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TEMPORARY ADMINISTRATIVE ORDER

INCLUDING STATEMENT OF NEED & JUSTIFICATION

FSR 9-2017
CHAPTER 441
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
FINANCE AND SECURITIES REGULATION

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ARCHIVES DIVISION
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FILING CAPTION: Licensing of Mortgage Servicers

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NEED FOR THE RULE(S):

The Mortgage Loan Servicer Practices Act (the act), which was signed into law on August 2, 2017, requires that mortgage servicers obtain a license from the Department of Consumer and Business Services (DCBS) by January 1, 2018. The Act also directs the Director of DCBS (Director) to promulgate regulations establishing the requirements for obtaining a license.

This temporary rule sets application requirements for obtaining a license, requirements for corporate surety bonds and irrevocable letters of credit, and application and renewal fees. The rule also clarifies which entities are exempt from licensing.

JUSTIFICATION OF TEMPORARY FILING:

Mortgage servicers will be required to obtain a license by January 1, 2018. In order to provide adequate time for the industry to apply for the license and for DCBS to process applications, a temporary rule is needed to create a licensing program in advance of the January 1 compliance date. Because DCBS did not have statutory authority to begin the rulemaking process until August 2, 2017, there was not sufficient time to complete the notice and comment procedures required under the Administrative Procedures Act for a permanent rule and provide adequate lead time for the industry.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

2017 Or Laws ch 636 (2017 Senate Bill 98) is available at:
https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/SB98/Enrolled

RULES:

441-850-0005, 441-890-0005, 441-890-0010, 441-890-0015, 441-890-0020, 441-890-0025, 441-890-0030, 441-890-0035, 441-890-0040, 441-890-0045, 441-890-0050

AMEND: 441-850-0005

RULE TITLE: Definitions

RULE SUMMARY: Is amended to apply definitions from chapter 850 to chapter 890 and to clarify certain exemptions under the act.

RULE TEXT:

As used in OAR chapter 441, divisions 850 to 890, unless the context otherwise requires:

(1) “Advertising” means any form of sales or promotional materials used in connection with the mortgage banker or mortgage broker business including, but not limited to, materials that may appear:

(a) In newspapers, magazines, leaflets, flyers, catalogs, direct mail literature, or other printed material;

(b) On radio or television;

(c) On an inside or outside sign or display, or a window display;

(d) In a facsimile;

(e) In point-of-sale literature, price tags, signs, and billboards; or

(f) Online, such as on the Internet, email, or via social media.

(2) “At least as prominently disclosing” means displaying in the same or most similar type, size, font, color, and general location in the advertisement as the featured term.

(3) “Branch office” means a location, separate from the principal place of business of a mortgage banker or mortgage broker, where a mortgage banker, mortgage broker or mortgage loan originator performs the activities described in ORS 86A.100(3)(a) and 86A.100(5)(a).

(4) “Clients’ Trust Account” means an account held in a federally-insured financial institution into which trust funds are deposited.

(5) “Compensation or gain” means anything of economic value that is paid, loaned, granted, given, donated, or transferred to a person or entity for or inconsideration of services, personal or real property, or another thing of value.

(6) “Contract or agreement for servicing the residential mortgage loan” under Section 2(12)(b) of 2017 Or Laws ch 636 means an agreement for the ongoing servicing of a loan and does not include one-time transfers of funds such as those associated with the origination or closing of a loan.

(7) “Control person” means a managing partner, director, principal, executive officer or other person occupying a similar position or performing similar functions for a person licensed as a mortgage banker or a mortgage broker.

(8) "Director" means the Director of the Department of Consumer and Business Services.

(9) “Deficiency” means information contained in the application for a mortgage banker, mortgage broker, or mortgage loan originator license that is inaccurate, incomplete or otherwise not in conformance with applicable law, policy or provisions of the NMLS Policy Guidebook.

(10) "Department" means the Department of Consumer and Business Services.

(11) “Employee” means any employment relationship, acknowledged by both the employed individual and the mortgage banker or mortgage broker, which meets the following conditions:

(a) The employee receives payment through the mortgage banker or mortgage broker in a manner wherein deductions for federal unemployment taxes, Federal Insurance Contributions Act taxes, and other such federal and state taxes have been withheld by the mortgage banker or mortgage broker;

(b) The mortgage banker or mortgage broker has the right to hire and terminate the employee, and hire and terminate the employee's assistants;

(c) The mortgage banker or mortgage broker provides the methods and procedures for performing the employee's services;

(d) The mortgage banker or mortgage broker supervises the employee in the conduct of the employed individual's business and supervises the employee's compliance with applicable statute and rules; and

(e) The employee does not act in any capacity as an employee or independent contractor for another mortgage banker or mortgage broker.

(12) “Experienced person” means the control person that possesses the required experience under ORS 86A.106 in the mortgage business, negotiating loans, or in lending.
(13) “Financial institution” has the same meaning given to that term in ORS 706.008.
(14) “Form MU1” means the Uniform Mortgage Lender/Mortgage Broker Form, published by the Conference of State Bank Supervisors on April 16, 2012, and available at http://mortgage.nationwidelicensingsystem.org/slr/common/policy/Pages/default.aspx.
(15) “Form MU2” means the Uniform Mortgage Biographical Statement & Consent Form, published by the Conference of State Bank Supervisors on April 16, 2012, and available at http://mortgage.nationwidelicensingsystem.org/slr/common/policy/Pages/default.aspx.
(16) “Form MU3” means the Uniform Mortgage Branch Office Form, published by the Conference of State Bank Supervisors on April 16, 2012, and available at http://mortgage.nationwidelicensingsystem.org/slr/common/policy/Pages/default.aspx.
(17) “Form MU4” means the Uniform Individual Mortgage License/Registration & Consent Form, published by the Conference of State Bank Supervisors on April 16, 2012, and available at http://mortgage.nationwidelicensingsystem.org/slr/common/policy/Pages/default.aspx.
(18) “Independent accountant” means a certified public accountant or a public accountant who holds an Oregon permit under ORS 673.150 or similar permit or license from another state or province.
(19) “Mortgage loan originator employed by the mortgage banker or mortgage broker” means every mortgage loan originator operating under the authority or sponsorship of a mortgage banker or mortgage broker’s license, regardless of whether the mortgage loan originator is an employee of the mortgage banker or mortgage broker or purports to act as an agent or independent contractor for the mortgage banker or mortgage broker;
(20) “Loan terms” include, but are not limited to:
(a) The provisions related to the payment amounts, expressed either as a percentage or dollar amount;
(b) The length of the loan;
(c) The market or fully indexed rate;
(d) The start rate;
(e) The life cap rate; and
(f) Whether the loan permits negative amortization.
(21) “Loan-to-value ratio” means the ratio between the amount of a mortgage loan and the value of the property pledged as security, expressed as a percentage.
(22) “Lock agreement” means an agreement with a borrower made by a mortgage banker, mortgage broker or mortgage loan originator, in which the mortgage banker, mortgage broker or mortgage loan originator agrees that, for a specified period of time, a specific interest rate or other financing term will be the rate or term at which it will make a loan available to that borrower.
(23) “Material litigation” means any past or pending litigation, which would be relevant to the director's action on an application for a mortgage broker or mortgage banker license, including but not limited to the following types of litigation:
(a) Any civil action within the previous ten years from the date of the application, including suits filed in civil court, administrative actions, arbitration proceedings, or alternative dispute resolutions, resulting in damages or penalties of $10,000 or more assessed against the applicant;
(b) Any pending civil action including suits filed in civil court, administrative actions, arbitration, or alternative dispute resolution, seeking damages or penalties of $10,000 or more against the applicant; and
(c) Any bankruptcy filing or declaration of bankruptcy within the previous ten years from the date of the application regardless of final disposition.
(24) "Neutral escrow depository" means the deposit of money with an escrow agent licensed under ORS 696.511.
(25) “NMLS Policy Guidebook” means the Conference of State Bank Supervisors/American Association of Residential Mortgage Regulators NMLS Policy Guidebook for Licensees, published by the State Regulatory Registry, updated on

August 1, 2011, and available at
http://mortgage.nationwidelicensingsystem.org/slr/common/policy/Pages/default.aspx.
(26) “Originates” under Section 3(2)(a) of 2017 Or Laws ch 636 § means providing a service involved in the creation of a residential mortgage loan, including but not limited to the taking of the loan application, loan processing, the underwriting and funding of the loan, and the processing and administrative services required to perform these functions.
(27) “Principal place of business” means that location, designated by the mortgage banker or mortgage broker, where the owners, officers, directors or other control persons conduct business and maintain books and records.
(28) “Savings statement” means written material given to the consumer which outline how much a consumer may save in interest costs if they make additional payments above the required minimum monthly payment on their proposed or current mortgage.
(29) “Supervisor” means a partner, officer, branch manager, or other experienced person with management or supervisory responsibilities who is an employee of the mortgage banker or mortgage broker.
(30) “Trust Funds” mean those funds deposited into a trust account or with a neutral escrow depository. Trust funds shall include, but are not limited to:
(a) All funds received by a licensee or persons authorized to act on behalf of the licensee from or on behalf of a client for payment of services to be provided by persons other than the licensee in connection with processing, arranging, or making a mortgage banking loan or mortgage loan;
(b) All funds received by a licensee or persons authorized to act on behalf of a licensee from or on behalf of a borrower for payment of principal, interest or taxes on a mortgage banking loan or mortgage loan, but shall not include such funds where the licensee and the lender have an agreement providing for the disposition of such funds, and the financial statements of licensee are audited on an annual basis in accordance with generally accepted auditing standards; and
(c) All funds received by a licensee or persons authorized to act on behalf of a licensee from or on behalf of a client for payment of services to be provided by a licensee in connection with processing, arranging, or making a mortgage banking loan or mortgage loan by the licensee, except for those funds received by a licensee on a nonrefundable basis under the provisions of OAR 441-875-0030.
(d) For purposes of this section, “licensee” means a mortgage banker, a mortgage broker or a mortgage loan originator.

STATUTORY/OTHER AUTHORITY: ORS 86A.136, ORS 86A.242, 2017 Or Laws ch 636 §§ 3, 16

STATUTES/OTHER IMPLEMENTED: ORS 86A.100, ORS 86A.200, 2017 Or Laws ch 636

ADOPT: 441-890-0005

RULE TITLE: Application Requirements

RULE SUMMARY: Sets application requirements for a mortgage servicer license.

RULE TEXT:

Each person applying for a mortgage servicer license shall submit to the Director all the following required application materials and information:

(1) A completed Form MU1 submitted through the NMLS and approved by the Director.

(2) A completed Form MU2 submitted through the NMLS and approved by the Director for any individual identified in OAR 441-890-0002.

(3) Fingerprints and an authorization to conduct a criminal records check and obtain a credit report submitted through the NMLS from any individual that acts as a controller or manager for the mortgage servicer. Notwithstanding Section 4(2)(A) of 2017 Or Laws ch 636, fingerprints need not be submitted for registered agents.

(4)(a) A corporate surety bond submitted through the NMLS that meets specified terms calculated using the appropriate loan servicing volume amounts under OAR 441-890-0025; or

(b) An irrevocable letter of credit filed with the Director through the NMLS that meets specified terms calculated using the appropriate loan servicing volume amounts under OAR 441-890-0025.

(5) Financial statements prepared in accordance with generally accepted accounting principles, including a balance sheet and a statement of income or operations, dated not more than six months prior to submission of the application through the NMLS.

(a) The financial statements may be prepared by the mortgage servicer, except that if the Director finds it in the public interest, the Director may require that a mortgage servicer submit financial statements prepared by an independent accountant.

(b) If the financial statements are more than six months old, interim period financial statements prepared by the mortgage servicer for the period ending the last full month prior to the date of application shall also be submitted.

(6) A statement with a detailed breakdown of the portfolio of mortgage loan servicing rights on a nationwide basis, as well as separately for Oregon. The information should reflect the composition of the portfolio based on mortgage servicing rights owned and aggregate number of loans and unpaid principal balance of all 1-4 family residential mortgage loans segregated by subservicer. The information provided should be as of the most recent quarter.

(7) The names and contact information of all subcontractors performing servicing activities on behalf of the mortgage servicer.

(8) Biographical information required by OAR 441-890-0010 submitted through the NMLS.

(9) The information required under OAR 441-890-0020 for each branch office submitted through the NMLS.

(10) Payment of fees for application or renewal, as applicable, under OAR 441-890-0030, paid through the NMLS.

STATUTORY/OTHER AUTHORITY: 2017 Or Laws ch 636 §§ 4, 16

STATUTES/OTHER IMPLEMENTED: 2017 Or Laws ch 636 § 4

ADOPT: 441-890-0010

RULE TITLE: Biographical Information Required for Mortgage Servicer License Application

RULE SUMMARY: Sets out the biographical information of individuals that need to be included in a license application.

RULE TEXT:

(1) Each of the following persons listed in section (2) of this rule shall submit a Form MU2 to the Director of the Department of Consumer and Business Services through the NMLS.

(2) This rule applies to:

(A) Any director, officer, and a shareholder with a direct or indirect ownership of greater than or equal to ten percent of outstanding shares of a corporate applicant;

(B) The owner, if the applicant is an unincorporated sole proprietorship;

(C) Each managing partner of a limited partnership or a partner in a general partnership with a partnership interest greater than or equal to ten percent of the total partnership interests in the general or limited partnership;

(D) A member or managing member in a limited liability company with an ownership interest greater than or equal to ten percent of the total membership interests in the limited liability company; and

(E) Each manager of a branch office.

STATUTORY/OTHER AUTHORITY: 2017 Or Laws ch 636 §§ 4, 16

STATUTES/OTHER IMPLEMENTED: 2017 Or Laws ch 636 § 4

ADOPT: 441-890-0015

RULE TITLE: Deficiencies in Mortgage Servicer License Application

RULE SUMMARY: Sets out procedures for when an incomplete application is submitted.

RULE TEXT:

(1) If an applicant or licensee submits an application, filing, or amendment, which is incomplete in any respect, the Director shall notify the applicant or licensee of the deficiencies through the NMLS. The applicant or licensee shall correct a deficiency associated with an application, filing, or amendment within 30 days of being notified through the NMLS that the Director placed a deficiency on the person's application, filing, or amendment. A challenge submitted to the NMLS as set out in OAR 441-850-0050 shall halt the 30-day period of time for correcting deficiencies for the duration of the challenge process.

(2) If the applicant fails to complete the application or respond to deficiencies within 30 days, the application will be considered abandoned. Any fees paid by the applicant under OAR 441-890-0030 will not be refunded due to abandonment. An applicant whose application is abandoned under this rule may reapply to obtain a mortgage servicer license.

STATUTORY/OTHER AUTHORITY: 2017 Or Laws ch 636 §§ 4, 16

STATUTES/OTHER IMPLEMENTED: 2017 Or Laws ch 636 § 4

ADOPT: 441-890-0020

RULE TITLE: Branch Office Licensing

RULE SUMMARY: Requires that licensed servicers obtain a license for each branch office that it intents to open.

RULE TEXT:

(1) If a licensee intends to operate a branch office from which it will service Oregon loans or that will be located in Oregon, the licensee shall obtain a license for the branch office prior to servicing loans from the branch office by submitting the licensing fee specified in OAR 441-890-0030 and submitting a Form MU3 to the NMLS.

(2) Upon satisfaction of the requirements listed in section (1), if the company's license is in good standing and the Director is satisfied that the branch application is complete, the Director shall issue a separate branch office license.

STATUTORY/OTHER AUTHORITY: 2017 Or Laws ch 636 §§ 4, 16

STATUTES/OTHER IMPLEMENTED: 2017 Or Laws ch 636 § 4

ADOPT: 441-890-0025

RULE TITLE: Corporate Surety Bond or Irrevocable Letter of Credit for Mortgage Servicers

RULE SUMMARY: Sets requirements for corporate surety bonds or irrevocable letters of credit for mortgage servicers.

RULE TEXT:

(1) Every applicant for a license as a mortgage servicer must file a corporate surety bond or irrevocable letter of credit with the Director as specified in this rule in a form and on terms approved by the Director. The corporate surety bond shall be renewed or replaced each calendar year. The corporate surety bond or irrevocable letter of credit shall be delivered to the Director by filing in the NMLS by December 1 of each calendar year but may be made effective as of December 31 of each calendar year. In no case shall any applicant or mortgage servicer subject to this rule reduce the amount of a corporate surety bond or irrevocable letter of credit before October 1 of each calendar year.

(2) The corporate surety bond or irrevocable letter of credit must remain in effect for at least five years after the person ceases to be licensed as a mortgage servicer. A consumer must file a claim against the corporate surety bond or irrevocable letter of credit before the corporate surety bond or irrevocable letter of credit expires as described in this section.

(3) At least five years after a person ceases to be licensed as a mortgage servicer, the person or the writer of the corporate surety bond or irrevocable letter of credit may apply to the Director for release of the corporate surety bond or irrevocable letter of credit. Unless the Director determines that claims are pending against the person for violation of 2017 Or Laws ch 636, the Director will release the corporate surety bond or irrevocable letter of credit.

(4) The corporate surety bond or irrevocable letter of credit must be calculated on the total unpaid principal balance of residential mortgage loans in Oregon as of the last day of the second quarter of the year, or, for new applications, the most recent completed quarter. The sum of the corporate surety bond or irrevocable letter of credit must be determined as follows:

(a) For a person with an unpaid principal balance of less than $10,000,000, the corporate surety bond or irrevocable letter of credit must be in the amount of $50,000.

(c) For a person with an unpaid principal balance of $10,000,000 or more but less than $25,000,000, the corporate surety bond or irrevocable letter of credit must be in the amount of $75,000.

(d) For a person with an unpaid principal balance of $25,000,000 or more but less than $50,000,000, the corporate surety bond or irrevocable letter of credit must be in the amount of $100,000.

(e) For a person with an unpaid principal balance of $50,000,000 or more but less than $100,000,000, the corporate surety bond or irrevocable letter of credit must be in the amount of $150,000.

(f) For a person with an unpaid principal balance of $100,000,000 or more, the corporate surety bond or irrevocable letter of credit must be in the amount of $200,000.

STATUTORY/OTHER AUTHORITY: 2017 Or Laws ch 636 §§ 4, 16

STATUTES/OTHER IMPLEMENTED: 2017 Or Laws ch 636 § 4

ADOPT: 441-890-0030

RULE TITLE: Fees Payable to the Director

RULE SUMMARY: Sets application fees.

RULE TEXT:

In addition to any fees required to participate in the NMLS, a mortgage servicer shall pay to the Director the following fees at the time of application or renewal:

(1) A nonrefundable application fee for a mortgage servicer license of $960 plus a $330 nonrefundable application fee for each branch the mortgage servicer establishes in Oregon.

(2) A nonrefundable renewal application fee for a mortgage servicer license of $480 plus a $165 nonrefundable renewal application fee for each branch the mortgage servicer maintains in Oregon.

STATUTORY/OTHER AUTHORITY: 2017 Or Laws ch 636 §§ 4, 16

STATUTES/OTHER IMPLEMENTED: 2017 Or Laws ch 636 § 4

ADOPT: 441-890-0035

RULE TITLE: Rules for Use of an Assumed Business Name

RULE SUMMARY: Sets rule for the use of assumed business names.

RULE TEXT:

(1) In addition to any requirements for registering an assumed business name with the Secretary of State, a mortgage servicer who intends to use an assumed business name to identify the person's mortgage servicer business shall also comply with the following before doing business under the assumed business name:

(a) If the assumed business name contains words or phrases described in ORS 56.023, the mortgage servicer must obtain specific written approval from the Director under ORS 705.635 and OAR 441-005-0010.

(b) The mortgage servicer must list the name as an other trade name on the company's MU1 in NMLS.

(2) Regardless of the lack of any ownership interest in the assumed business name, the mortgage servicer is responsible for all actions of those acting under the assumed business name which relate to mortgage servicing.

STATUTORY/OTHER AUTHORITY: 2017 Or Laws ch 636 § 16

STATUTES/OTHER IMPLEMENTED: 2017 Or Laws ch 636 § 5

ADOPT: 441-890-0040

RULE TITLE: Financial Responsibility Criteria for Individuals

RULE SUMMARY: Sets financial responsibility criteria for individuals.

RULE TEXT:

(1) For purposes of this rule, an individual is not financially responsible if the individual has shown a disregard of his or her own financial circumstances, taking into consideration the totality of the individual's financial circumstances.

(2) Factors that the Director may consider in determining whether an individual has not demonstrated financial responsibility include, but are not limited to, the following:

(a) Current outstanding judgments or material litigation, excluding judgments solely as a result of medical expenses;

(b) Current outstanding tax liens or other government liens and filings;

(c) A foreclosure within the past three years and the type of property subject to foreclosure, whether residential or commercial;

(d) Pending or completed bankruptcy proceedings, and the length of time between two or more bankruptcy filings; or

(e) A pattern of seriously delinquent accounts within the past three years.

(3) In assessing the financial responsibility of the individual, the Director may consider extenuating or mitigating factors, including but not limited to the following:

(a) Involuntary loss of job or income;

(b) Involuntary medical expenses;

(c) Divorce;

(d) Attempting workout arrangements with creditors; or

(e) Any other factor the Director believes reflects circumstances beyond the control of the applicant.

STATUTORY/OTHER AUTHORITY: 2017 Or Laws ch 636 §§ 4, 16

STATUTES/OTHER IMPLEMENTED: 2017 Or Laws ch 636 § 4

ADOPT: 441-890-0045

RULE TITLE: Preexisting Duty to Service a Mortgage Loan

RULE SUMMARY: Clarifies that the revocation, suspension, or failure to obtain and maintain a license does not impair or affect the servicer's obligations under a preexisting lawful contract with a lender or borrower.

RULE TEXT:
The revocation, suspension, or failure to obtain and maintain a license does not impair or affect the servicer's obligations under a preexisting lawful contract with a lender or borrower.

STATUTORY/OTHER AUTHORITY: 2017 Or Laws ch 636 § 16

STATUTES/OTHER IMPLEMENTED: 2017 Or Laws ch 636

ADOPT: 441-890-0050

RULE TITLE: Exempt Entities

RULE SUMMARY: Exempts certain entities from the licensing requirement.

RULE TEXT:

A person need not obtain a mortgage servicer license under Section (3)(1) of 2017 Or Laws ch 636 if the person:

(1) Is an employee of a licensed mortgage servicer or an exempt entity acting within the scope of the person's emplyment;

(2) Owns the rights to service a mortgage loan but does not otherwise service a residential mortgage loan as defined under Section 2(12) of 2017 Or Laws ch 636; or

(3) Is a nonprofit organization that:

(a) Has been granted a tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, 26 U.S.C. § 501(c)(3);

(b) Promotes affordable housing, affordable housing financing, or other similar services approved by the Director; and

(c) Has not violated a state or federal law and has not engaged in a course of dealing that is fraudulent, deceptive, or dishonest.

STATUTORY/OTHER AUTHORITY: 2017 Or Laws ch 636 §§ 3, 16

STATUTES/OTHER IMPLEMENTED: 2017 Or Laws ch 636 § 3