

DEPARTMENT OF STATE
OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Section 121(b) (5 **Del.C.** §121(b))
5 **DE Admin. Code** §2401

FINAL

Order Adopting New Regulation 2401

IT IS HEREBY ORDERED, this 13th day of November, 2008 that new Regulation 2401 is adopted as a regulation of the State Bank Commissioner. A copy of Regulation 2401 as adopted is attached hereto and incorporated herein by reference. The effective date of Regulation 2401 is December 11, 2008. The Regulation is adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code and pursuant to the requirements of Chapters 11 and 101 of Title 29 of the **Delaware Code**, as follows:

1. A notice of the proposed Regulation 2401 and its text was published in the October 1, 2008 issue of the *Delaware Register of Regulations*. Notices were also published in the September 30, 2008 edition of *The News Journal*, and the October 1, 2008 edition of *The Delaware State News*, and mailed to all persons who had made timely written requests to the Office of the State Bank Commissioner for advance notice of its regulation-making proceedings. The notices, among other things, summarized the proposed regulation, invited interested persons to submit written comments to the Office of the State Bank Commissioner at or before the hearing on the proposed regulation, and indicated that the proposed regulation was available for inspection at the Office of the State Bank Commissioner, that copies were available upon request, and that a public hearing would be held on November 6, 2008 at 10:00 a.m. at the Office of the State Bank Commissioner in Dover, Delaware.

2. No written comments concerning the proposed new regulation were received on or before the hearing.

3. A public hearing was held on November 6, 2008 at 10:00 a.m. regarding proposed Regulation 2401. Robert A. Glen, State Bank Commissioner; Francis S. Babiarz, Deputy Bank Commissioner for Supervisory Affairs; Frank Broujos, Deputy Attorney General; Clare T. Crossan, Larry Doub, Kristina Rewis, Chris Rowe, and LaMontz Hayman from ACA Mortgage; Bryan Cochran from State Farm Insurance, and a court reporter attended the hearing. Mr. Broujos attended by telephone. No other persons were present.

4. The State Bank Commissioner and Deputy Commissioner Babiarz summarized the proposed new regulation. Deputy Commissioner Babiarz also noted that a manifest typographical error appeared in the proposed regulation. In Section 1.0, Definitions, Subsection (8), the term "Statute" was incorrectly defined as "24 Del.C. Chapter 24", when the definition should have read "5 **Del.C.** Chapter 24". Deputy Attorney General Broujos confirmed that this was a non-substantive technical error.

5. Mr. Rowe commented that he believed that the legislation on which the regulation was based should have been passed earlier. He believed that the statute's exemptions were too extensive and that market conditions had already filtered out many persons who had been acting improperly, so that the legislation now affected mostly smaller businesses. He added that he thought the statute would have much lower financial benefit to the State than anticipated and might not even produce enough funds to cover its costs. He also wanted the statute's education requirements to include reciprocity with other states to reduce the burden on licensees. Ms. Crossan stated that she supported Mr. Rowe's comments, especially with regard to the extensiveness of exemptions that apply to large companies. She believed that the statute should have no hiding places.

6. After review and consideration, the State Bank Commissioner finds that the comments by Mr. Rowe and Ms. Crossan relate to the statute (5 Del.C. Chapter 24) that the proposed regulation implements, rather than to provisions in the regulation itself. In particular, the proposed regulation does not alter or enlarge the statute's provisions about licensing exemptions or educational requirements. Moreover, the statute does not preclude education courses from being accepted to satisfy the educational requirements of more than one state.

7. Therefore, the State Bank Commissioner hereby adopts new Regulation 2401 as proposed, but with the non-substantive typographical error noted above corrected to read: "5 Del.C. Chapter 24".

Robert A. Glen, State Bank Commissioner

2401 Mortgage Loan Originator Licensing

1.0 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.

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