any civil action or proceeding against the Licensee involving fraud, misrepresentation, and/or wrongful taking of property.

(f) Filing a personal bankruptcy petition or being the subject of an involuntary bankruptcy petition.

#### 41.10: Prohibited Acts and Practices

(1) It is a prohibited act or practice for a Mortgage Loan Originator to engage in conduct prohibited under 209 CMR 42.12A: *Prohibited Acts and Practices*.

(2) It is a prohibited act or practice for a Mortgage Loan Originator to engage in mortgage loan origination activities after receiving notification of the denial of his or her Mortgage Loan Originator license application or at any time that the license is expired, cancelled, suspended, revoked, or in an inactive status.

(3) It is a prohibited act or practice for a Mortgage Loan Originator to misrepresent his or her license status and type.

(4) It is a prohibited act or practice for a Mortgage Loan Originator to download or remove borrowers' or mortgage loan applicants' loan files or other information from the premises or the computer systems of the Employing Entity, unless the Mortgage Loan Originator has obtained the written permission of the Employing Entity.

(5) It is a prohibited act or practice for a Mortgage Loan Originator to allow any other person or entity to utilize the Mortgage Loan Originator's Mortgage Loan Originator license number to engage in mortgage loan origination activities.

(6) It is a prohibited act or practice for a Mortgage Loan Originator to simultaneously work for, or be associated with, more than one Employing Entity.

(7) It is a prohibited act or practice for a Mortgage Loan Originator to conduct business with or to assist, aid or abet a person in the conduct of business who should be licensed as a Mortgage Loan Originator under M.G.L. c. 255F or a mortgage lender or mortgage broker under M.G.L. c. 255E, and which the Mortgage Loan Originator knows or should know is an unlicensed Mortgage Loan Originator, mortgage broker or mortgage lender.

(8) It is a prohibited act or practice for a Mortgage Loan Originator to directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person.

(9) It is a prohibited act or practice for a Mortgage Loan Originator to engage in any unfair or deceptive practice toward any person.

(10) It is a prohibited act or practice for a Mortgage Loan Originator to obtain property by fraud or misrepresentation.

(11) It is a prohibited act or practice for a Mortgage Loan Originator to solicit or enter into a contract with a borrower that provides in substance that the Mortgage Loan Originator or the Employing Entity may earn a fee or commission through best efforts to obtain a loan even though no loan is actually obtained for the borrower.

(12) It is a prohibited act or practice for a Mortgage Loan Originator to 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;

(13) It is a prohibited act or practice for a Mortgage Loan Originator to fail to make disclosures as required by M.G.L. c. 255F and 209 CMR 41.00.

(14) It is a prohibited act or practice for a Mortgage Loan Originator to make, in any manner, any false or deceptive statement or representation including, with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising.

(15) It is a prohibited act or practice for a Mortgage Loan Originator to 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 NMLS or in connection with any investigation conducted by the Commissioner or another governmental agency.

(16) It is a prohibited act or practice for a Mortgage Loan Originator to 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.

(17) It is a prohibited act or practice for a Mortgage Loan Originator to collect, charge, attempt to collect or charge or use or propose any agreement purporting to collect or charge any fee prohibited by M.G.L. c. 255F.

(18) It is a prohibited act or practice for a Mortgage Loan Originator to 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.

(19) It is a prohibited act or practice for a Mortgage Loan Originator to fail to truthfully account for monies belonging to a party to a residential mortgage loan transaction.

(20) It is a prohibited act or practice for a Mortgage Loan Originator to violate any written agreement entered between the Mortgage Loan Originator and the Commissioner.

(21) It is a prohibited act or practice for a Mortgage Loan Originator to fail to maintain accurate and up-to-date information in his or her NMLS license record.

(22) A violation of 209 CMR 41.10 shall constitute grounds for the issuance of a cease and desist order or for license suspension, revocation, or refusal to renew under M.G.L. c. 255F, § 11(a); shall constitute grounds for a civil assessment under M.G.L. c. 255F, § 11(b); and shall constitute grounds for a Prohibition Notice under M.G.L. c. 255F, § 11(d).

#### 41.11: Challenge Process

(1) A Mortgage Loan Originator may challenge information entered into the NMLS by the Division. Such challenge must be in writing and must set forth the specific information being challenged and include supporting evidence. The grounds for the challenge shall be limited to the factual accuracy of the information pertaining to the Mortgage Loan Originator's own license record that has been entered into the NMLS by the Division. A Mortgage Loan Originator shall not submit a challenge in order to protest disciplinary action taken against the Mortgage Loan Originator by the Division or to appeal the underlying reasons for the disciplinary action.

(2) The Commissioner shall review all information submitted by the Mortgage Loan Originator and shall determine the merits of the challenge. If the Commissioner determines that the information submitted to the NMLS is factually incorrect, the Commissioner shall take prompt steps to correct the information submitted.

(3) A Mortgage Loan Originator that is aggrieved by the Commissioner's decision in response to the challenge submitted may appeal said decision within 30 days of the Commissioner's decision, in accordance with M.G.L. c. 30A.

#### 41.12: License Disclosure

(1) A Licensee shall disclose his or her Mortgage Loan Originator license number to all clients and/or residential mortgage loan applicants in writing at the time a fee is paid or a mortgage loan application is accepted.

(2) A Licensee's Mortgage Loan Originator license number shall be clearly shown on all residential mortgage loan application forms, solicitations or advertisements, including, without limitation, business cards and websites.

#### REGULATORY AUTHORITY

209 CMR 41.00: M.G.L. c. 255F, §§ 2(c) and 19; [St. 2018, c. 228, §§49 through 52](#).