

**DEPARTMENT OF INSURANCE, SECURITIES AND BANKING**

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**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

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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”) and the Mortgage Lender and Broker Amendment Act of 2009, effective July 18, 2009 (D.C. Law 18-38; 56 D.C. Reg. 4290; D.C. Official Code §26-1100 *et seq*) (“the Amendment Act”), hereby gives notice of his intent to adopt, by emergency rulemaking amendments to Title 26A of the District of Columbia Municipal Regulations, Chapter 11, MORTGAGE LENDERS, MORTGAGE BROKERS AND MORTGAGE LOAN ORIGINATORS, effective July 21, 2009, and proposed rules in not less than ten (10) days from the date of publication of this notice in the *D.C. Register*. The emergency rules will expire 120 days after their effective date, or upon publication in the *D.C. Register* of a Notice of Final Rulemaking, whichever occurs first. This emergency action is necessary because the Amendment Act included legislative amendments which were not in the temporary version of the law which provides, among other things, for the District of Columbia's compliance with the federal law pursuant to Title V of the Housing and Economic Recovery Act of 2008 (Hereinafter “the S.A.F.E. Act”). The S.A.F.E. Act encourages all jurisdictions to join the Nationwide Mortgage Licensing System and Registry (NMLSR) by either 2009 or 2010 depending on when that jurisdiction's legislature meets. In the District of Columbia that period is August 2009. If a jurisdiction fails to meet the requirements of the S.A.F.E. Act or does not participate in the NMLSR, the jurisdiction risks federal takeover of the state licensing function. In response to the S.A.F.E. Act requirement, the District of Columbia has contracted with the NMLSR to process license applications starting August 3, 2009. This rulemaking, therefore, is necessary for the immediate preservation of the public safety and welfare.

**Chapter 11 MORTGAGE LENDERS, MORTGAGE BROKERS AND MORTGAGE LOAN ORIGINATORS**

**Sections 1101, 1102, 1103, 1106, 1109, 1116, 1117, 1125 and 1199 of CHAPTER 11, Title 26A, DCMR are amended as follows:**

**Section 1101 EXEMPTIONS**

Subsection 1101.1 is amended to read as follows:

1101.1 The provisions of this chapter shall not apply to any bank, trust company, savings bank, savings and loan association, or credit union incorporated or chartered under the laws of the United States, any state or territory of the United States, or the District, and any other financial institution incorporated or chartered under the laws of the District or of the United States, that accepts deposits and is regulated under Title 26 of the District of Columbia Official Code.

A new subsection 1101.2 is added to read as follows:

1101.2 The provisions of this chapter shall not apply to a mortgage loan originator or loan officer who is registered with and maintains a unique identifier through the NMLSR and who is an employee of an institution described in § 1101.1 above.

### **Subsection 1102 GENERAL LICENSING REQUIREMENTS**

Subsection 1102.7(f)(1) is amended by deleting the “and” at the end of the phrase.

Subsection 1102.7(f)(2) is amended by deleting the period at the end of the sentence and adding the phrase “; and”.

A new subsection 1102.7(f)(3) is added to read as follows:

- (3) The applicant has identified the sponsor or sponsoring agent with whom the mortgage loan originator is employed or associated.

### **Subsection 1103 TERMINATION AND REASSIGNMENT OF MORTGAGE LOAN ORIGINATOR**

Subsections 1103.2, 1103.4 and 1103.5 are amended to read as follows:

1103.2 Upon the termination of the relationship between a mortgage loan originator and a sponsoring agent, the sponsor shall fully set forth the reason(s) for termination and shall submit such statement to the Commissioner.

1103.4 Upon the termination of the relationship between the sponsoring agent and the mortgage loan originator, 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 is sponsored by another District licensed mortgage broker or lender and all required procedures have been followed to re-assign and reactivate such license.

1103.5 If the mortgage loan originator license has not been re-assigned to another

sponsoring agent within one (1) year of termination of the sponsoring relationship or affiliation, it shall be cancelled.

### **Section 1109 SURETY BOND**

Subsection 1109.2 (a) and 1109.3 are amended to read as follows:

1109.2 The surety bond shall:

- (a) Run to the Commissioner for the benefit of the District and any person who has been damaged by a licensee as a result of violating any law or regulation governing the activities of mortgage loan originators, mortgage lenders, or mortgage brokers;

1109.3 A bond filed by a mortgage lender, mortgage broker, or mortgage dual authority licensee shall cover all mortgage loan originators sponsored by the licensee.

A new subsection 1109.9 is added to read as follows:

1109.9 Any person who may be damaged by noncompliance of a licensee with any condition of such bond may proceed on such bond against the principal or surety thereon, or both, to recover damages. Regardless of the number of years the bond remains in effect, the number of premiums paid, the number of renewals of the license, or the number of claims made, the aggregate liability under the bond shall not exceed the penal sum of the bond.

### **Section 1116 MORTGAGE LOAN APPLICATION AND APPROVAL PROCESS**

Subsection 1116.1(f) is amended by deleting the “and” at the end of the phrase.

Subsection 1116.1(g) is amended by deleting the period at the end of the sentence and inserting the following phrase “; and”.

A new subsection 1116.1(h) is added to read as follows:

- (h) The unique identifier of the mortgage loan originator

### **Section 1117 WRITTEN COMMITMENTS, FINANCING AGREEMENTS, AND LOCK-IN AGREEMENTS**

Subsection 1117.1(i) is amended by deleting the “and” at the end of the phrase.

Subsection 1117.1(j) is amended by deleting the period at the end of the sentence and inserting the following phrase “;and”.

A new subsection 1117.1(k) is added to read as follows:

- (k) The unique identifier of the mortgage loan originator, mortgage lender and mortgage broker.

### Section 1125 REVOCATION AND SUSPENSION OF LICENSE

Section 1125 is amended to read as follows:

- 1125.1 A person to whom an order is issued pursuant to sections 18 and 19 of the Act shall be given reasonable notice and the opportunity for a hearing. The order shall issue and be served, either by hand or by United States certified mail, return receipt requested, postage prepaid, on the respondent, applicant, licensee, person required to be licensed or the registered agent of the person. Service shall be made on the person required to be served at the last known address of that person or at the last known address maintained by the Department for that person.
- 1125.2 The order shall include:
- (a) The date the order was entered;
  - (b) The basis for the proposed action;
  - (c) The date by which the person shall file a written request for a hearing;
  - (d) Notice that the failure of the person to file a written request for a hearing with the Department 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 consider the order to be final.
- 1125.3 The Department may issue a temporary order taking enforcement action against a person, 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 If the person files a request for a hearing, 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 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 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.
- 1125.9 Any order issued by the Commissioner pursuant to sections 18 and 19 of the Act shall remain in full force and effect until and unless later modified or vacated by the Commissioner.

### Section 1199 DEFINITIONS

Subsection 1199.1 is amended by adding a new definition to read as follows:

**Sponsor or Sponsoring Agent** – the District licensed mortgage lender or mortgage broker with whom the mortgage loan originator is employed or associated.

All persons desiring to comment on the subject matter of this emergency and proposed rulemaking shall file comments in writing, not later than ten (10) days after the date of the publication of this notice in the *D.C. Register*. Comments should be filed with Howard Amer, Associate Commissioner of Banking, Department of Insurance, Securities and Banking, 810 1<sup>st</sup> Street NE, 7<sup>th</sup> Floor, Washington, D.C. 20002. Comments may also be sent electronically to [howard.amer@dc.gov](mailto:howard.amer@dc.gov). Copies of the proposed rulemaking are available by writing to the above address. Copies of the proposed rulemaking also may be obtained from the Department at the same address during the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding holidays.