42 NJR 6(2)
June 21, 2010
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BANKING

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF BANKING

General Provisions – Miscellaneous and Mortgage Loans, Fees, and Obligations

Department Organization – Nonpublic Records

Residential Mortgage Lenders; Correspondent Mortgage Lenders; Residential Mortgage Brokers; Qualified Individual Licensees; Mortgage Loan Originators

Fees, License Terms and Annual Reports for Licensees

Adopted Amendments: N.J.A.C. 3:1-7.4, 7.6, 16.1 and 16.3; 3:3-2.1; 3:15; and 3:23-2.1 and 4.1

Adopted New Rules: N.J.A.C. 3:15-1.8, 2.3, 2.11, 2.12 and 2.15

Adopted Repeals: N.J.A.C. 3:1-16.11 and 3:15-2.10, 2.11, 4.2, 6.8, 6.10, 6.11, 6.13, 10.3 and 11

Proposed: August 3, 2009 at 41 N.J.R. 2829(a).

Adopted: May 26, 2010 by Thomas B. Considine, Commissioner, Department of Banking and Insurance.

Filed: May 27, 2010 as R.2010 d. 129, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 17:1-8, 8.1 and 15e; 17:9A-1 et seq.; 17:12B-1 et seq.; 17:13-125; 17:11C-51 et seq.; and 47:1A-1 et seq.

Effective Date: June 21, 2010.

Operative Date: July 31, 2010.

Expiration Date: June 8, 2011, N.J.A.C. 3:1;

July 29, 2010, N.J.A.C. 3:3;

February 26, 2013, N.J.A.C. 3:15;

April 24, 2013, N.J.A.C. 3:23.

Summary of Public Comments and Agency Responses:

The Department of Banking and Insurance received written comments from: Mary Kathryn Roberts, of Riker Danzig Scherer Hyland Perretti, LLP, Attorneys at Law; Walter F. Sullivan, Esq.; and E. Robert Levy, Executive Director and Counsel, Mortgage Bankers Association of New Jersey, Mortgage Bankers Association of Pennsylvania, and New Jersey Association of Mortgage Brokers.

COMMENT: One commenter stated it was praiseworthy that the Department is attempting to deal with the damage done by irresponsible borrowers and lenders and is cooperating with Federal initiatives to lessen the likelihood that another such crisis could occur again.

RESPONSE: The Department thanks the commenter for his support.

COMMENT: One commenter stated that certain provisions of the proposal are dictated by statutes but goes on to note that the states have been given leeway in areas of interpretation and enforcement.

RESPONSE: The Department notes that agency discretion in the interpretation and enforcement of statutes exists only on a foundation of statutory authority, which in this case is provided by the New Jersey Residential Mortgage Lending Act (RMLA), N.J.S.A. 17:11C-51 et seq.

COMMENT: One commenter stated that the rules do not expressly address underwriting standards apart from the catchall of determination of fitness. The commenter urged the Department to reconsider its position and include meaningful standards for underwriting in a revised proposal and noted that the judiciary has created a body of case law that could be incorporated into administrative rules of the Department.

RESPONSE: The Department notes the suggestions, but declines to revise the proposal to cover underwriting. These rules are primarily adopted in order to timely implement the new licensing system established in RMLA, consistent with the Federal mandate of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 ("SAFE Act"). RMLA does not require the establishment of specific underwriting standards as part of that primary purpose. The Department has the ability to review other issues in the mortgage regulatory field and propose additional rules as appropriate.

COMMENT: One commenter noted a difference in tone between RMLA and these proposed rules on the one hand, and discussions of the economic situation by Federal officials on the other. RMLA provides certain advantages to borrowers but it contains no mention of a major economic crisis. The commenter noted that opinions may differ concerning the nature of the present economic situation, but that the testimony of Assistant U.S. Treasury Secretary Barr on September 19, 2009 before the House Financial Services Committee (Subcommittee on Housing and Committee on Opportunity on Statewide and Housing Market) is instructive. That testimony stated that the crisis in the housing sector has devastated families and communities and is at the center of our financial crisis and economic downturn.

RESPONSE: The Department thanks the commenter for these thoughts. The thrust of the comment aims at the RMLA, not these rules. While occasionally the Legislature prefaces remedial legislation with a statement describing the problems addressed in the new law, it did not do so in RMLA. Rulemaking is not a vehicle for legislative policy declarations. That being said, the RMLA does, in fact, implement portions of the federal SAFE Act and that congressional action was manifestly driven by concerns similar to those noted by this commenter.

COMMENT: One commenter stated that although underwriting standards are not defined or used greatly in RMLA, nonetheless attention should be paid to underwriting issues such as the use of no document loans and adjustable rate mortgages.

RESPONSE: The Department thanks the commenter for his thoughts but the establishment of specific underwriting standards is beyond the scope of this proposal.

COMMENT: One commenter stated that the Department is fully equipped to investigate and intervene in a wide variety of circumstances, many of which are based on dishonesty, but applicants and licensees are not required to account for their underwriting practices.

RESPONSE: The Department thanks the commenter for his thoughts and agrees that it has broad investigative and enforcement powers. The establishment of specific underwriting standards, however, is beyond the scope of this proposal.

COMMENT: One commenter stated that the general level of fitness is not ascertainable from the regulation and is defined in terms of suitability to serve the community. The commenter stated that the existence of worldwide markets raises the question of whether the relevant "community" extends worldwide.

RESPONSE: The Department believes the commenter is referring to N.J.A.C. 3:15-2.3, Application for licensure as a qualified individual licensee or mortgage loan originator. This section of the proposed rules requires a criminal background check, a credit report, proof of pre-licensing education and passage of written Federal and state law tests. The Department believes that these requirements provide clear guidance as to the requirements for issuance of a license. Furthermore, as the adopted rule will govern licensure by New Jersey to originate residential

mortgages on real estate located in New Jersey, the "community" referred to in N.J.A.C. 3:15-2.3(a)2 is the State of New Jersey.

COMMENT: One commenter stated that in the definition of "branch office" in N.J.A.C. 3:15-1.2, there is a missing open bracket in the second line between "loans" and the comma.

RESPONSE: The Department disagrees. The proposal has an open bracket earlier in the line and therefore proposes to remove the language "second mortgage loans, consumer loans or sales finance contracts" appearing on the second and third lines from the definition of "branch office." This is necessary because, consistent with the RMLA, as amended N.J.A.C. 3:15-1.2 will not apply to consumer loans or sales finance contracts, and will provide for a license that permits both second mortgage loan and first lien mortgage loan activity.

COMMENT: One commenter stated that in the definition of "direct contact" in N.J.A.C. 3:15-1.2, the term "mortgage loans" should be used instead of the phrase "first mortgage loans or second mortgage loans."

RESPONSE: The Department disagrees. Because of the prior separate treatment of first and second mortgage loans, it is helpful in certain areas to make express provision in those instances where the new and amended rules apply to both types.

COMMENT: One commenter stated that the definition of "loan processor or loan underwriter" in N.J.A.C. 3:15-1.2 will require a company that offers loan processing or loan underwriting services on an outsourcing basis and all individual loan processors and underwriters employed by such a company to obtain a license, although it does not appear that such a company or such employees fall within the definition of a "residential mortgage lender" or "mortgage loan

originator." The commenter stated that such a provision would be unnecessary and much different from the Department's long-standing position.

RESPONSE: The definition of "loan processor or loan underwriter" in the proposal is taken verbatim from the RMLA, which mirrors the definition in the SAFE Act. The Department agrees that requiring licensure based upon such activities is a significant change from the prior requirements under the New Jersey Licensed Lenders Act, N.J.S.A. 17:11C-1 et seq., (LLA) but the change is required for compliance with the SAFE Act. The SAFE Act, the HUD statements about the SAFE Act and HUD's rulemaking proposal to implement the SAFE Act make it clear that a wide group of people would fall within the definition of a "mortgage loan originator" as interpreted by HUD, and, therefore, require licensure under the SAFE Act and the RMLA. The Department notes that the HUD rules as ultimately adopted may further clarify this issue on a nationwide basis.

COMMENT: One commenter noted that the definition of "residential mortgage loan" in N.J.A.C. 3:15-1.2 appears to include an ordinary construction loan to an individual although such a loan is typically replaced by permanent financing.

RESPONSE: The Department agrees with the commenter's conclusion. However, this provision implements the definition in the RMLA and mirrors the language in the SAFE Act. Therefore, it cannot be substantively changed through rulemaking.

COMMENT: One commenter noted that the definition of "secondary mortgage loan" in N.J.A.C. 3:15-1.2 deletes prior exclusions. The commenter suggested that the prior exclusions be retained.

RESPONSE: The Department thanks the commenter for the comment. The exclusions were proposed to be eliminated so that the rule would be consistent with the SAFE Act, which does not include the type of exclusions referenced in the comment. However, although the intent of the RMLA was to conform New Jersey law to the SAFE Act, the definition of "secondary mortgage loan" included in the RMLA continued to include the exemptions previously established in the LLA. To conform the rule to the statutory text, the Department will not adopt the proposed deletions of the exclusions from the definition. The Department will seek a statutory change to amend the RMLA in order to be SAFE Act compliant.

COMMENT: One commenter stated that N.J.A.C. 3:15-1.3(a)1i is broad enough to require that a call center be divided into separate offices, in order that call center employees cannot overhear conversations with consumers, which would be an onerous requirement. The commenter believes that the Department should be more concerned with determining whether a licensee's office is "suitable" and, if the Department is concerned about confidentiality, the commenter requested, in the alternative, that a requirement be added to the rules that each licensee develop and maintain appropriate policies and procedures to protect the confidentiality of consumer information and documentation.

RESPONSE: The Department thanks the commenter for these thoughts, but disagrees that the proposed regulation could be interpreted to require a call center to be divided formally into separate offices. A consumer's personal and financial privacy must be protected. Licensees must structure their office spaces to provide this protection.

COMMENT: One commenter cited N.J.A.C. 3:15-1.3(e)3 as apparently permitting an attorney to act as a mortgage broker on behalf of his or her clients without a license under RMLA so long

as the attorney charges the customer directly. The commenter believes that this is not the intent of the Department.

RESPONSE: N.J.A.C. 3:15-1.3 covers office requirements of licensees, and current N.J.A.C. 3:15-1.3(e) is proposed to be deleted. The Department believes the commenter was referring to N.J.A.C. 3:15-2.1(e)3, which governs exemptions from licensure requirements. These rules are unchanged in pertinent part. An attorney who negotiates the terms of a residential mortgage loan ancillary to representation of a client does not need to be licensed under RMLA, unless the attorney is compensated by a mortgage lender, broker or mortgage loan originator. Compensation by a licensee would essentially place the attorney in the position of a broker or originator or their agent and would subject the attorney to the RMLA license requirement.

COMMENT: One commenter stated that N.J.A.C. 3:15-1.3(e)5 seems to permit companies to make "no cost" first and second mortgage loans to their employees without a license subject only to the requirements that the interest rate not be in excess of the usury rate. The commenter expressed concern that the provision could provide a loophole in the law.

RESPONSE: N.J.A.C. 3:15-1.3 covers office requirements of licensees, and current N.J.A.C. 3:15-1.3(e) is proposed to be deleted. The Department believes the commenter was referring to N.J.A.C. 3:15-2.1(e)5. The Department notes that this provision is unchanged from the LLA, as applied to secondary mortgage loans. The RMLA expands this provision to both first and second residential mortgage loans. The rule proposal implements the statutory change. The Department notes that the key usury rate applicable here is the civil usury rate, while the criminal usury rate also applies.

COMMENT: One commenter stated that N.J.A.C. 3:15-2.5(a)1iii allows for the possibility that a licensee, as a condition for renewal, will have to supply the Department with an audited financial statement because the Nationwide Mortgage Licensing System (NMLS) can require this statement. The commenter stated this could be onerous and costly for small mortgage brokers.

RESPONSE: The Department agrees that such a requirement may be imposed at a future date as a condition for renewal through the NMLS. The Department recognizes that conditioning a renewal on the submission of an audited financial statement will involve a balancing of the benefits to the Department and consumers against the costs to the regulated industry.

COMMENT: One commenter stated that N.J.A.C. 3:15-2.9 proposes the requirement that a licensee submit an audited financial statement to convert from a broker to a banker. The commenter stated that the current rule permits upward conversion if the previous years' annual financial reports show the requisite tangible net worth. The commenter stated that for a new entity to obtain an audited financial statement is straightforward and not costly because it is not for an operating business. However, the proposed rule may discourage a person from starting up as a mortgage broker and the commenter opposes the change in the rule.

RESPONSE: The Department notes the commenter's position. The requirement for an audited financial statement will apply only for a conversion of an existing license to a license with higher requirements. Although tangible net worth is covered in an annual report, the most recent annual report may not be current at the time the conversion application is filed and considered by the Department. For the protection of consumers, the Department needs to be certain that the applicant currently meets the higher level of net worth before the license is issued.

COMMENT: One commenter stated that N.J.A.C. 3:15-2.1 does not provide for someone who has already taken and passed the New Jersey Mortgage Licensing Exam since 2002 to qualify without taking the State-component of the NMLS exam. The commenter believes that the NMLS is leaving that decision to the states and suggests that New Jersey should adopt such a provision.

RESPONSE: The Department thanks the commenter for this comment. Licensing tests under the LLA were revised and vendor-administered starting in November 2004. With the concurrence of the State Regulatory Registry LLC, the body which administers the NMLS, the Department has concluded that applicants for individual licensure under the RMLA who are certified as having passed the LLA test between November 2004 and December 31, 2009, will not have to take the new New Jersey State component of the NMLS administered test in order to qualify for such licensure.

COMMENT: One commenter stated that N.J.A.C. 3:15-2.14(d) requires that where a qualified licensed individual leaves a business, that individual must surrender his or her license. The commenter stated that it is not clear whether an individual must include an inactivation request. The commenter stated that it is preferable for such persons to simply hold their license until they work with another business licensee and requested that the proposal be changed to reflect that practice.

RESPONSE: The procedure set forth in the rule does require the surrender of a license when a qualified licensed individual leaves a business. The Department notes that the RMLA requires, as a condition of licensure, that a qualified licensed individual be associated with a business. When that condition is no longer met, the individual's license must be surrendered. Under the RMLA there is no license status of "inactive." If the licensed person leaves the business with

which they were affiliated, their license ceases and must be surrendered. If, in the future, they become associated with a different company, or even the same company again, at that point they would apply for a new license through an expedited process. When the individual subsequently finds employment with a new company, that specific process will be available to request sponsorship by the new company and the issuance of a new license to the individual. That process will not entail all of the requirements applicable to an application for a new license. The Department declines to change the proposal as requested by the commenter.

COMMENT: One commenter stated that N.J.A.C. 3:15-2.16 will require change of control applications to be submitted at least 90 days prior to the proposed sale date. The commenter stated that the current rule requires 30 days, which is sufficient and should remain as the official timeframe, as the additional time is excessive and unnecessary.

RESPONSE: The Department disagrees with the commenter and declines to make the change. Such transactions are complex and more time-consuming under the RMLA than they were under the LLA. There are more background checks required under RMLA for new principals. In addition, applications for the licensure of new qualified individual licensees frequently accompany change of control applications, all of which require additional time for review and processing.

COMMENT: One commenter stated that in N.J.A.C. 3:15-3.1(a), it is unclear what is intended by the words “which will be applicable to the first $50 million of closed loan volume.” The commenter asks whether a new licensee that closes $50 million of loans during the first three months of operation, for example, would immediately have to increase the bond or could the licensee wait until after the annual report reflecting such volume is filed.

RESPONSE: Adjustments to bonds are only required by the rule after the filing of an annual report which indicates a basis for a bond amount adjustment. These rules do not preclude a licensee from adjusting its bond amount upward (though not downward) unilaterally based on its perception of increased exposure from its volume, with appropriate notice to the Department as required by N.J.A.C. 3:15-3.4.

COMMENT: One commenter stated that N.J.A.C. 3:15-4.1 significantly increases fees. Current fees are $700.0 for one authority or $1,000 for both (for the company license, any branch license and any individual license, not including an additional $100.00 per solicitor registration). The commenter stated that this proposal increases these fees to $1,200 for the company, $1,000 for a branch, $500.00 for an individual, plus $150.0 for each licensed loan originator. These costs are in addition to the costs of the necessary education courses and licensing tests. The commenter further stated that a company with one branch office and one licensed individual that only issues first mortgage loans currently is required to pay $2,100 for a license. Under the new rule, that licensee will have to pay $2,700, in addition to an extra $150.00 for each loan originator on its payroll, as well as "transition fees" that existing licensees must pay. The commenter respectfully objects to this fee increase, especially in these difficult economic times.

RESPONSE: The Department understands the difficult economic times that currently exist, but believes the fees are reasonable and reflect the cost of providing the additional services and staff review required under the new licensing scheme mandated by the SAFE Act and RMLA. The Department notes that the examples given are for new licensees only. Companies and branches currently licensed under the LLA will pay only the transition fees. Likewise, new licensees under RMLA not currently licensed under the LLA will not pay transition fees.

The Department disagrees that the fees are increasing significantly. The commenter gives an example under the LLA of a company with one branch office and one licensed individual that only handles first mortgage loans, and would pay $2,100. The commenter notes that under the proposal it will go up to $2,700. The Department agrees with the calculations of the commenter, but notes that these fees are a one-time license application charge, and are not recurring costs. Further, the license issued under RMLA and the proposed rules permits the handling of first and second mortgages, so additional products are authorized for the RMLA licensee with no additional upfront fee. Under the LLA, for a licensee with two authorities, the fees would have been $1,000 for the company, $1,000 for the branch; and $1,000 for the individual to engage in first and second mortgage loan activities.

In addition, the current charge to register, not license, a mortgage solicitor is $100.00 but that charge must be paid whenever the person changes companies and needs to re-register. Under the proposal, the charge to license a mortgage loan originator will be $150.00, but if they change companies it is $75.00 to relicense with the new company. Furthermore, under RMLA, background checks, credit checks and fingerprinting are all mandatory requirements for licensure of qualified individuals and mortgage loan originators, which creates a substantial additional workload for the Department in its review of applications for licensure.

COMMENT: One commenter stated that the proposed surety bond amounts are unnecessarily high and that many companies are finding bonds difficult to obtain or beyond their financial capacity.

RESPONSE: The Department disagrees that the proposed bond amounts are unnecessarily high. The Department recognizes that, in some cases, there will be an increase for a small segment of the regulated community depending on a company's situation. The minimum bond amounts

required for first and second mortgage activity under the LLA are the same as those proposed under these rules. For some companies, the amount may be the same. Most importantly, the bond amounts are set at the level the Department believes is necessary to protect New Jersey consumers in a state with high real estate values, large mortgages and associated points and fees, and, therefore, higher potential bond claims. For instance, the Department notes that the amount of a mortgage subject to review under the New Jersey Home Ownership Security Act of 2002 is currently up to $438,615.74 as provided in the most recently issued Bulletin on the subject. Further, the Department has not received documentation of bond availability or cost problems. While the Department has the ability to revisit bond amounts in the future, it declines to make any changes to the proposed amounts upon adoption.

COMMENT: One commenter stated that a survey obtained by a consultant for a major surety bond producer shows that a typical surety bond requirement for brokers in other states is in the range of $25,000 to $50,000 at minimum volume, to $100,000 to $150,000 at maximum volume. The commenter said the survey shows the following bond requirements in other states: Georgia: $50,000 minimum broker; $150,000 minimum lender. Iowa: $100,000 until the Commissioner promulgates other requirements. Mississippi: $25,000 to $150,000, subject to Commissioner adjustment of the amounts. Montana: $25,000 to $100,000. Nebraska $100,000 to $200,000. New Mexico: $50,000 to $150,000. South Carolina: $50,000 to $150,000 lender; $25,000 to $55,000 broker. Vermont: $50,000 to $150,000 lender; $25,000 to $100,000 broker. Indiana: $50,000 to $75,000. Arkansas: $100,000 minimum. West Virginia: $50,000 to $150,000 broker; $100,000 to $250,000 lender; table funder $150,000. Wisconsin: $120,000 broker; $300,000 lender. The commenter then stated that Connecticut appears to be the only state with a maximum bond up to $500,000.

RESPONSE: The Department agrees that some states have lower bond amounts for brokers. As previously mentioned, the required bond amounts under these adopted rules will remain the same for companies licensed under the LLA that currently have two authorities and that transition to a RMLA license. Most importantly, the Department considers these amounts necessary to protect New Jersey consumers, after weighing the competing factors of reasonable business expense and consumer protection.

COMMENT: One commenter stated that based on discussions with bond experts, bonding companies are tightening their underwriting, making it difficult for brokers to get the necessary bonds. The commenter stated that brokers and their spouses are also being asked to personally indemnify the bond companies, which the commenter asserts is an onerous requirement. The commenter stated that he has learned that bonding companies are requiring a net worth of two to three times the bond aggregate limits, and at times a letter of credit. The commenter noted that it will be more difficult to get surety bonds for those operating in more than one state because bonds are considered cumulatively with respect to a company's net worth. Those active in multiple states may be unable to continue multistate operations as a result. The commenter stated that when collateral is required and thus encumbered it reduces the funds available to operate the company and lend to consumers.

The commenter said that a $300,000 bond will cost at least $2,500 per annum and a $500,000 bond at least $3,750, and bond costs are expected to rise above these levels in the near future. The commenter believes this major problem will cost consumers the loss of many valuable mortgage and finance sources as companies exit the business.

RESPONSE: The Department shares the commenter's general concern for a healthy and competitive mortgage marketplace. However, given the historically high property values in New

Jersey, an adequate bond amount is essential to provide a minimum level of consumer protection to the clients of licensed residential mortgage lenders and brokers. The Department does not maintain records on license surrenders attributable to bond unavailability. The Department invites licensees to provide information regarding company exits demonstrably caused by bond availability and cost issues.

COMMENT: One commenter stated that bond requirements should be lowered because the new safeguards established in the SAFE Act and RMLA with respect to education, testing, background checks, credit histories, the felony bar, and the multistate effects of disciplinary action.

RESPONSE: The Department disagrees that the SAFE Act and the RMLA support a reduction in bond amount requirements. There is no express or implicit authority in the SAFE Act or in the RMLA for diminishing any consumer protection provision in existing law or rules. On the contrary, the Department believes this State's high real estate values and resulting larger mortgages and associated points and fees inevitably produce higher potential bond claims, for which higher bond requirements are necessary.

COMMENT: One commenter suggested a bond schedule of $50,000 for less than $15 million of loans originated; $75,000 for origination of between $15 million and $30 million in loans; $100,000 for origination of between $30 million and $50 million in loans; and $150,000 for above $50 million. The commenter stated that this is the schedule Pennsylvania recently enacted.

RESPONSE: The Department declines to adopt the schedule suggested by the commenter. As was noted in a Response to a prior Comment, the Department considers the proposed bond amounts to be necessary to protect New Jersey consumers.

COMMENT: One commenter stated that he was advised by a surety bond expert that the average loss is approximately $15,000 on a surety bond and industry experience shows a low incidence of claims on such bonds and that these factors mitigate against increasing bond requirements.

RESPONSE: The Department is not in possession of an authoritative tabulation of bond losses, nor is it clear whether the $15,000 average represents historic experience or recent bond claim settlement activity or is based on national data, relevant regional data, or data specific to New Jersey. Moreover, to the extent the $15,000 average loss is relevant to New Jersey experience, it should operate to mitigate the risk associated with the bonds and lower their cost. At any rate, for the reasons set forth in prior responses, the Department declines to reduce the bond amount requirements as proposed.

Summary of Agency-Initiated Changes:

The Department had proposed at N.J.A.C. 3:15-2.13(a) that a business licensee's qualified individual licensee be replaced within 60 days of the revocation, suspension, or lapse of his or her license, or of his or her departure from the business. Upon further review, the Department has noted that the RMLA permits replacement within 90 days (see N.J.S.A. 17:11C-54(a)2). To conform the rule to the statute, upon adoption the Department is changing the 60-day period to a 90-day period in the two places it is referenced in N.J.A.C. 3:15-2.13(a). The Department is also correcting a cross-reference at N.J.A.C. 3:1-7.6(a).

Federal Standards Analysis

The Federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," Title V of Pub. L. 110-289 (12 U.S.C. §§ 5101 et seq.) ("SAFE Act") provides new, heightened protections to consumers throughout the residential mortgage lending process including pre-licensing education, national and State law testing requirements and continuing education for individual licensees.

The requirements of these adopted amendments, repeals and new rules exceed Federal standards only in the area of continuing education requirements. The SAFE Act establishes minimum annual continuing education requirements of eight hours per individual licensee, and permits states to exceed this minimum. The Residential Mortgage Lenders Act (RMLA) establishes minimum annual continuing education requirements of 12 hours per individual licensee and the higher standards of the RMLA are reflected in this rulemaking. Therefore, the Federal standards are exceeded in the adopted amendments, repeals and new rules as expressly permitted in the pertinent Federal law, in order to conform the rules to the RMLA and carry out the clear intent of the New Jersey Legislature that licensees under RMLA complete 12 hours of annual continuing education in order to better protect New Jersey consumers.

Lastly, certain definitions contained in 15 U.S.C. §§ 1601 and 1605; section 603(p) of the Fair Credit Reporting Act, Pub. L. 91-508 (15 U.S.C. § 1681a(p)); section 103(v) of the Truth in Lending Act, Pub. L. 90-321 (15 U.S.C. § 1602(v)); section 5.7 of the "Farm Credit Act of 1971," Pub. L. 92-181 (12 U.S.C. § 2241); section 101(53D) of Title 11, United States Code (11 U.S.C. § 101(53D)) and section 3 of the "Federal Deposit Insurance Act" (12 U.S.C. § 1813) are incorporated by reference in the adopted amendments, repeals and new rules, making the scope

of these definitions as set forth in the adopted amendments, repeals and new rules the same as those imposed by Federal standards.

Full text of the adopted amendments and new rules follows (additions to proposal indicated in boldface with asterisks *__thus__*; deletions from proposal indicated in brackets with asterisks *[thus]*):

3:1-7.6 Penalty for late filing of annual reports and/or late payment of assessments

(a) Business licensees under the New Jersey Residential Mortgage Lending Act, N.J.S.A. 17:11C-51 et seq. (RMLA), licensees under the New Jersey Consumer Finance Licensing Act, N.J.S.A. 17:11C-1 to 43 (CFLA), motor vehicle installment sellers, home repair contractors, home financing agencies, check cashers, money transmitters, debt adjusters, foreign money transmitters, pawnbrokers, insurance premium finance companies, or any other licensees who fail to file an annual report on a timely basis as specified below shall be subject to a penalty as specified in (c) below. With the exception of licensees under RMLA and CFLA, all licensees who file applications to renew their license after the license expiration date shall be subject to a penalty of $ 50.00. Business licensees under RMLA and licensees under CFLA who file renewal license applications after the expiration of their licenses shall be subject to N.J.A.C. 3:15-2.7 and 3:17-*[17]**__2.6__*, respectively, including any penalties specified therein. Individual licensees under RMLA who file renewal license applications after the expiration of their license shall be subject to N.J.A.C. 3:15-2.15.

1.-4. (No change from proposal.)

(b)-(e) (No change from proposal.)

3:15-1.2 Definitions

…

"Secondary mortgage loan" means a residential mortgage loan secured in whole or in part by a lien upon any interest in residential real estate, which is subject to one or more prior mortgage liens ***except that the following loans shall not be subject to the provisions of this chapter:**

1. A loan that is to be repaid in 90 days or less;

2. A loan that is taken as security for a home repair contract executed in accordance with the provisions of the Home Repair Financing Act, N.J.S.A. 17:16C-62 et seq.; or

3. A loan that is the result of the private sale of a dwelling, if title to the dwelling is in the name of the seller and the seller has resided in the dwelling for at least one year, if the buyer is purchasing that dwelling for his or her own residence and, if the buyer, as a part of the purchase price, executes a secondary mortgage in favor of the seller.*

…

3:15-2.13 Responsibilities and replacement of a business licensee's qualified individual licensee

(a) If a qualified individual licensee upon whom a corporation, partnership, association, limited liability company or other entity relies for its license has his or her qualified

individual license revoked or suspended by any state, or allows the license to lapse, or for some other reason is no longer affiliated with the business licensee, the business licensee shall notify the Commissioner within 10 days of the event. In addition, the business licensee shall appoint another qualified individual licensee within *[60]* ***90*** days of the effective date of the termination of the former qualified individual licensee's affiliation with the business licensee for any reason. The Department may extend the *[60-day]* ***90-day*** period for good cause upon written request of the business licensee.

(b) (No change from proposal.)