

DISTRICT OF COLUMBIA PUBLIC SCHOOLS

NOTICE OF FINAL RULEMAKING

The Chancellor of the District of Columbia Public Schools (DCPS), pursuant to section 103 of the District of Columbia Public Education Reform Amendment Act of 2007 (“Public Education Reform Amendment Act”), effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-172), and Mayor's Order 2007-186 (August 10, 2007), hereby gives notice of the below final rule. The purpose of this amendment is to ensure the consistent application of the District’s Freedom of Information Act throughout all District government agencies and to clarify the procedures that DCPS is required to follow in response to a Freedom of Information Act request. With the passage of the Public Education Reform Amendment Act, DCPS became a subordinate agency to the Mayor and subject to the rules of the Mayor. This rule will delete rules for the implementation of the Freedom of Information Act from Chapter 34 of Title 5 of the District of Columbia Municipal Register (DCMR), rules that were promulgated specific to DCPS as an independent agency and which are now in conflict with those promulgated for all District government agencies, and as such obsolete.

Amendments to Chapter 34 were adopted as an emergency rulemaking on February 9, 2009, and became effective immediately. Proposed rulemaking amending Chapter 34 was promulgated and published for comment on February 13, 2009, at 56 *D.C. Register* 1499. The proposed rulemaking was simultaneously submitted to the Council of the District of Columbia for a forty five (45) day period of passive review. No changes have been made to the text of the proposed rules. The Council has neither approved nor disapproved during the required 45 day period of Council review, and they were deemed approved on April 18, 2009, pursuant to section 103 of the Act. These rules shall become effective on the date of publication of this notice in the *D.C. Register*.

Chapter 34 of Title 5 of the DCMR is deleted in its entirety.

Title 5 of the DCMR is amended to add a new Chapter B34 to a new Subtitle B to read as follows:

CHAPTER B34 FREEDOM OF INFORMATION**B3400 GOVERNING REGULATIONS**

B3400.1 The regulations found in Chapter 4 of Title 1 of the District of Columbia Municipal Regulations shall be the rules and procedures followed by the District of Columbia Public Schools in implementing the District of Columbia's Freedom of Information Act, effective March 25, 1977 (D.C. Law 1-96, D.C. Official Code § 2-531 *et seq.*).

DEPARTMENT OF HEALTH

FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in section 10(e)(1) of the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48, D.C. Official Code § 44-509(e)(1)), Mayor's Order 98-137, dated August 20, 1998, section 104 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42, D.C. Official Code § 2-1801.04), Mayor's Order 99-68, dated April 28, 1999, and Reorganization Plan No. 4 of 1996, hereby gives notice of the adoption of the following amendments to Chapter 36 (Civil Infractions) of Title 16 of the District of Columbia Municipal Regulations (DCMR) upon completion of the sixty (60) day Council period of review if the Council does not act earlier to adopt a resolution approving the rules. The amendments prescribe civil infraction fines for violations of the law governing the licensing of hospitals. The proposed rulemaking was published for comment in the D.C. Register on January 2, 2009. No comments were received.

Chapter 36 (Civil Infractions) of Title 16 DCMR is amended by adding a new section 3606 and repealing the current section 3606 to read as follows:

3606 LICENSING OF HOSPITALS

3606.1 Violation of any of the following provisions shall be a Class 1 infraction:

- (a) 22 DCMR 2002 (operating a hospital without a license);
- (b) 22 DCMR 2002.17 (failure to meet the minimum requirements for insurance);
- (c) 22 DCMR 2002.18 (failure to comply with Certificate of Need requirements);
- (d) 22 DCMR 2003 (failure to comply with certificate requirements, including Certificate of Occupancy and fire approval);
- (e) 22 DCMR 2006.1 (failure to obtain a permit before moving the hospital or part of the hospital from the licensed premises);
- (f) 22 DCMR 2007.2 (failure to permit the Director entry to investigate complaints);
- (g) 22 DCMR 2014.1 (failure to have a governing body that is authorized and responsible for the direction and policy of the hospital);

- (h) 22 DCMR 2015.1 (failure to have an administrator who is responsible for planning, organizing and directing the day to day operation of the hospital);
- (i) 22 DCMR 2015.2 (failure of the administrator to be present in the hospital forty (40) hours per week during regular business hours and failure of the administrator to be responsible for the day to day operation twenty-four (24) hours a day seven (7) days of a week);
- (j) 22 DCMR 2016.1 (failure to maintain a sufficient number of staff with appropriate qualifications, skills and training twenty-four (24) hours a day);
- (k) 22 DCMR 2017 (failure to comply with requirements on health examinations for those involved in direct patient care, except that sections 2017.5 and 2017.8 are class 2 offenses);
- (l) 22 DCMR 2020 (failure to comply with requirements on availability of physicians);
- (m) 22 DCMR 2024 (failure to comply with requirements on patient care and treatment);
- (n) 22 DCMR 2027 (failure to comply with requirements on restraint and seclusion of patients);
- (o) Section 6(c) of the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-505(c)) (failure to allow authorized government officials to enter premises to conduct an inspection); and
- (p) Section 6(d)(1) of the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-505(d)(1)) (failure to notify the Mayor of the loss of accreditation or federal certification within five (5) calendar days of the loss).

3606.2

Violation of any of the following provisions shall be a Class 2 infraction:

- (a) 22 DCMR 2000.2 (failure to comply with requirements of Medicare, the Joint Commission, medical, nursing and public health standards);

- (b) 22 DCMR 2000.3 (failure to deliver services in compliance with the laws of the District when the contract entity delivering the services is not licensed in the District);
- (c) 22 DCMR 2002.2 (failure to submit license application timely, to submit the appropriate license fee, to state the offered services in the application or the number of beds provided or other information required);
- (d) 22 DCMR 2002.4 (failure to list certificate approvals on license application);
- (e) 22 DCMR 2002.5 (failure to submit license renewal application no later than sixty (60) days prior to expiration date and to submit license renewal fee);
- (f) 22 DCMR 2002.6 (failure to pay a late application fee);
- (g) 22 DCMR 2002.8 (failure to inform the Director of a change in operation within thirty (30) days after the change);
- (h) 22 DCMR 2002.9 (failure to return a license to the Director when a license is suspended, revoked, not renewed, forfeited or when the operation voluntarily ceases operation);
- (i) 22 DCMR 2002.10 (transfer of a license to a person or premises not named in the license application);
- (j) 22 DCMR 2007.3 (failure to submit a plan of correction no later than ten (10) days after receipt of a complaint investigation report);
- (k) 22 DCMR 2007.7 (failure to correct deficiencies within thirty (30) days of receipt of the complaint investigation report);
- (l) 22 DCMR 2014.2 (failure of the governing body to fulfill its responsibilities);
- (m) 22 DCMR 2015.3 (failure of the administrator to fulfill his or her responsibilities);
- (n) 22 DCMR 2016.2 (failure to ensure and maintain evidence of staff and contract staff licensure, registration, certification or other credentials and to have procedures to verify current status);

- (o) 22 DCMR 2016.3 (failure to report the termination of a licensed professional to the applicable professional board when the termination is due to a job-related incident);
- (p) 22 DCMR 2017.5 (failure to maintain on file a report of each health examination of employees);
- (q) 22 DCMR 2017.8 (failure to maintain and make available for examination by the Department a copy of certification that a direct patient care employee who has been ill can return to work);
- (r) 22 DCMR 2018 (failure to comply with requirements on staff training);
- (s) 22DCMR 2019 (failure to comply with requirements on the responsibilities of medical staff);
- (t) 22 DCMR 2021 (failure to comply with requirements on the responsibilities of nursing staff);
- (u) 22 DCMR 2022 (failure to comply with requirements on patient rights);
- (v) 22 DCMR 2023 (failure to establish and implement a written process that promptly addresses grievances by patients and their representatives);
- (w) 22 DCMR 2025 (failure to comply with requirements on errors in provision and administration of medications);
- (x) 22 DCMR 2026 (failure to comply with requirements on separate patient care);
- (y) 22 DCMR 2028 (failure to comply with requirements on patient nutrition);
- (z) 22 DCMR 2029 (failure to comply with requirements on discharge planning);
- (aa) 22 DCMR 2030 (failure to comply with requirements on recordkeeping);
- (bb) 22 DCMR 2031 (failure to comply with requirements on physical plant standards);

- (cc) 22 DCMR 2032 (failure to comply with requirements on Medicare/Medicaid participation);
- (dd) 22 DCMR 2033 (failure to comply with provisions on prohibitions against sharing care and treatment areas);
- (ee) 22 DCMR 2034 (failure to comply with provisions on construction standards);
- (ff) 22 DCMR 2035 (failure to comply with requirements on maintaining a safe environment);
- (gg) 22 DCMR 2036 (failure to comply with requirements on maintaining building systems for the safety, comfort and well-being of patients);
- (hh) 22 DCMR 2037 (failure to comply with requirements on housekeeping and maintenance); and
- (ii) Section 8 of the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-507) (failure to comply with requirements on clinical privileges).

3606.3 Violation of any of the following provisions shall be a Class 3 infraction:

- (a) 22 DCMR 2002.3 (failure to provide enumerated information on license application);
- (b) 22 DCMR 2002.19 (failure to post the license in a conspicuous place at all times); and
- (c) 22 DCMR 2008.2 (failure to submit requisite information to the Director when requesting a variance).

D.C. DEPARTMENT OF HUMAN RESOURCES**NOTICE OF FINAL RULEMAKING**

The D.C. Department of Human Resources, with the concurrence of the City Administrator, pursuant to Mayor's Order 2008-92, dated June 26, 2008 and Mayor's Order 2007-95, dated April 18, 2007, and in accordance with the provisions of Title II of the Child and Youth, Safety and Health Omnibus Amendment Act of 2004 (Act), effective April 13, 2005 (D.C. Law 15-353; D.C. Official Code § 4-1501.01 *et seq.*) (2008 Repl.), hereby gives notice that final rulemaking action was taken adopt the following rules. The Act established criminal background and traffic record checks requirements for District government employees providing direct services to children or youth in District government agencies considered "*covered child or youth services providers.*" The rules amend section 414.2 of Chapter 4, Organization for Personnel Management, of Title 6 of the DCMR, to add the organizational component within the DDOE described above to the list of agencies covered under the Act. Additionally, section 407 of the chapter, on *suitability actions initiated or taken by personnel authorities*, has been amended to clearly state that the personnel authority (not the employing agency) shall take the action terminating an employee who fails a criminal background check pursuant to the Act; and section 419 of the chapter, on the *review and determination process for employees covered under the Act*, has been amended to, among other things, clarify the process for the termination of employees who fail a criminal background check pursuant to the Act. Finally, in addition to the amendments to sections 414.2, 407, and 419 of the chapter, other amendments, mostly non-substantive and unrelated to the Act, are being made to sections 400, 404, 406, and 408 of the chapter. No comments were received and no changes were made under the Notice of Proposed Rulemaking published on April 24, 2009 (56 DCR 003218). Final rulemaking action was taken on May 27, 2009.

CHAPTER 4**ORGANIZATION FOR PERSONNEL MANAGEMENT**

Chapter 4 of Title 6 of the District of Columbia Municipal Regulations is amended as follows:

Section 400 is amended to read as follows:

- 400.1 The Director of the D.C. Department of Human Resources (DCHR) is authorized to grant variations from the letter of the D.C. personnel regulations issued under the authority of the Mayor pursuant to section 404 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-604.04), whenever there are practical difficulties and unnecessary hardships in complying with the strict letter of the regulations.

- 400.2 The Director of the DCHR shall be authorized to grant a variation as specified in section 400.1 of this section if:
- (a) Such a variation is within the spirit of the regulations;
 - (b) The efficiency of the District government is being protected and promoted; and
 - (c) The integrity of the Career, Legal, Excepted, Management Supervisory, or Executive Services, as applicable, is being protected and promoted.
- 400.3 Whenever a variation is granted, the Director of the DCHR shall publish in the District Personnel Manual (or any other procedural manual or manuals developed) an issuance showing the following:
- (a) The particular practical difficulty or hardship involved;
 - (b) The variation being permitted, the difference from the requirements of the regulations, and to whom it applies;
 - (c) The specific circumstances which protect or promote the efficiency of the District government and the integrity of a particular service or services; and
 - (d) The steps that will be taken to limit the application of the variation only to the duration of the conditions that gave rise to it.
- 400.4 Like variations shall be granted whenever like conditions exist.

Section 404.2 is amended to read as follows:

- 404.2 Persons being considered for employment in the Executive Service under the authority of sections 1051 through 1063 of the CMPA (D.C. Official Code §§ 1-610.51 through 1-610.63) shall be subject to pre-employment inquiries and background investigations as prescribed by the Director, DCHR, or in the case of the Director of the DCHR him or herself, as prescribed by the Mayor.

Sections 406.3, 406.4, and 406.6 are amended to read as follows:

- 406.3 The Director of the DCHR shall develop procedures to set forth the policies, standards, and criteria for background investigations pursuant to this section, and publish the procedures in the District Personnel Manual (or any other procedural manual or manuals developed).
- 406.4 As specified in the procedures developed by the Director of the DCHR, each subordinate agency head shall be required to inform the DCHR of the results of background investigations conducted pursuant to this section.

- 406.6 Notwithstanding the provisions of section 406.2 of this chapter, the Director of the DCHR shall conduct background investigations for cases described in section 406.5 (a) of this section.

The heading of section 407 is changed from “Suitability Actions Against Employees Initiated by Personnel Authorities” and the section amended to read as follows:

407 SUITABILITY ACTIONS AGAINST EMPLOYEES INITIATED OR TAKEN BY THE D.C. DEPARTMENT OF HUMAN RESOURCES AND INDEPENDENT PERSONNEL AUTHORITIES

- 407.1 The D.C. Department of Human Resources (DCHR) and independent personnel authorities covered by this chapter shall initiate, or initiate and take, suitability action against District government employees pursuant to this section and chapter when:

- (a) The DCHR or independent personnel, as applicable, make a determination that the employee provided a material false statement; engaged in deception or fraud in his or her examination or appointment with the District government; or engaged in the falsification of official personnel records;
- (b) Derogatory information about the employee, of a nature that constitutes an immediate hazard to the agency, the employee concerned, to other employees, or to the detriment of the public health, safety, or welfare, is disclosed by a credible source or independently discovered by the DCHR, independent personnel authority, or the employing agency;
- (c) Derogatory information about an employee, of a nature that will impact the employee’s suitability to continue performing the duties of his or her position, is disclosed by a credible source or independently discovered by the personnel authority or employing agency; or
- (d) A determination is made to terminate the employment of an employee subject to the provisions on criminal background checks for the protection of children and youth contained in sections 412 through 425 of this chapter because the employee has failed a criminal background check.

- 407.2 In the circumstances described in section 407.1 (a) through (c) of this section, the DCHR or independent personnel authority shall:

- (a) Require that the employing agency remove the employee from District government service;
- (b) In addition to requiring the employee’s removal, require that the employing agency cancel any reinstatement eligibility, as applicable; or

- (c) In addition to the actions in accordance with subsection 407.2 (a) and (b) of this section, deny the employee examination for and appointment to a position in the particular agency for a period of not more than three (3) years from the date of the determination of unsuitability.
- 407.3 In the circumstance described in section 407.1 (d) of this section, the DCHR or independent personnel authority shall not only propose the administrative action to remove an employee who fails the criminal background check, as applicable, but shall also issue the final administrative decision on the removal action. The provisions in subsection 407.2 (b) and (c) of this section shall also apply to an employee terminated pursuant to section 407.1 (d) of this section.
- 407.4 If a determination is made that the suitability violation does not rise to the standard described in section 407.1 (a) of this section, the DCHR or independent personnel authority may require that the employing agency take an administrative action against the employee that is less than removal.
- 407.5 The DCHR or independent personnel authority, as appropriate, shall determine the specific duration of any punitive period imposed under section 407.2 (c) of this section.
- 407.6 Subordinate agencies shall refer any case with circumstances as described in section 407.1 (a) through (c) of this section to the Director of the DCHR.
- 407.7 The DCHR or independent personnel authority shall ensure that any suitability action taken against an employee pursuant to section 407.1 of this section is based on information or documentation that is accurate, timely, relevant, and complete.
- 407.8 Before taking any of the actions listed in sections 407.2 and 407.4 of this section, the employee shall be given an opportunity to explain the derogatory information, in writing, within fifteen (15) days of being notified thereof, to allow the appointee to provide information that would explain any discrepancies, omissions, or misinformation, or mitigating circumstances that may exist which are unknown to the personnel authority or the employing agency.
- 407.9 The review and determination process set forth in section 419 of this chapter shall be followed before taking action under section 407.1 (d) of this section to terminate an employee because he or she failed a criminal background check for the protection of children and youth.
- 407.10 Any suitability disqualification action against a subordinate agency head shall be taken by the Mayor (or his or her designee).

Section 408.2 is amended to read as follows:

- 408.2 A subordinate agency head (or his or her designee) delegated personnel authority pursuant to sections 403.5 or 406 of this chapter, shall provide the Director of the DCHR information to document the results of each suitability investigation conducted by the subordinate agency. Unless otherwise specified, the information

shall be provided prior to the effective date of appointment of a selectee or appointee.

Section 414.2 is amended to read as follows:

414.2 The following subordinate agencies shall be considered covered child or youth services providers subject to the criminal background check and traffic record check provisions of the Act and these regulations.

- (a) Department of Human Services;
- (b) Department of Health;
- (c) Department of Parks and Recreation;
- (d) Fire and Emergency Medical Services Department (FEMSD);
- (e) Metropolitan Police Department (MPD);
- (f) Traffic Safety Administration, within the District Department of Transportation;
- (g) Office of the State Superintendent of Education;
- (h) Department of Youth Rehabilitation Services;
- (i) Department of Employment Services;
- (j) Department of Mental Health;
- (k) Child and Family Services Agency;
- (l) Department of Disability Services;
- (m) District Department of the Environment, Natural Resources Administration, Fisheries and Wildlife Division, Fisheries Management Branch, Aquatic Resource Education Center;
- (n) D.C. Public Schools; and
- (o) Any other subordinate agency subject to these regulations which, as a result of a permanent or temporary change to its mission such as may be caused by reorganization or any other similar reason shall become a covered child or youth services provider subject to the criminal background check and traffic record check provisions in the Act.

New sections 414.3 and 414.4 are added to read as follows:

- 414.3 While not listed in section 414.2 of this section, the provisions of sections 412 through 425 of this chapter shall apply to independent agencies covered by this chapter, such as the D.C. Public Library, which as part of their mission, provide the types of direct services to children and youth, or for the benefit of children and youth, encompassed in the duties and responsibilities listed in section 416 of this chapter. Such independent agencies shall be considered covered child or youth services providers subject to the criminal background check and traffic record check provisions of the Act and these regulations
- 414.4 The D.C. Department of Human Resources may execute a Memorandum of Understanding to conduct criminal background checks and traffic record checks under the Act for an independent agency considered a covered child or youth services provider.

Section 419 is amended to read as follows:

419 CRIMINAL BACKGROUND AND TRAFFIC RECORD CHECKS FOR THE PROTECTION OF CHILDREN AND YOUTH – REVIEW AND DETERMINATION PROCESS

- 419.1 The Mayor's authority to make suitability determinations under this section is delegated to the D.C. Department of Human Resources (DCHR) and independent personnel authorities, as appropriate.
- 419.2 Upon completing each criminal background check, the designated MPD representative, or the representative for any other entity conducting the check, shall forward the criminal background check to the DCHR or independent personnel authority, as appropriate.
- 419.3 Upon receipt of the criminal background check, the DCHR or independent personnel authority shall complete a review and determination process as specified in this section.
- 419.4 The DCHR or independent personnel authority shall conduct an initial review of the criminal background check to determine if the appointee or employee has a criminal record, including any of the proscribed offenses, and determine if there are any charges with no clear disposition.
- 419.5 The information obtained from a criminal background check shall not immediately disqualify or create a presumption against employment or volunteer status of an appointee, employee, or unsupervised volunteer with a criminal record, including a proscribed offense, unless the DCHR or independent personnel authority determine that because of such criminal record, the person would pose a present danger to children or youth that makes him or her unsuitable

for paid employment of unsupervised voluntary service in a covered position. This determination shall be made based on the following seven (7) factors:

- (a) The specific duties and responsibilities necessarily related to the employment sought;
- (b) The bearing, if any, the criminal offense for which the appointee was previously convicted will have on his or her fitness or ability to perform one (1) or more of the duties or responsibilities of the position;
- (c) The time which has elapsed since the occurrence of the criminal offense;
- (d) The age of the appointee at the time of the occurrence of the criminal offense;
- (e) The frequency and seriousness of the criminal offense;
- (f) Any information produced by the appointee, or produced on his or her behalf, in regard to his or her rehabilitation and good conduct since the occurrence of the criminal offense; and
- (g) The public policy that is beneficial generally for ex-offenders to obtain employment.

419.6 When there is a discovery of charges with no clear disposition, the DCHR or independent personnel authority shall:

- (a) Contact the appointee or employee and inform him or her of the charges with no clear disposition contained in the criminal background check;
- (b) Notify the appointee or employee, in writing, that he or she has five (5) business days to provide the necessary information on the final disposition of the charges; and
- (c) Determine whether or not the information submitted by the appointee or employee resolves the charges with no clear disposition.

419.7 Notwithstanding the seven (7) factors listed in section 419.5 of this section, a covered District government agency shall terminate the employment of current employees and shall not employ or permit to serve as unsupervised volunteers persons who have been convicted of, have pleaded nolo contendere, are on probation before judgment or placement of a case upon a stet docket, or have been found not guilty by reason of insanity for any sexual offenses involving a minor.

419.8 When the DCHR or independent personnel authority resolve criminal background check information issues, the DCHR or independent personnel authority shall make the final suitability determination whether:

- (a) In the case of an appointee (new hire), a final offer of appointment should be made or denied;
 - (b) In the case of an unsupervised volunteer, he or she shall be allowed to provide the volunteer services;
 - (c) A person newly appointed to a compensated position who had begun to work in a supervised setting prior to receiving the results of the check should be retained or employment shall be terminated; or
 - (d) A current employee shall be retained or employment shall be terminated.
- 419.9 The DCHR or independent personnel authority shall notify the employing agency of the final suitability determination.
- 419.10 If the determination of the DCHR or independent personnel authority is that a final offer of appointment should be made to an appointee, the final offer letter shall be promptly issued.
- 419.11 If the determination of the DCHR or independent personnel authority is to terminate employment because of a failed criminal background check, the termination action shall be based on the employee's type of appointment (i.e., Career Probational/Permanent, term appointment, etc.) and service (i.e., Career Service, Management Supervisory Service, etc.), and the applicable legal and regulatory provisions governing terminations, including terminations for cause pursuant to Chapter 16 of these regulations.
- 419.12 In completing the review and determination process of traffic records checks, records of traffic infractions shall be judged on an individual basis for appointees whose duties would include driving a motor vehicle to transport children or youth as described in the Act. A pattern of disregard for existing traffic regulations, particularly where there has been a conviction for driving under the influence of intoxicants or drugs, may make the appointee unsuitable for employment or voluntary service, if the appointee could be required to drive a motor vehicle to transport children or youth in the course of performing his or her duties.
- 419.13 A final suitability determination by the DCHR or independent personnel authority on a criminal background check or traffic record check pursuant to this section that results in termination of employment shall be the final agency decision; except that in the case of a Career Service employee terminated under Chapter 16 of these regulations, the employee shall have appeal rights as specified in that chapter.

D.C. DEPARTMENT OF HUMAN RESOURCES**NOTICE OF FINAL RULEMAKING**

The Director, Department of Human Resources (DCHR), with the concurrence of the City Administrator, pursuant to Mayor's Order 2008-92, dated June 26, 2008, and in accordance with Title I of the Child and Youth, Safety and Health Omnibus Amendment Act of 2004 (Act), effective April 13, 2005 (D.C. Law 15-353; D.C. Official Code § 1-620.31 *et seq.*) (2006 Repl. and 2008 Supp.), hereby gives notice that final rulemaking action was taken to adopt the following rules. **These rules amend subsection 3902.2 of Chapter 39, Testing for the Presence of Controlled Substances and Alcohol, of Title 6 of the District of Columbia Municipal Regulations (DCMR)**, on the subject of *covered agencies*, to add the District Department of the Environment, Natural Resources Administration, Fisheries and Wildlife Division, Fisheries Management Branch, Aquatic Resource Education Center, to the list of agencies covered under the Act. No comments were received and no changes were made under the Notice of Proposed Rulemaking published on April 24, 2009 (56 DCR 003221). Final rulemaking action was taken on May 27, 2009.

CHAPTER 39**TESTING FOR THE PRESENCE OF CONTROLLED
SUBSTANCES AND ALCOHOL**

Chapter 39 of Title 6 of the District of Columbia Municipal Regulations is amended as follows:

Section 3902.2 is amended to read as follows:

3902.2 The following subordinate agencies shall be covered under the Program, on the basis that each one of these agencies, as a whole or certain components thereof, has safety-sensitive positions:

- (a) Department of Human Services;
- (b) Department of Health;
- (c) Department of Parks and Recreation;
- (d) Fire and Emergency Medical Services Department;
- (e) Metropolitan Police Department;
- (f) Traffic Safety Administration within the District Department of Transportation;

- (g) Office of the State Superintendent of Education;
- (h) Department of Youth Rehabilitation Services;
- (i) Department of Employment Services;
- (j) Department of Mental Health;
- (k) Child and Family Services Agency;
- (l) Department of Disability Services;
- (m) District Department of the Environment, Natural Resources Administration, Fisheries and Wildlife Division, Fisheries Management Branch, Aquatic Resource Education Center;
- (n) D.C. Public Schools; and
- (o) Any other subordinate or independent District government agency subject to these regulations, including an agency which, as a result of a permanent or a temporary change to its mission such as may be caused by reorganization or any other similar reason, come to have safety-sensitive positions.

New sections 3902.3 and 3902.4 are added to read as follows:

- 3902.3 While not listed in section 3902.2 of this section, the provisions of sections 3901 through 3910 of this chapter shall apply to independent agencies covered by this chapter, such as the D.C. Public Library, that have safety-sensitive positions as that term is defined in the Act.
- 3902.4 The D.C. Department of Human Resources may execute a Memorandum of Understanding to conduct drug and alcohol testing under the Act for an independent agency with safety-sensitive positions.

DEPARTMENT OF INSURANCE, SECURITIES AND BANKING**NOTICE OF FINAL RULEMAKING**

The Commissioner of the Department of Insurance, Securities and Banking, pursuant to the authority set forth in Section 22 of the Mortgage Lender and Broker Act of 1996, effective September 9, 1996 (D.C. Law 11-155; D.C. Official Code § 26-1121 (2001)) (“Act”), hereby gives notice of the repeal of Chapter 11, MORTGAGE LENDERS AND BROKERS, of Title 26A of the District of Columbia Municipal Regulations (DCMR) and the adoption of a new Chapter 11, MORTGAGE LENDERS, MORTGAGE BROKERS AND MORTGAGE LOAN ORIGINATORS. A Notice of Proposed Rulemaking was published in the *D.C. Register* on April 24, 2009, at 56 DCR 3163-3186 (2009).

The rules provide for the licensing, examination, investigation, and supervision of mortgage lenders, mortgage brokers, and mortgage loan originators in the District of Columbia. This rulemaking will become effective on the date of publication in the *D.C. Register*.

26A DCMR, Chapter 11, MORTGAGE LENDERS AND BROKERS, is repealed.

26A DCMR is amended by adding a new Chapter 11, MORTGAGE LENDERS, MORTGAGE BROKERS AND MORTGAGE LOAN ORIGINATORS, to read as follows:

**CHAPTER 11 MORTGAGE LENDERS, MORTGAGE BROKERS AND
MORTGAGE LOAN ORIGINATORS****1100 SCOPE AND APPLICABILITY**

1100.1 This chapter shall apply to any person who engages in business as a mortgage lender, mortgage broker, or mortgage loan originator in the District or who issues, makes, services, brokers, or originates a mortgage loan as defined in the Act.

1101 EXEMPTIONS

1101.1 Unless preempted by federal law, an affiliate or subsidiary of a federal, state, or District bank, trust company, savings bank, savings and loan association, or credit union is exempt from obtaining a license pursuant to the Act only if the affiliate or subsidiary maintains its principal office in the District and the parent company of the affiliate or subsidiary maintains its principal office in the District.

1102 GENERAL LICENSING REQUIREMENTS

- 1102.1 An applicant for a license to engage in business as a mortgage lender shall file a mortgage lender license application with the Department.
- 1102.2 An applicant for a license to engage in business as a mortgage broker shall file a mortgage broker license application with the Department.
- 1102.3 An applicant for a license to engage in business as a mortgage lender and a mortgage broker shall file a dual mortgage lender and broker license application with the Department.
- 1102.4 An applicant for a license to engage in business as a mortgage loan originator shall file a mortgage loan originator license application with the Department.
- 1102.5 A license to engage in the activity of a mortgage broker, mortgage lender, mortgage lender and mortgage broker (mortgage dual authority), or 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 the Act have been met.
- 1102.6 A license application shall be filed on a form prescribed by the Department, including all information required by the Department, and be accompanied by the required fees as prescribed in Appendix A.
For purposes of this chapter, a license application means an application processed through the Department or its designee such as the Nationwide Mortgage Licensing System and Registry or any other person or third party prescribed by the Commissioner. Any fees paid in connection with the processing of an application shall be non refundable.
- 1102.7 The application shall, at a minimum, contain information to demonstrate that:
- (a) The applicant has never had a mortgage-related license revoked in any governmental jurisdiction;
 - (b) The applicant and each of its officers, directors, partners, and owners of a controlling interest have not been convicted of, or pled guilty or *nolo contendere* to a felony in a domestic, foreign, or military court:
 - (1) During the seven (7) year period preceding the date of the application for licensing and registration; or
 - (2) 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.

- (c) The applicant has demonstrated financial responsibility, character, and general fitness such as to warrant a determination that the applicant will operate honestly, fairly, and efficiently within the purposes of the Act;
- (d) The applicant has met the applicable capital and/or surety bond requirements required pursuant to the Act and sections 1107 and 1109 of these rules; and
- (e) The applicant has paid all applicable fees as described in Appendix A of these rules.
- (f) In the case of an applicant for a mortgage loan originator's license,
 - (1) The applicant has completed the pre-licensing education requirement described in the Act; and
 - (2) The applicant has passed a written test that meets the requirements described in the Act.

- 1102.8 The Department shall deny a license application if the application is incomplete, not accompanied by the fees required pursuant to section 1102.6 of these rules, or if there are any outstanding fees due to the Department.
- 1102.9 The Department shall approve or deny a license application not later than sixty (60) days from the date the Department determines that the application is complete.
- 1102.10 A licensee may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the Commissioner. Such challenge must be in writing and include the specific information being challenged and supporting information to evidence that information being challenged is incorrect, invalid, or inappropriate.
- 1102.11 A challenge pursuant to subsection 1102.8 shall be filed within forty-five (45) business days from the date the information is received.
- 1102.12 The Department will respond to the challenge within fourteen (14) business days with one (1) of the following responses:
- (a) Granting the challenge and entering the requested change;
 - (b) Granting the challenge and allowing the licensee to submit information to be entered into the system; or

(c) Denying the challenge.

1102.13 Acquisition of control applications filed pursuant to the Act shall be accompanied by the fee described in Appendix A of these rules.

1103 TERMINATION AND REASSIGNMENT OF MORTGAGE LOAN ORIGINATOR

1103.1 A mortgage loan originator shall disclose the mortgage loan originator's license number to all clients and residential mortgage loan applicants in writing at the time a fee is paid or a mortgage loan application is accepted.

1103.2 Upon the termination of the relationship between a mortgage loan originator and an employer, the employer shall return the original mortgage loan originator license to the Department within five (5) business days after the termination. The employer shall fully set forth the reason(s) for termination and shall submit such statement in the form and in the manner prescribed by the Commissioner.

1103.3 For a period of one (1) year after the termination of employment or association, the mortgage loan originator may request re-assignment of the license to another entity by submitting an application for a change to the Department and paying the required fee, as determined by the Commissioner.

1103.4 When a mortgage loan originator license is returned to the Department, 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 required procedures have been followed to re-assign and reactivate such license.

1103.5 The mortgage loan originator license that has been returned to the Department and not re-assigned to another entity within one (1) year of termination of employment or affiliation shall be cancelled.

1104 BACKGROUND CHECKS

1104.1 To assist the Commissioner in his determination for licensure, an applicant for an original mortgage loan originator's license shall furnish the Department or its designee information concerning the applicant's identity, including, but not limited to the following:

- (a) Fingerprints, less than ninety (90) days old, 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

- (b) Personal history and experience in a form prescribed by the Department or its designee, including the submission of authorization for the Department or its designee to obtain the following:
 - (1) An independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and
 - (2) Information related to any administrative, civil or criminal findings by any governmental jurisdiction.

1105 PRE-LICENSING EDUCATION REQUIREMENTS FOR MORTGAGE LOAN ORIGINATORS

- 1105.1 In order to meet the pre-licensing education requirements for a mortgage loan originator, an applicant shall complete at least twenty (20) hours of pre-licensing education approved in accordance with subsection 1105.2.
- 1105.2 The twenty (20) hours of pre-licensing education requirements shall include at least the following courses approved by the Nationwide Mortgage Licensing System:
- (a) Three (3) hours of federal law and regulations on mortgage and real estate related subject matter;
 - (b) Three (3) hours of ethics which shall include instruction on mortgage and real estate related fraud, consumer protection, and fair lending issues;
 - (c) Two (2) hours of training related to lending standards for the non-conventional mortgage product marketplace;
 - (d) Three (3) hours of District of Columbia mortgage lending laws and regulations; and
 - (e) Nine (9) hours of elective courses on mortgage and real estate related subject matter.
- 1105.3 An applicant for an original mortgage loan originator license, who is already licensed in another state, that requires testing, will be required to complete at least three (3) hours of District mortgage related courses.
- 1105.4 An applicant for an original mortgage loan originator license, who is already licensed in another state, that does not require testing, will be required to comply with the requirements of section 1105.2.

1105.5 If the Nationwide Mortgage Licensing System and Registry has not approved twenty (20) hours of pre-licensing education requirements at the time of the submission of an application, and all other licensure requirements have been met, the application will be contingently approved until the first renewal cycle. By the first renewal cycle the applicant shall have taken the required pre-licensing education requirements.

1106 TESTING

1106.1 In order to meet the written test requirement an individual shall pass, in accordance with the standards established under this section, a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry.

1106.2 A written test shall not be treated as a qualified written test for purposes of the preceding paragraph unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including the following:

- (a) Ethics;
- (b) Federal law and regulation pertaining to mortgage origination;
- (c) State law and regulation pertaining to mortgage origination; and
- (d) Federal and state law and regulation, including instruction on fraud, consumer protection, the non-conventional mortgage marketplace, and fair lending issues.

1106.3 The test shall contain a national portion and a District of Columbia portion and the applicant must take and pass both parts, with a test score of not less than seventy-five percent (75%) on each part, unless excepted under subsection 1106.4.

1106.4 If the applicant has taken and passed the national portion in another jurisdiction, which has also issued to the applicant a mortgage loan originator license, the applicant is only required to take and pass, with a test score of not less than seventy-five percent (75%), the District of Columbia portion of the test.

1106.5 An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than seventy-five (75%) percent correct answers to questions.

- 1106.6 An individual may retake a test three (3) consecutive times. Each consecutive test may not occur less than thirty (30) days after the preceding test.
- 1106.7 After failing three (3) consecutive tests, an individual shall wait at least six (6) months before taking the test again.
- 1106.8 A formerly licensed mortgage loan originator who fails to maintain a valid license for a period of five (5) years or longer shall retake the test.
- 1106.9 If the Nationwide Mortgage Licensing System and Registry has not developed a qualified written test, to be administered by a test provider approved by the Nationwide Licensing System and Registry at the time of the submission of an application, and all other licensure requirements have been met, the application will be contingently approved until the first renewal cycle. By the first renewal cycle the applicant shall have taken and passed, in accordance with the standards established under this section, the qualified written test developed and administered by the Nationwide Mortgage Licensing System and Registry.

1107 EVIDENCE OF FINANCIAL RESPONSIBILITY

- 1107.1 For purposes of this section, references in the Nationwide Mortgage Licensing System and Registry to the terms “net worth” and “capital” are interchangeable
- 1107.2 A mortgage lender shall demonstrate and maintain capital of not less than two hundred thousand dollars (\$200,000) per licensed location; a mortgage broker shall demonstrate and maintain capital of not less than twenty-five thousand dollars (\$25,000) per licensed location. A mortgage dual authority licensee shall demonstrate and maintain capital of not less than two hundred and twenty-five thousand dollars (\$225,000) per licensed dual authority location. Higher levels of capital may be required pursuant to section 1107.3.
- 1107.3 Where the Commissioner reasonably determines, that the financial history or condition, managerial resources and/or active earnings prospects of a licensee are not adequate, or where a licensee has sizeable off-balance sheet or funding risks, excessive interest rate risk exposure, or a significant volume of classified or criticized assets, the Commissioner may prescribe a capital requirement for a licensee that is greater than the minimum.
- 1107.4 The amount and time frames for attaining a higher level of capital prescribed under this section shall be set forth in either:
- (a) A final report of examination approved by the Commissioner;

- (b) A corporate resolution executed by the licensee and approved by the Commissioner;
- (c) A written memorandum of understanding or other agreement between the licensee and the Commissioner; or
- (d) As a provision in a temporary or permanent cease and desist order or other enforcement action issued by the Commissioner.

1107.5 The maintenance of the minimum capital standards specified under this section shall be a requirement for continued licensure under the Act. Failure to meet and maintain such minimum standards may constitute grounds for the issuance of a cease and desist order and may also constitute grounds for license suspension or revocation under the Act.

1107.6 Failure to meet the minimum capital standards under the Act may constitute grounds for the denial of an application, the issuance of a cease and desist order, license suspension, or license revocation.

1108 CREDIT REPORT

1108.1 An applicant for a mortgage loan originator's license and each officer, director, partner, and owner of a controlling interest in an applicant for a mortgage lender or mortgage broker license shall provide authorization for the Department to obtain a credit report.

1108.2 Any credit report relied upon to grant a license must be less than ninety (90) days old.

1109 SURETY BOND

1109.1 An applicant for a mortgage lender, mortgage broker or mortgage dual authority license shall file a surety bond with each original application and any renewal application.

1109.2 The surety bond shall:

- (a) Run to the Commissioner for the benefit of any person who has been damaged by a licensee as a result of violating any law or regulation governing the activities of mortgage origination, mortgage brokerage, or mortgage lending;
- (b) Be issued by a surety company authorized to do business in the District;

- (c) Be conditioned upon the applicant complying with all District and federal laws regulating the activities of mortgage lenders, mortgage brokers, and mortgage loan originators and performing all written agreements with borrowers or prospective borrowers, accounting for all funds received by the licensee in conformity with a standard system of accounting consistently applied;
- (d) Be continuously maintained thereafter for as long as any license issued under this chapter remains in force; and
- (e) Be issued in the legal and trade name of the licensee.

1109.3 A bond filed by a mortgage lender, mortgage broker, or mortgage dual authority licensee shall cover all mortgage loan originators in their employ and licensed associated independent contractors.

1109.4 If an applicant for a mortgage lender, mortgage broker, or mortgage dual authority license has not conducted such business in the District in any of the three (3) calendar years preceding the year in which an original application for a license is filed, the surety bond required under this subsection shall be in the amount of twelve thousand five hundred dollars (\$12,500).

1109.5 If an applicant has conducted business as a mortgage lender, mortgage Broker, or mortgage dual authority licensee in the District in any of the three (3) calendar years preceding the year in which an original or renewal application is filed, the applicant shall provide a sworn statement setting forth the total dollar amount of mortgage loans applied for and accepted or mortgage loans applied for, procured, and accepted by the mortgage lender, mortgage broker, or mortgage dual authority licensee during the latest calendar year such business was conducted. The bond required in this circumstance shall be determined as follows:

- (a) Where the total dollar amount of stated loans was one million dollars (\$1,000,000) or less, the bond shall be in the amount of twelve thousand five hundred dollars (\$12,500);
- (b) Where the total dollar amount of stated loans was more than one million dollars (\$1,000,000) but not more than two million dollars (\$2,000,000), the bond shall be in the amount of seventeen thousand five hundred dollars (\$17,500);
- (c) Where the total dollar amount of stated loans was more than two million dollars (\$2,000,000) but not more than three million dollars (\$3,000,000), the bond shall be in the amount of twenty-five thousand dollars (\$25,000); and

- (d) Where the total dollar amount of stated loans was more than three million (\$3,000,000), the bond shall be in the amount of fifty thousand dollars (\$50,000).

1109.6 Subject to approval by the Commissioner, if an applicant files four (4) or more original or renewal applications at the same time, the applicant may provide a blanket surety bond for all licensed offices in the amount of two hundred thousand dollars (\$200,000).

1109.7 When an action is commenced on a licensee's bond the Commissioner may require the filing of a new bond.

1109.8 Immediately upon recovery upon any action on the bond the licensee shall file a new bond pursuant to the requirements of this section.

1110 FINANCIAL STATEMENTS

1110.1 An applicant for a mortgage lender, mortgage broker, or mortgage dual authority license shall submit financial statements prepared in accordance with generally accepted accounting principles.

1110.2 The financial statements shall include, but not be limited to, a balance sheet, income statement, statement of cash flows, and all relevant notes thereto.

1110.3 The financial statements shall include information for the current year to date through the most recent quarter ending date and for the preceding fiscal year, and shall include any other financial information as the Commissioner may require.

1111 RENEWAL OF LICENSE

1111.1 In order to renew a license, a licensee shall file a renewal license application, on a form prescribed by the Department, which shall be accompanied with the required fees as prescribed in Appendix A, and any other required information, at least thirty (30) days prior to the expiration date of the licensee's current license.

1111.2 All mortgage licenses shall expire on December 31st of each year.

1111.3 The minimum standards for license renewal for mortgage loan originators shall include the following:

- (a) The mortgage loan originator continues to meet the minimum standards for license issuance under the Act;

- (b) The mortgage loan originator has satisfied the annual continuing education requirements described in section 1112; and
- (c) The mortgage loan originator has met applicable criminal background check requirements.

- 1111.4 If a mortgage loan originator has failed to complete continuing education requirements during the time period in which completion of the education requirements is due, as described in the Act, the mortgage loan originator's license shall be ineligible for renewal and shall be deemed to be inactive.
- 1111.5 A renewal license application filed after the renewal-filing deadline set forth in section 1111.1 above, shall be subject to, and accompanied by, a late renewal fee described in Appendix A in addition to any other fees imposed as prescribed in Appendix A.
- 1111.6 A license which has expired for sixty (60) days or more cannot be renewed. The licensee must apply for a new license.
- 1111.7 Any fees paid pursuant to this section shall be non-refundable.
- 1111.8 The Department shall approve or deny the renewal license application not later than sixty (60) days from the date a complete application is filed with the Department.

1112 CONTINUING EDUCATION REQUIREMENTS FOR MORTGAGE LOAN ORIGINATORS

- 1112.1 In order to meet the continuing education requirements, a licensed mortgage loan originator shall complete, annually at least eight (8) hours of education, at least sixty (60) days prior to expiration of the license. The continuing education requirements shall include, but not be limited to, the following:
- (a) Three (3) hours of federal law and regulations pertaining to mortgage related activity subject matters;
 - (b) Two (2) hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues;
 - (c) Two (2) hours of training related to lending standards for the nontraditional mortgage product marketplace; and
 - (d) One (1) hour of District of Columbia law and regulations pertaining to mortgage related activity subject matters.

- 1112.2 The continuing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry. If the Nationwide Mortgage Licensing System and Registry has not reviewed and approved continuing education courses at the time of the submission of an application, and all other licensure requirements have been met, the application will be contingently approved until the first renewal cycle. By the next renewal cycle the applicant shall have taken and passed the required continuing education courses.
- 1112.3 A licensed mortgage loan originator may:
- (a) Only receive credit for a continuing education course in the year in which the course is taken; and
 - (b) Not receive credit for taking the same course more than once in the same or successive years to meet the annual requirements for continuing education.
- 1112.4 A licensed mortgage loan originator, who is an 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 two (2) credit hours for every one (1) hour taught.

1113 NOTIFICATION OF SIGNIFICANT EVENTS BY LICENSEE

- 1113.1 A mortgage lender, mortgage broker, mortgage dual authority licensee, or mortgage loan originator licensed under the Act shall notify the Commissioner in writing within five (5) business days of the occurrence of any fact or condition that exists that has a negative impact on the licensee's financial condition and ability to maintain the financial requirements under section 1107 or to perform financial obligations to fund mortgage commitments which preclude the licensee from operating in a safe and sound manner consistent with the Act, these regulations and in the best interest of District of Columbia consumers.
- 1113.2 A mortgage lender, mortgage broker, mortgage dual authority licensee, or mortgage loan originator licensed under the Act shall notify the Commissioner in writing within five (5) business days of the occurrence of any of the following significant developments:
- (a) A charge of or conviction of any criminal felony offense;

- (b) A charge of or conviction 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) Receipt of notification of license denial, cease and desist order, initiation of suspension or revocation proceedings, issuance of formal orders of suspension or revocation or other imposed disciplinary action, or other formal or informal regulatory action, from any state or federal agency against the licensee, and the reasons thereof;
- (d) Receipt of notification of the initiation of any action against the licensee by the District of Columbia Office of the Attorney General or of any other state or federal agency, pursuant to the Act, or any other comparable consumer protection statute, and the reasons thereof;
- (e) Settlement or resolution of any civil action or proceeding against the licensee involving fraud, misrepresentation, or wrongful taking of property; or
- (f) Filing of a bankruptcy petition by the licensee or being the subject of an involuntary bankruptcy petition.

1114 ANNUAL REPORTING REQUIREMENTS

1114.1 A mortgage lender, mortgage broker, and mortgage dual authority licensee shall submit an annual report to the Department on a form prescribed by the Commissioner.

A mortgage loan originator shall file annually, a call report with the Nationwide Mortgage Licensing System and Registry on a form prescribed by the Nationwide Mortgage Licensing System and Registry.

1115 ANNUAL ASSESSMENTS

1115.1 Each licensed mortgage lender, mortgage broker, or mortgage dual authority licensee filing an application to renew a license, shall be subject to an assessment as prescribed in Appendix A. The assessment shall be determined to be the sum of a fixed amount based on the license type plus a variable amount based on the number of loans originated, brokered, and serviced in the previous license period as prescribed in Appendix A.

- 1115.2 A licensee who has been charged and pays an annual assessment fee shall not be subject to an examination fee in the same year unless the following occurs:
- (a) The Commissioner determines that an out-of-state examination is necessary; or
 - (b) The Commissioner determines that a special investigation is necessary.

1115.3 Any person who files an application, and was licensed by the Department as a mortgage broker, mortgage lender, or mortgage dual authority licensee during the one (1) year period preceding the filing of the application, shall be assessed the annual assessment, in addition to any fees required, as prescribed in Appendix A.

1116 MORTGAGE LOAN APPLICATION AND APPROVAL PROCESS

- 1116.1 Each application for a proposed mortgage loan must be signed and dated by each borrower on each page of the mortgage loan application and shall contain, or have attached to the application, at a minimum, the following information:
- (a) The name, social security number, address, telephone number, and source of income of each borrower;
 - (b) The address and legal description, if available, of the real property that is being secured by the loan;
 - (c) The principal amount of the loan requested;
 - (d) The current income and current debt of each borrower as provided by each borrower;
 - (e) The current assets and current liabilities of each borrower as provided by each borrower;
 - (f) Disclosure as to whether the loan will refinance a prior loan secured by the same real property; and
 - (g) If the loan will refinance a prior loan secured by the same real property, the purpose of the refinancing, and the amount of the loan that is being refinanced.
- 1116.2 The following additional information shall be included in, or attached to, a mortgage loan application if available at the time of the application:

- (a) The cost of the mortgage loan, including the annual percentage rate, interest rate, broker compensation, lender compensation, and finance charge;
- (b) The date of maturity of the proposed loan;
- (c) Disclosure as to whether the interest rate is fixed or variable;
- (d) For proposed loans with a proposed variable rate of interest, disclosure of the index used for adjustments, limits on adjustments, and the adjustment period;
- (e) Disclosure as to whether the loan may result in a balloon payment; and
- (f) Non-conventional mortgage disclosure requirements as prescribed by the Act.

1116.3 If a mortgage loan application is approved and executed without the information in sections 1116.1 and 1116.2, the mortgage loan application shall be voidable by the borrower(s) prior to the loan closing and any fees submitted by the borrower(s) in connection with the application shall be returned to the borrower(s) in the event the borrower(s) voids the mortgage loan application.

1116.4 The current income, current debt, current assets, current liabilities, employment, and other sources of revenue of each borrower shall be verified and documented in order to determine the borrower's ability to repay a loan secured by a residential lien instrument.

1116.5 A licensee shall demonstrate the preparation and use of an analysis of the borrower's ability to repay the loan and such analysis shall be retained in the loan file. The licensee shall act in good faith in the best interest of the borrower.

1116.6 A borrower may withdraw a mortgage loan application at anytime, with no penalty or fee, except for any reasonable application fee, prior to signing a financing agreement or written commitment.

1117 WRITTEN COMMITMENTS, FINANCING AGREEMENTS, AND LOCK-IN AGREEMENTS

1117.1 A written commitment shall include the following:

- (a) If available, identification of the real property intended to secure the mortgage loan;

- (b) The principal amount and maturity term of the mortgage loan;
- (c) The interest rate and points for the mortgage loan if the commitment agreement is also a lock-in agreement, or a statement that the mortgage loan will be made at the mortgage lender's prevailing rate and points for such loans at the time of closing or a specified number of days prior to closing;
- (d) The amount of any commitment fee and the time within which the commitment fee must be paid;
- (e) Disclosure as to whether funds will be escrowed and, if so, the purpose of the escrow;
- (f) Disclosure as to whether private mortgage insurance or any other type of insurance is required;
- (g) The length of the commitment period;
- (h) A statement that if the mortgage loan is not closed, for any reason, within the commitment period, the mortgage lender is no longer obligated by the commitment agreement and any commitment fee paid shall be refunded to the borrower;
- (i) A statement that the agreement is binding on both parties. The statement shall be disclosed in bold-faced type and at least a font size greater than the other language in the agreement; and
- (j) Any other reasonable terms and conditions that the mortgage lender elects to disclose in the commitment agreement.

1117.2 A financing agreement containing the information required in section 14 of the Act may be submitted and executed by the mortgage lender and the borrower in lieu of a written commitment if the financing agreement is not subject to a future determination, change, or alteration, and the financing agreement meets the requirements of section 1117.1.

1117.3 A written commitment executed by the mortgage lender and the borrower pursuant to section 15(a)(8) of the Act may be submitted in lieu of a financing agreement if the written commitment contains the information required in section 14 of the Act and the information required in section 1117.1.

1117.4 The mortgage lender may enter into a lock-in agreement if the mortgage lender and each borrower execute the agreement, and the agreement contains the information required in section 1117.5.

- 1117.5 A lock-in agreement shall include the following:
- (a) The interest rate and points for the mortgage loan, and if the rate is an adjustable rate, disclosure of the initial rate, the index used for adjustments, limits on adjustments, and the adjustment period;
 - (b) The amount of any lock-in fee and the time within which the lock-in fee must be paid;
 - (c) The length of the lock-in period;
 - (d) A statement that if the mortgage loan is not closed within the lock-in period, for any reason, the mortgage lender is no longer obligated by the lock-in agreement and any lock-in fee paid by the borrower shall be refunded;
 - (e) A statement that any terms not locked-in by the lock-in agreement are subject to change until the mortgage loan is closed at settlement; and
 - (f) Any other reasonable terms and conditions of the lock-in agreement required by the mortgage lender.

1117.6 A written commitment, financing agreement, or lock-in agreement executed pursuant to this section may be deemed voidable and unenforceable unless the agreement is signed by the borrower and contains the information required by this section.

1118 MORTGAGE LENDER AND MORTGAGE BROKER FEES

- 1118.1 For purposes of this section, a fee shall include the rate of interest, annual percentage rate, finance charge, points, yield spread premium, or any other monetary costs charged to a borrower, or paid on behalf of the borrower, for the origination, service, or brokering of a mortgage loan.
- 1118.2 A licensee shall charge fees that are reasonable and for services actually performed by the licensee or a third party providing services on behalf of the licensee.
- 1118.3 Unless otherwise stated, any fee charged shall be disclosed and charged in accordance with applicable District and federal law, including TILA and RESPA.

1119 APPRAISAL

1119.1 A mortgage loan originator, mortgage lender, a mortgage broker, or a mortgage dual authority licensee shall not use an appraisal conducted for real property located in the District of Columbia, which will be used to secure a mortgage loan, unless the appraisal was conducted by an appraiser that is licensed and authorized to conduct business in the District of Columbia.

1120 RECORDKEEPING

1120.1 For each mortgage loan brokered or originated, a licensee shall retain a file of all documents, invoices and/or other obligations for at least three (3) years after final payment is made on any mortgage loan or after the mortgage loan is sold, whichever first occurs. Such file shall contain at a minimum, the following:

- (a) Mortgage loan application;
- (b) Settlement statements or forms required to be executed or completed pursuant to RESPA;
- (c) Forms or documents required to be executed or completed pursuant to TILA;
- (d) Financing agreement;
- (e) Non-conventional mortgage loan disclosure;
- (f) Written commitment;
- (g) Lock-in agreement, if applicable;
- (h) Promissory note;
- (i) Documents related to any litigation against or by the licensee;
- (j) Copies of all printed or other advertising materials circulated by the licensee; and
- (k) Any other document that the Department may require the licensee to maintain.

1120.2 In addition to the requirements of section 1120.1, a mortgage lender shall maintain the following, as applicable:

- (a) A copy of the Deed of Trust;
- (b) Lien release;
- (c) Certification of satisfaction; and
- (d) Any other document that the Department may require the mortgage lender to maintain.

1120.3 In addition to the requirements of section 1120.1, a mortgage broker shall maintain:

- (a) A copy of the mortgage loan broker agreement containing the signature(s) of applicant(s);
- (b) A copy of all invoices or other evidence of expenses incurred in connection with the mortgage loan including, but not limited to, the property appraisal, title certificate, and credit report;
- (c) A record of all fees collected by the broker and copies of all receipts provided to the applicant(s) for amounts paid to the broker; and
- (d) Any other document that the Department may require the broker to maintain.

1120.4 The licensee shall provide a copy of the documents listed in section 1120.1 to the borrower within ten (10) business days of execution or completion of the document unless federal law prescribes a different timeframe.

1121 ESCROW ACCOUNTS

1121.1 A borrower may elect not to make escrow payments to the mortgage lender when the borrower has made a down payment equaling twenty percent (20%) or more of the total purchase price of the property or has an equity interest in the property equal to, or greater than, twenty percent (20%) of the fair market value of the property.

1121.2 A mortgage lender may not impose a penalty or fee, including an increase in interest or other finance charges, when a borrower is not required, pursuant to section 16 of the Act, to make advance payments of real estate taxes or insurance premiums.

1122 APPLICABILITY OF FEDERAL LAW

1122.1 Unless otherwise stated in the Act, a licensee or person required to be licensed under the Act shall comply with applicable federal law and any rule, regulation, order, or interpretation promulgated or issued pursuant to the

applicable federal law.

1123 EXAMINATIONS AND INVESTIGATIONS

- 1123.1 To defray the costs of examination, every mortgage lender, mortgage broker, and mortgage loan originator required to be licensed under this chapter shall be subject to an examination fee as prescribed in Appendix A.
- 1123.2 A licensee who has been charged and pays an examination fee, shall not be subject to an annual assessment fee in the same year unless the following occurs:
- (a) The Commissioner determines that an out-of-state examination is necessary; or
 - (b) The Commissioner determines that a special investigation is necessary.
- 1123.3 The Commissioner may examine a licensee located outside the District of Columbia and charge the licensee for the cost of actual travel and housing expenses incurred to conduct the examination.

1124 COMPLAINTS

- 1124.1 Each licensee shall file with the Department a written notice designating a contact person to serve as the point of contact for complaints filed with the Department against the licensee. The notice shall include the designee's name, title, e-mail address, telephone number, and address.
- 1124.2 All complaints shall be filed with the Department, on a form prescribed by the Department, and in accordance with any procedures or processes adopted by the Department.
- 1124.3 The Commissioner may provide information on consumer complaints to the Nationwide Mortgage Licensing System and Registry, and other state and federal regulatory agencies.

1125 REVOCATION AND SUSPENSION OF LICENSE

- 1125.1 The Department, prior to taking any enforcement action pursuant to sections 18 and 19 of the Act against a person, including a licensee, shall issue and serve, by United States certified mail, return receipt requested, postage prepaid, on the person or the registered agent of the person, a notice of its intent to take enforcement action against the person.
- 1125.2 A notice of intent to take enforcement action shall include:
- (a) The basis for the proposed action;

- (b) The date by which the person shall file a written response with the Department;
- (c) The date, time, and location of the hearing;
- (d) Notice that the failure of the person to file a written response with the Department to a notice of intent to take enforcement action within the specified time period shall constitute a waiver of a hearing and shall constitute a default; and
- (e) The date by which the Department shall issue a final order taking the proposed enforcement action in the event the person fails to respond to the notice of intent to take enforcement action.

1125.3 The Department may issue a temporary order taking enforcement action against a person, without serving a prior notice of intent to take enforcement action pursuant to section 1125.1, if the Department determines that the person has engaged in conduct that is likely to cause one or more of the conditions as set forth in section 117(b) of the 21st Century Financial Modernization Act of 2000, effective June 9, 2001 (D.C. Law 13-308; D.C. Official Code § 26-551.17(b) (2001)).

1125.4 A person shall file a written response to a notice of intent to take enforcement action or a temporary order within fifteen (15) days from the date of service of the notice of intent to take enforcement action or temporary order. The written response shall include:

- (a) An explanation of why the proposed action or temporary order is not warranted; and
- (b) Any other relevant information, mitigating circumstance, documentation, or other evidence in support of the person's position.

1125.5 The Department shall issue a final order within fifteen (15) days after the deadline upon which a response from the person was due or a hearing has been held.

1125.6 Unless otherwise required by the Act, a final order, temporary order, or any other type of enforcement action taken by the Department shall be issued or conducted in accordance with subchapter IV of the 21st Century Financial Modernization Act of 2000, effective June 9, 2001 (D.C. Law 13-308; D.C. Official Code §§ 26-551.13 through 551.21(2001)).

1125.7 The Commissioner may make public a notice of intent to take enforcement action, a final order, temporary order or any other type of enforcement action

taken by the Department.

- 1125.8 All hearings held pursuant to this section shall be conducted pursuant to the Rules of Practice and Procedure for Hearings set out in Chapter 38 of Title 26 of the District of Columbia Municipal Regulations.

1126 ADMINISTRATIVE PENALTIES

- 1126.1 Any licensee that fails to file an annual report at the time prescribed by section 11 of the Act, shall be assessed a late penalty in the amount of one hundred dollars (\$100) per business day following the date the annual report is due until the annual report is filed with the Department.

- 1126.2 Any licensee, or any person required to have a license under the Act, shall be assessed up to the maximum penalties upon a violation of the Act as follows:

- (a) Five thousand dollars (\$5000) for each occurrence of each violation of the Act if the person committing the violation is licensed by the Department, and the licensee has no more than one (1) violation of the Act during the current license period;
- (b) Twenty-five thousand dollars (\$25,000) for each occurrence of each violation of the Act if the person committing the violation is not licensed by the Department.

- 1126.3 The Commissioner, in his or her discretion, may reduce the penalty imposed by section 1126.2 above upon good cause shown, in writing, by the person against whom the penalty would be imposed.

1199 DEFINITIONS

- 1199.1 For the purpose of this chapter, the following terms have the meaning ascribed:

Applicant - a person filing an application for a license, a renewal license, or a change in control under the Act, for an individual office location.

Commissioner - the Commissioner of the Department of Insurance, Securities and Banking.

Department - the Department of Insurance, Securities and Banking.

Fair Credit Reporting Act – 15 USC §§ 1681 *et seq.* and implementing rules and regulations.

Lock-in agreement - an agreement that guarantees an interest rate during a specified period.

Mortgage Dual Authority licensee – a licensee with both a mortgage lender and a mortgage broker license.

Mortgage Servicer - a person who engages in the business of servicing mortgage loans for others or collecting or otherwise receiving mortgage loan payments directly from borrowers for distribution to any other person.

RESPA - the Real Estate Settlement Procedures Act (*12 USC §§ 2601 et seq.*) and implementing rules and regulations.

TILA - the Truth In Lending Act (*15 USC §§ 1601 et seq.*) and implementing rules and regulations.

Appendix A

**Department of Insurance, Securities, and Banking (DISB)
Mortgage Lender, Mortgage Broker, Mortgage Loan Originator Fee Schedule
Including Nationwide Mortgage Licensing System and Registry (NMLSR) Fee Requirements**

DISB - Mortgage Licensing, Assessment and Examination Fees

	Mortgage Loan Originator License	Mortgage Broker License	Mortgage Lender License	Mortgage Dual Authority License
DISB Initial Application Fee	\$300 + NMLSR Fee	\$1,100 + NMLSR Fee	\$1,200 + NMLSR Fee	\$1,300 + NMLSR Fee
DISB Renewal Application Fee	\$300 + NMLSR Fee	\$900 + NMLSR Fee	\$1,000 + NMLSR Fee	\$1,200 + NMLSR Fee
DISB Amendment Fee	\$100.00	\$100.00	\$100.00	\$100.00
DISB Late Fee	\$300.00	\$300.00	\$300.00	\$300.00
DISB Acquisition of Control Fee		\$500.00	\$500.00	\$500.00
DISB Annual Assessment Fee		\$400 + \$6.60 per loan	\$800 + \$6.60 per loan	\$1,200 + \$6.60 per loan
DISB Examination Fee	\$400 per examiner day	\$400 per examiner day	\$400 per examiner day	\$400 per examiner day

METROPOLITAN POLICE DEPARTMENT**NOTICE OF FINAL RULEMAKING**

The Chief of the Metropolitan Police Department, pursuant to her duties to interpret, implement and enforce the Firearms Regulations Control Act of 1975 (Act), effective September 24, 1976 (D.C. Law 1-85; D.C. Official Code § 7-2501 *et seq.*)(2001), and section 3(q) of the Firearms Registration Emergency Amendment Act of 2008 (FREAA), effective January 7, 2009 (D.C. Act 17-651; 56 DCR 911) and any substantially similar temporary or permanent acts, hereby gives notice of the adoption of an amendment to Chapter 23 (Guns and Other Weapons) of Title 24 (Public Space and Safety) of the District of Columbia Municipal Regulations (DCMR). The rulemaking repeals sections 2303 and 2304, amends sections 2305, 2309, 2311 and subsection 2300.3, adds new sections 2320 and 2321 - Procedures and Requirements for Registration of a Pistol for the Purpose of Self-Defense Within Applicant's Home and Qualifications and Procedures to Obtain a Firearms Dealer's License - and adds definitions to section 2399. These rules were previously published as an emergency and proposed rulemaking in the D.C. Register on January 16, 2009 (Vol. 56 – No. 3, pp. 624-631). No comments were received and no changes were made.

The Chief also gives notice of her intent that the final rules shall become effective upon publication in the *D.C. Register*.

Section 2300.3 of Chapter 23 of Title 24 DCMR is amended to read as follows:

2300.3 This section shall not apply to the discharge of firearms or explosives in a performance conducted in or at a regular licensed theater or show, or to a discharge of a registered firearm while it is being used to protect against a reasonably perceived threat of immediate harm to a person in the registrant's home.

Sections 2303 and 2304 of Chapter 23 of Title 24 DCMR are repealed.**Section 2305 of Chapter 23 of Title 24 DCMR is amended by inserting the following:****2305 REGISTRATION OF FIREARMS: GENERAL PROVISIONS**

2305.3 The Chief shall register no more than one pistol per registrant during any 30-day period.

2305.4 The Chief may permit a person first becoming a District resident to register more than one pistol if those pistols were lawfully owned in another jurisdiction for a period of 6 months prior to the date of application.

Section 2309 of Chapter 23 of Title 24 DCMR is amended by inserting the following:

2309 OTHER DISQUALIFICATIONS FOR REGISTRATION

- 2309.4 A court record showing the applicant is a respondent in an intrafamily proceeding in which a civil protection order was issued against the applicant, unless the applicant can demonstrate by a certified court record establishing that the order has expired or has been rescinded for a period of 5 years.
- 2309.5 A court record showing the applicant is a respondent in which a foreign protection order (as defined in D.C. Official Code § 16-1041) was issued against the applicant, unless the applicant can demonstrate by a certified court record establishing that the order has expired or has been rescinded for a period of 5 years.
- 2309.6 Arrest records within the 5 years immediately preceding the application, showing that the applicant has had a history of violent behavior. For purposes of this subsection, "history of violent behavior" includes but is not limited to arrests for violation of D.C. Official Code § 22-407, regarding threats to do bodily harm, or D.C. Official Code § 22-404, regarding assaults and threats, any crime of violence as defined in D.C. Official Code § 23-1331, or any similar provision of the law of any other jurisdiction so as to indicate a likelihood to make unlawful use of a firearm.

Section 2311 of Chapter 23 of Title 24 DCMR is amended by inserting the following:

2311 KNOWLEDGE OF FIREARMS AND TRAINING REQUIREMENTS

- 2311.9 Complete a firearms training or safety course or class conducted by a state-certified firearms instructor or a certified military firearms instructor that provides, at a minimum a total of at least one hour of firing training at a firing range and a total of at least 4 hours of classroom instruction.
- 2311.10 Submit an affidavit from the certified firearms instructor who conducted or taught the course, providing the name, address, and phone number of the instructor and attesting to the successful completion of the course by the applicant shall constitute evidence of certified successful completion of the requirement imposed by section 2311.9.

Chapter 23 of Title 24 DCMR is amended to add sections 2320, 2321, and 2322 to read as follows:

2320 PROCEDURES AND REQUIREMENTS FOR REGISTRATION OF A PISTOL FOR THE PURPOSE OF SELF-DEFENSE WITHIN APPLICANT'S HOME

- 2320.1 In addition to satisfying all other firearms registration requirements in Chapter 23 of this Title, an applicant for a registration certificate for a pistol to be used for the purpose of self-defense within that person's home shall comply with all the procedures and requirements of this section. In the event of any irreconcilable conflict between this section and any other regulations regarding the registration of a pistol, this section controls.
- 2320.2 The Director may register a pistol so long as the pistol is not an assault weapon, or a machine gun as those terms are defined in section 101(3A) & (10) of the Firearms Control Act of 1975 (D.C. Law 1-85; D.C. Official Code § 7-2501.01(3A), (10)), or an unsafe firearm prohibited under § 504 of the Firearms Registration Emergency Amendment Act of 2008.
- 2320.3 An applicant seeking to register a pistol he or she will purchase from a firearms dealer pursuant to this section shall:
- (a) Acquire the Firearm Registration application (PD 219) either from any licensed firearms dealer in the District of Columbia, or in person at the Firearms Registration Section at Metropolitan Police Department (MPD) headquarters or by mailing a request with a self-addressed, stamped envelope to Firearms Registration Section, Metropolitan Police Department, 300 Indiana Avenue, NW, Washington, DC 20001;
 - (b) Present the Firearm Registration application to a licensed firearm dealer, whose assistance is necessary to complete the application;
 - (c) Appear in person at MPD headquarters to take these steps:
 - (1) Report to the Firearms Registration Section with the completed Firearm Registration application, acquire two fingerprint cards, and provide the following:
 - (A) Two passport-sized facial photos;
 - (B) A valid driver's license or a letter from a physician attesting that the applicant has vision as least as good as that required for a driver's license; and
 - (C) Residency verification, such as a District of Columbia driver's license or identification card, a

current rental agreement, or a deed to property that includes a home;

- (2) Complete a Firearm Registration test with at least a 75% proficiency;
 - (3) If successful on the test, pay all applicable and reasonable fees required by the Chief at the MPD cashier, including thirty five dollars (\$35) for fingerprinting and thirteen dollars (\$13) for a firearm registration;
 - (4) Present a fee receipt and the two fingerprint cards to the MPD fingerprint examiner, and submit to fingerprinting; and
 - (5) Return to the Firearms Registration Section with one fingerprint card for the office file and the other for submission to the Federal Bureau of Investigation (FBI) for fingerprint analysis for the purpose of a criminal record check;
- (d) Await notification by mail to the address on the Firearm Registration application of whether all statutory and regulatory requirements for registration have been satisfied;
 - (e) Upon notification that all statutory and regulatory requirements for registration have been satisfied, return to the Firearms Registration Section to complete the registration process and obtain an MPD seal on the completed Firearms Registration certificate;
 - (f) Present the sealed Firearm Registration application to the licensed firearms dealer and take delivery of the applicant's pistol pending completion of a ballistic identification procedure, or, in the case of a purchase from a firearms dealer located in another jurisdiction, have that firearms dealer transport the applicant's pistol to a licensed firearms dealer in the District, where the applicant will take delivery of the pistol pending completion of a ballistic identification procedure;
 - (g) Transport the pistol to the Firearms Registration Section for completion of a ballistic identification procedure between the hours of 9:00 AM through 5:00 PM, Monday through Friday, pay a ballistic identification fee of twelve dollars (\$12); and

- (h) Retrieve the registered pistol from the Firearms Registration Section and transport it to the applicant's home.
- 2320.4 Up until March 22, 2009, an applicant seeking to register an unregistered pistol already in his or her possession pursuant to this section shall follow the procedure laid out in paragraphs (g), (a), (c), (d), (e), and (h) of section 2320.3, in that order.
- 2320.5 An applicant seeking to register a pistol legally possessed in another jurisdiction pursuant to this section shall follow the procedure laid out in paragraphs (g), (a), (c), (d), (e), and (h) of section 2320.3, in that order. If the applicant does not transport the pistol immediately to the Firearms Registration Section upon bringing it into the District, the applicant shall contact the Firearms Registration Section by calling 202-727-4275, providing notification that a pistol from another jurisdiction has been brought into the District, and then begin the application process within 48 hours of such notification.
- 2320.6 Failure to comply with the requirement to bring the pistol for a ballistics identification procedure will result in the denial of the registration application or revocation of the registration for that pistol and may subject the owner of the pistol to possible criminal charges.
- 2320.7 In the event of the loss, theft, or destruction of the registration certificate or of a registered pistol, a registrant shall immediately file a police report and shall also:
- (a) Immediately notify the Firearms Registration Section in writing of the loss, theft, or destruction of the registration certificate or of the registered pistol (including the circumstances, if known) upon discovery of such loss, theft, or destruction; and
- (b) Immediately return to the Firearms Registration Section the registration certificate for any firearm which is lost, stolen, or destroyed.
- 2320.8 When permitted under this section to transport a pistol between two places, a registrant must go directly between those places without deviation.
- 2320.9 When permitted under this section to transport a pistol, the firearm shall be unloaded, and neither the firearm nor any ammunition being transported shall be readily accessible or directly accessible from the passenger compartment of the transporting vehicle.

2320.10 If the transporting vehicle does not have a compartment separate from the driver's compartment, the firearm or ammunition shall be contained in a locked container other than the glove compartment or console, and the firearm shall be unloaded.

2320.11 If the transportation is in a manner other than in a vehicle, the firearm shall be:

- (a) Unloaded;
- (b) Inside a locked container; and
- (c) Separate from any ammunition.

2321 QUALIFICATIONS AND PROCEDURES TO OBTAIN A FIREARMS DEALER'S LICENSE

2321.1 A person is eligible to become a licensed dealer of firearms if that person:

- (a) Is eligible to register a firearm under this Chapter;
- (b) Is eligible under federal law to engage in such business; and
- (c) Has not previously violated any statutory duty of a licensed dealer if that person earlier was a licensed dealer.

2321.2 The license issued to a firearms dealer shall be valid for a period of not more than one year from the date of issuance.

2321.3 To deal firearms lawfully, the holder of a firearms dealer's license must also comply with any other license or zoning procedures required by law, including having a certificate of occupancy and a basic business license in accordance with applicable provisions in the District of Columbia Municipal Regulations.

2321.4 Prior to applying to the Firearms Registration Section for a firearm dealer's license, an applicant must first obtain a Federal Firearms Dealer's License issued by the Bureau of Alcohol, Tobacco, and Firearms.

2321.5 Each application for a dealer's license and renewal shall be made on a form prescribed by the Chief, shall be sworn to or affirmed by the applicant, and shall contain:

- (a) All information required by section 203 of the Firearms Control Act of 1975 (D.C. Law 1-85; D.C. Official Code § 7-2502.03);
- (b) The address where the applicant conducts or intends to conduct his/her business;

- (c) Whether the applicant, prior to September 24, 1976, held a license to deal in deadly weapons in the District; and
- (d) Such other information as the Chief may require including, but not limited to, fingerprints and photographs of the applicant.

Section 2399 of Chapter 23 of Title 24 DCMR is amended to read as follows:

2399 DEFINITIONS

2399.1 When used in this chapter, and in forms prescribed under this chapter, where not otherwise distinctly expressed or manifestly incompatible with the intent of the Act or this chapter, the following terms shall have the meanings ascribed:

Ballistics identification procedure – a process, approved by the Chief, undertaken to identify markings unique to a particular firearm or the ammunition used by the firearm.

Business premises - the property on which a licensed, deadly weapons dealer's business is or will be conducted.

Certified firearms instructor – any person certified as a firearms instructor by the military or a state authority.

Chief - the Chief of the Metropolitan Police Department.

Dealer - any person engaged in the business of buying, selling, or otherwise dealing in firearms, ammunition, or destructive devices at wholesale or retail; any person engaged in the business of repairing, testing, or analyzing firearms; any person engaged in the business of making or fitting special barrels, stocks, or trigger mechanisms for firearms or destructive devices; or any person repairing, testing, analyzing, or making any destructive device or ammunition.

Director - the commanding officer or acting commanding officer of the Police Business Services Division of the Metropolitan Police Department or their delegates.

Explosive or explosives - any chemical compound or mechanical mixture that contains any oxidizing and combustible units, or other ingredients, in such proportion, quantities, or packing that an ignition by fire, friction, concussion, percussion, or detonator, or any part of the compound or mixture, may cause a sudden generation of highly heated gasses that results in gaseous pressures capable of producing destructive effects on contiguous objects or of destroying life or limb. (Art. 9, § 3 of the Police Regulations)

Firearms Registration Section - a part of the Police Business Services Division of the Metropolitan Police Department, located in 300 Indiana Avenue, N.W., Washington, D.C. 20001

Home - the principal place of residence of an individual in the District and limited to the interior of a house, condominium unit, cooperative unit, apartment, houseboat, or a mobile home, so long as that structure is not capable of unassisted movement. The term home does not include any common areas of any condominium unit, cooperative unit, or apartment.

Intrafamily offense - shall have the same meaning as provided in D.C. Official Code § 16-1001(8).

Law enforcement officer - any person authorized by a unit of government to carry a firearm on public space and who is responsible for, and under a duty to, detect crimes and apprehend offenders. A law enforcement officer is not a commissioned special police officer or the equivalent.

Licensed dealer - a deadly weapons dealer licensed under the Act and this chapter.

Machine gun - means any firearm which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term "machine gun" shall also include the frame or receiver of any such firearm, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a firearm into a machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

Pistol – any firearm originally designed to be fired by use of a single hand or with a barrel less than 12 inches in length.

Place of business - means a business that is located in an immovable structure at a fixed location and that is operated and owned entirely, or in substantial part, by the firearm registrant.

Supervisor - the person in charge of the Firearms Registration Section.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING**

and

Z.C. ORDER NO. 09-01

ZC Case No. 09-01

(Procedural Rule Amendment – 11 DCMR)

(Requests to Extend the Validity of or to Modify Board of Zoning Adjustment Orders)

May 11, 2009

The Zoning Commission for the District of Columbia (the “Commission”), pursuant to its authority under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 799; D.C. Official Code § 6-641.07) (c) having held a public hearing as required by that provisions, hereby gives notice of adoption of the following amendments to §§ 3129, 3130, and 3180 of the Board of Zoning Adjustment Rules of Practice and Procedure as codified in Title 11 of the District of Columbia Municipal Regulations.

Section 3129 currently authorizes the Board of Zoning Adjustment (“BZA”) to consider minor modifications to plans if filed within six (6) months of an issued BZA order. The amendment to that provision makes the time to request minor modifications to approved plans the same as the two year period allowed to file plans for a building permit with the Department of Consumer and Regulatory Affairs. The proposed amendment to § 3130 codifies the Board’s inherent authority to grant a time extension to allow more time to file such plans and establishes the standards to be utilized. The amendment to § 3180 sets the filing fee for time extension requests.

Notice of Proposed Rulemaking was published in the *D.C. Register* on April 10, 2009 at 56 *DCR* 2736, and the text referred to the National Capital Planning Commission for comment. The Commission adopted the amendments at a public meeting held on May 11, 2009; making no changes to the proposed text.

This final rulemaking is effective upon publication in the *D.C. Register*.

Title 11 DCMR, Chapter 31, THE BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, is amended as follows, with addition to existing provisions shown in **bold and underlined** text, and deletions to existing provisions shown in ~~strike through~~ text:

1. By amending § 3129, MODIFICATION OF APPROVED PLANS, to read as follows:

3129 MODIFICATION OF APPROVED PLANS.

3129.1 This section applies to all appeals and applications filed with the Board under this chapter; provided, however, this section only applies to chancery applications to the extent specified in § 3134.

3129.2 The Board shall consider requests to approve **minor** modifications to plans approved by the Board, as set forth in §§ 3125.7 and 3125.8. The request shall

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be in writing, shall state specifically the modifications requested and the reasons therefore and include a copy of the plans for which approval is now requested.

- 3129.3 A request for **minor** modification of plans shall be filed with the Board not later than ~~six months~~ **two (2) years** after the date of the final order approving the application.
- 3129.4 All requests for **minor** modifications of plans shall be served on all other parties to the original application at the same time as the request is filed with the Board. A party shall have ten (10) days within which to submit written comments that such party may have concerning the requested modification.
- 3129.5 A decision on a request for **minor** modification of plans shall be made by the Board on the basis of the written request, the plans submitted therewith, and any responses thereto from other parties to the original application.
- ~~3129.6 No member shall vote on a request for modification of plans unless the member participated in and voted on the original decision or read the record.~~
- ~~3129.7 Approval of requests for modification of approved plans shall be limited to minor modifications that do not change the material facts the Board relied upon in approving the application.~~
- 3129.6 **Approval of requests for modification of approved plans shall be limited to minor modifications that do not change the material facts upon which the Board based its original approval of the application.**
- 3129.7 **A request to modify other aspects of a Board order may be made at anytime, but shall require a hearing.**
- 3129.8 **The scope of a hearing conducted pursuant to § 3129.7 shall be limited to impact of the modification on the subject of the original application, and shall not permit the Board to revisit its original decision.**
2. By amending § 3130, TIME LIMITS ON BOARD ACTION, as follows:
- (a) By amending § 3130.1 to read as follows:
- 3130.1 No order of the Board authorizing the erection or alteration of a structure shall be valid for a period longer than two (2) years, or one (1) year for an Electronic Equipment Facility, unless, within such

Z.C. NOTICE OF FINAL RULEMAKING AND ORDER NO. 09-01
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period, the plans for the erection or alteration are filed for the purposes of securing a building permit, except as permitted in § 3130.6.

(b) By adding new §§ 3130.6 through 3130.10 to read as follows:

3130.6 The Board may grant one extension of the time periods in §§ 3130.1 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval; provided, that the Board determines that the following requirements are met:

- (a) The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond;
- (b) There is no substantial change in any of the material facts upon which the Board based its original approval of the application that would undermine the Board's justification for approving the original application; and
- (c) The applicant demonstrates that there is good cause for such extension, with substantial evidence of one or more of the following criteria:
 - (1) An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control;
 - (2) An inability to secure all required governmental agency approvals by the expiration date of the Board's order because of delays that are beyond the applicant's reasonable control; or
 - (3) The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control.

3130.7 A time extension granted pursuant to § 3130.6 shall not exceed two (2) years, or one (1) year for an Electronic Equipment Facility.

3130.8 The Board's decision on the request shall be in writing and shall become final and effective upon its filing in the record and service upon the parties.

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3130.9 A request for a time extension filed at least thirty (30) days prior to the date upon which an order is due to expire shall toll the expiration date for the sole purpose of allowing the Board to consider the request.

3130.10 If the request is not decided prior to an order's expiration date, no application for a building permit may be filed pursuant to the order unless and until a decision granting the request becomes final and effective pursuant to § 3130.8.

3. By amending § 3180, SCHEDULE OF FEES, paragraph 3180.1 (f), read as follows:

- (f) For **a time extension**, a **minor** modification of plans or a modification of conditions of an order of the Board for **an** owner-occupied one-family dwelling, or flat, one hundred dollars (\$100); for all other applicants, twenty percent (20%) of the original filing fee.

On March 30, 2009, upon motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission **APPROVED** the petition at the end of the hearing on this case by a vote of **3-0-2** (Anthony J. Hood, Peter G. May, and Michael G. Turnbull to approve; Gregory N. Jeffries and William W. Keating, III, not present, not voting).

On May 11, 2009, upon motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** the Order at its public meeting by a vote of **3-0-2** (Anthony J. Hood, Peter G. May, and Michael G. Turnbull to adopt; Gregory N. Jeffries and William W. Keating, III, not having participated, not voting).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*; that is, on June 5, 2009.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 09-01
ZC Case No. 09-01
(Procedural Rule Amendment – 11 DCMR)
(Requests to Extend the Validity of or to Modify Board of Zoning Adjustment Orders)
May 11, 2009**

The full text of this Zoning Commission Order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.