Revised and Marked-Up, October 14, 2011

PROPOSED
RULES OF THE FAIR MORTGAGE LENDING ACT
EFFECTIVE – December 1, 2011

ARKANSAS SECURITIES DEPARTMENT
Heritage West Building, Suite 300
201 East Markham
Little Rock, Arkansas 72201

TABLE OF CONTENTS

RULE 5001	TITLE	p. 1
RULE 5002	DEFINITIONS	p. 1
RULE 5003	LICENSE REQUIRED – LICENSEE RECORDS	p. 2
5003-1	Soliciting or Accepting Or Offering To Solicit Or Accept An Application For A Mortgage Loan	
5003-2	Negotiating or Offering To Negotiate the Terms and Conditions of a Mortgage Loan	
5003-3	Miscellaneous	
RULE 5004	RULEMAKING AUTHORITY	p. 6
5004-1	Advisory Opinions and Other Legal Interpretations	
RULE 5005	QUALIFICATIONS FOR LICENSURE – ISSUANCE	p. 6
5005-1	Application	
5005-2	Qualifications for Doing Business	
5005-3	Affiliated Businesses or Beneficial Interest	
5005-4	Background Checks	
5005-5	Pre-Licensing and Re-Licensing Education of Loan Officers	
5005-6	Testing Of Loan Officers	
5005-7	Other Experience or Competency Requirements	
5005-8	Surety Bonds	
5005-9	Non-transferability of a License	
RULE 5006	LICENSE RENEWAL-TERMINATION	p. 15
5006-1	License Renewal	
5006-2	[Reserved]	
RULE 5007	CONTINUING EDUCATION	p. 17
5007-1	Continuing Education for Loan Officers	
RULE 5008	MANAGING PRINCIPALS AND BRANCH MANAGERS	p. 19
5008-1	Supervision	
RULE 5009	OFFICES-ADDRESS CHANGES-LOCATIONS OF RECORDS [RESERVED]	
RULE 5010	LICENSEE DUTIES	p. 19
5010-1	Servicing	
5010-2	Financial Privacy	
5010-3	Reporting Requirements	
RULE 5011	RECORDS-ESCROW FUNDS OR TRUST ACCOUNTS	p. 22
5011-1	Amendments to Information on File with the Commissioner	
5011-2	Books and Records Requirements	

5011-3	Trust Accounts or Escrow Accounts	
RULE 5012	PUBLIC INSPECTION OF RECORDS-EXCEPTIONS [RESERVED]	
RULE 5013	PROHIBITED ACTIVITIES	p. 28
5013-1	Advertising	
RULE 5014	PRACTICE AND PROCEDURE	p. 29
RULE 5014-1	SCOPE OF RULES	p. 29
5014-1.01	Location of the Office, Contact Information and Business Hours	
5014-1.01	Powers of the Commissioner	
RULE 5014-2	INVESTIGATIONS, PROCEEDINGS, AND HEARINGS	p. 31
5014-2.01	Investigations	
5014-2.02	Proceedings and Hearings	
RULE 5014-3	PLEADINGS AND PRACTICE	p. 33
5014-3.01	Pleadings Allowed	
5014-3.02	Form	
5014-3.03	Motions	
5014-3.04	Briefs	
5014-3.05	Computations of Time	
5014-3.06	Extensions of Time	
5014-3.07	Effect of Filing	
5014-3.08	Filing and Service	
5014-3.09	Submission of Information	
RULE 5014-4	HEARING PROCEDURES	p. 37
5014-4.01	Notice of Hearings	
5014-4.02	Rights of Witnesses	
5014-4.03	Notice to Interest Parties	
5014-4.04	Subpoenas	
5014-4.05	Hearing Location	
5014-4.06	Consolidation and Severance	
5014-4.07	Conduct of Hearing	
5014-4.08	Order of Proceedings	
5014-4.09	Failure to Request or Appear at a Hearing	
5014-4.10	Appearance, Practice, and Withdrawal before the Commissioner	
5014-4.11	Recording the Proceeding and Transcript Corrections	
5014-4.12	Evidence	
5014-4.13	Orders	
5014-4.14	Right to Appeal	
RULE 5014-5	CHALLENGE OF INFORMATION IN THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY	p. 44

RULE 5014-6	EXAMINATIONS	p. 45
RULE 5014-7	LICENSURE OF INDIVIDUALS	p. 45
RULE 5015	REVIEW OF ORDER OF THE COMMISSIONER – [RESERVED]	
RULE 5016	CRIMINAL PENALTY – [RESERVED]	
RULE 5017	TRANSITION – [RESERVED]	
RULE 5018	COOPERATION WITH OTHER REGULATORY AGENCIES – [RESERVED]	

RULE 5001 TITLE.

These Rules shall be referred to as the Rules of the Fair Mortgage Lending Act.

RULE 5002 DEFINITIONS.

When the terms listed below are used in the Fair Mortgage Lending Act, any rules or forms promulgated under the Fair Mortgage Lending Act, or any order of the Commissioner under the Fair Mortgage Lending Act, the following definitions shall apply, unless a contrary definition is expressly provided or clearly required by the context, to the extent that they do not conflict with the definitions set forth in the Fair Mortgage Lending Act.

(1) **Act** means the Fair Mortgage Lending Act, Ark. Code Ann. § 23-39-501 et seq., as the same may be codified and amended from time to time.

(2) **Affiliate** means a person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with such person.

(3) **Annual Report** means a report submitted by the licensee to the Commissioner, containing information regarding the licensee's business activities.

(4) **APA** means the Arkansas Administrative Procedures Act ("APA"), as amended, codified at Ark. Code Ann. §§ 25-15-201 through 25-15-~~217~~219.

(5) **Application** means the form prescribed by the Commissioner for filing in connection with obtaining a license as a mortgage broker, mortgage banker, mortgage servicer, or loan officer, and including all amendments, papers, documents, and exhibits incidental thereto.

(6) **Commissioner** means the Arkansas Securities Commissioner and includes the Commissioner's designees.

(7) **Compensation or Gain** means direct or indirect remuneration, benefit, or ~~an increase in something~~ anything having value received or expected to be received.

(8) ~~**Continuing education program** means education program approved pursuant to Rule 5007 of these Rules.~~

~~(9)~~ **Department** means the Arkansas Securities Department.

~~(10) **Instructor** means an individual who is employed by a provider and who is responsible for teaching a continuing education program.~~

~~(11)~~ (9) **Lender** means the secured creditor or creditors named in the debt obligation and document creating the mortgage loan.

~~(12)~~(10) **Loan Application** or **Mortgage Loan Application** means the form(s) or document(s) used to apply for a mortgage loan that provides the essential financial and personal information about a borrower on which a lender will base the decision to lend money.

~~(13)~~(11) **Loan Modification** means a permanent change in one or more of the terms of an existing mortgage, deed of trust, or equivalent security instrument while the existing promissory note and the mortgage or deed of trust will remain intact.

~~(14)~~(12) **NMLS&R** means the Nationwide Mortgage Licensing System and Registry means the automated mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage brokers, mortgage bankers, mortgage servicers, or loan officers.

~~(15)~~(13) **Pleadings** means all forms of petitions, requests, complaints, answers, responses, replies, proposals, requests, notices, applications, briefs, and filings of any nature that are placed before the Commissioner.

~~(16)~~(14) **Provider** means a person that offers approved continuing education programs under these Rules.

~~(17)~~(15) **Staff** means the Staff of the Arkansas Securities Department.

RULE 5003 LICENSE REQUIRED – LICENSEE RECORDS.

Rule 5003-1 ~~[RESERVED]~~SOLICITING OR ACCEPTING OR OFFERING TO SOLICIT OR ACCEPT AN APPLICATION FOR A MORTGAGE LOAN

(a) Under the definition of a loan officer, sections 23-39-502(11)(A)(i) and (ii) of the Act, and under the definition of mortgage broker, sections 23-39-502(15)(A) and (B) of the Act, a person may be considered to have solicited or accepted; or offered to solicit or accept an application for a mortgage loan when the person engages in certain activities, and the person receives direct or indirect compensation or gain from a mortgage broker or mortgage banker. These activities include, but are not limited to the following:

(1) ~~Completing or~~ Materially assisting a borrower in completing, in whole or in part, an application for a mortgage loan, regardless of whether or not a mortgage loan is made;

(i) Materially assisting may include advising or counseling a borrower about the manner in which an application should be completed to facilitate approval of the mortgage loan, or advising or counseling a borrower about the desirability or suitability of available mortgage loan programs.

(ii) Materially assisting does not include communication of generic information related to the application process, such as the type of information necessary to complete an application form or a general description of the loan application process.

~~Acting as an agent of a lender;~~

(2) Recommending, referring, or steering a borrower to a specific lender based upon a duty to or incentive from the lender ~~the borrower's creditworthiness or other factors specific to the borrower~~;

(3) Holding oneself out as being a mortgage broker, or loan officer, or having knowledge or expertise in mortgage lending through advertising or promotional materials such as business cards, stationery, brochures, rate sheets, or other promotional items; and

(4) Holding oneself out as having knowledge or expertise in mortgage loans or mortgage loan modifications.

(b) A person will not be considered to have solicited or accepted or to have offered to solicit or accept an application for a mortgage loan, when the person receives no direct or indirect compensation or gain from a mortgage broker or mortgage banker and the person's activities are limited to the following:

(1) Informing a borrower that lenders are available to assist in a mortgage loan transaction;

(2) Making lender application materials available to a borrower;

(3) Informing a borrower that a lender has approved or denied the borrower's application; and

(4) Physically handling completed documents, transmitting completed documents, or delivering completed documents or correspondence to a lender on behalf of a borrower.

Rule 5003-2 NEGOTIATING OR OFFERING TO NEGOTIATE THE TERMS AND CONDITIONS OF A MORTGAGE LOAN

(a) Under the definition of a loan officer, section 23-39-502(11)(A)(iii) of the Act, and the definition of a mortgage broker, section 23-39-502(15)(C) of the Act, a person may be considered to have negotiated or offered to negotiate the terms or conditions of a mortgage loan when the person engages in certain activities, and the person receives direct or indirect compensation or gain from a mortgage broker or mortgage banker. ~~Those~~ These activities include, but are not limited to the following:

(1) Obtaining ~~financial information, including obtaining~~ a credit report or credit score, from the borrower or a third party to be used by a person in making a credit decision;

(2) Preparing a loan package in order to obtain a mortgage loan on behalf of the borrower;

(3) Advising or counseling a borrower on particular mortgage loan terms that have been made available to a borrower, including amount, payment period, payment amount, interest rates, credit related fees, financing costs or options;

(4) Negotiating the terms of a mortgage loan on behalf of a borrower with a lender; and

(5) Holding oneself out as having expertise in the mortgage lending industry.

(b) A person will not be considered to have negotiated or to have offered to negotiate the terms or conditions of a mortgage loan when the person receives no direct or indirect compensation or gain from a mortgage broker or mortgage banker and the person's activities are limited to the following:

(1) Explaining or describing the steps that a borrower would need to take in order to obtain a mortgage loan;

(2) Providing general explanations or descriptions such as mortgage loan terminology, financing options not specific to the borrower, or generic rate sheets;

(3) Discussing a borrower's ability to afford a home;

(4) Facilitating communication between a lender and a borrower regarding the terms, rates, or conditions of a mortgage loan, so long as the person refrains from advising, or counseling the borrower, or negotiating the terms, rates, or conditions of the mortgage loan; and

(5) Obtaining from a borrower the necessary signatures, photographic identification, and other information needed in the ordinary course of business for transmission to a lender.

Rule 5003-3 MISCELLANEOUS.

(a) Clerical or Administrative Tasks. "Clerical and administrative tasks" or "administrative or clerical tasks" as used in sections 23-39-502(9)(B)(i), (9)(B)(xvi) and (11)(B)(i) of the Act means ~~is a category of~~ activities generally associated with those traditionally performed by a clerk, administrative assistant, or secretary, including the keeping of books and records, handling of correspondence, transcription of documents, word processing, placing and receiving telephone calls, transmission and receipt of facsimiles, or other similar activities ~~performed at the direction of an executive officer or licensed loan officer~~. These terms may include: the receipt, collection, or distribution of information common with the processing or underwriting of a mortgage loan and communication with a customer or borrower to obtain the information necessary for the processing or underwriting of a mortgage loan to the extent that the activity and communication does not include soliciting, accepting, or negotiating terms and conditions of a mortgage loan. ~~A loan processor or employee that is subject to the supervision of a licensee and is solely engaged in clerical or administrative tasks is exempt from licensure as provided in sections 23-39-502(9)(B)(i) and 23-39-502(11)(B) of the Act. Those tasks may include keeping books and records, handling correspondence, transcribing documents, word processing, placing and receiving telephone calls, transmitting and receiving facsimiles, receiving, collecting, and distributing information common for the processing of a loan, provided that such tasks do not include offering or negotiating loan rates or terms, or counseling about loan rates or terms, or other similar activities.~~

(b) Attorney at Law. A licensed attorney who negotiates the terms of a mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client is exempt under section 23-39-502(9)(B)(xii) of the Act, unless the attorney receives compensation from a mortgage broker, a mortgage banker, mortgage servicer, or other loan officer or by any agent of such mortgage broker, mortgage banker, mortgage servicer, or other loan officer.

(c) Loan Modification.

(1) A person offering or negotiating loan modification services is, at a minimum, indirectly acting as a loan officer. Therefore, any person who directly or indirectly solicits, accepts, or negotiates; or offers or attempts to solicit, accept, or negotiate loan modifications for a borrower; and receives compensation or gain is required to be licensed as a loan officer.

(2) Any person who directly employs or supervises individuals who solicit, accept, or negotiate; or offer or attempt to solicit, accept, or negotiate loan modifications for compensation or gain ~~are~~ is required to be licensed as a mortgage broker~~s~~.

RULE 5004 RULEMAKING AUTHORITY.

Rule 5004-1 ADVISORY OPINIONS AND OTHER LEGAL INTERPRETATIONS.

The Commissioner or the Commissioner's designee may issue advisory opinions or other legal interpretations regarding the Act, these rules, or any other order issued under the Act or these Rules. Requests for written opinions or interpretations of the Act or these Rules shall be in writing. The request must meet the following qualifications:

(a) An original and one copy of each request.

(b) The specific section or subsection of the particular statute, rule, or order to which the request pertains must be indicated in the request.

(c) The names of each person and entity involved in the underlying facts. Requests relating to unnamed persons or entities, or to hypothetical situations, will not be answered.

(d) Requests should be limited to a particular situation involving the problem at hand and must not attempt to include every possible type of situation that may arise in the future. The facts and representations must be specific, not general.

(e) While it is essential that the request contain all facts necessary to reach a conclusion in the matter, the request should be concise and to the point.

(f) An indication why the requesting party thinks a problem exists, his own opinion in the matter, and the basis for the opinion.

(g) If the requesting party seeks confidential treatment, a separate letter requesting confidential treatment and stating the basis for confidential treatment must be submitted with the request for informal advice.

RULE 5005 QUALIFICATIONS FOR LICENSURE – ISSUANCE.

RULE 5005-1 APPLICATION.

(a) Each type of application shall be in a form provided by the NMLS&R and approved by the Commissioner. The application shall be accompanied by all information required by these Rules or the Act, and shall be verified by the oath of the applicant, and if applicable, a principal officer of the applicant or licensee.

(b) All licensing fees required by the Act shall be submitted with the application through NMLS&R.

(c) In addition to the documents and information required by these Rules the Commissioner may require additional information in order to enable the Commissioner to make the determinations required by the Act.

(d) Applications submitted without the required fees or which are missing material information shall not be approved by the Department but held for a period of sixty ~~(60)~~ calendar days after notice to the applicant directly from the Department or through NMLS&R, specifying the nature of the deficiency. If any such deficiency remains outstanding for more than sixty ~~(60)~~ days, the application may automatically be considered abandoned without further action by the Commissioner, and the applicant may be required to submit a new application and pay all fees associated with the subsequent new application.

(e) A loan officer applicant must be an employee as defined by section 23-39-502(8) of the Act, have completed the pre-licensing education as described in Rule 5005-5, and passed the written test as described in Rule 5005-6 prior to the submission of an application.

RULE 5005-2 QUALIFICATIONS FOR DOING BUSINESS.

(a) History.

(1) A loan officer applicant, partner, officer, director, any person occupying a similar status or performing similar functions, <u>any managing principal,</u> or any person directly or indirectly controlling a mortgage broker, mortgage banker, or mortgage servicer applicant, shall provide a residential history for ten years prior to the application.

(2) A loan officer applicant, partner, officer, director, any person occupying a similar status or performing similar functions, <u>any managing principal,</u> or any person directly or indirectly controlling a mortgage broker, mortgage banker, or mortgage servicer applicant, shall provide an employment history for the prior ten years prior to the application.

(3) A loan officer applicant, partner, officer, director, any person occupying a similar status or performing similar functions, <u>any managing principal,</u> or any person directly or indirectly controlling a mortgage broker, mortgage banker, or mortgage servicer applicant, shall supply the all criminal, civil, and administrative proceeding filed against the applicant.

(b) Financial Condition.

(1) A mortgage banker applicant or mortgage servicer applicant shall provide audited financial statements in accordance with section 23-39-505(g) of the Act.

(2) A mortgage broker applicant shall provide financial statements reflecting the financial condition of the applicant.

(3) A loan officer applicant shall submit an authorization for an independent credit report in accordance with section 23-39-505(b)(4)(B)(i).

RULE 5005-3 AFFILIATED BUSINESSES OR BENEFICIAL INTEREST.

(a) If an applicant or licensee has a beneficial interest in a company that provides a service related to or in connection with the real estate procurement, settlement, or the closing of a mortgage loan, that beneficial interest and the affiliated business must be disclosed to the Commissioner at the time of application. These services include, but are not limited to, the following:

(1) Real estate services~~,~~;
(2) Title searches;
(3) Title examinations;
(4) Title certificates;
(5) Title insurance;
(6) Services rendered by an attorney;
(7) Preparation of title documents;
(8) Property surveys;
(9) Credit reports
(10) Appraisals;
(11) Insurance;
(12) Home inspection services;
(13) Escrow handling;
(14) Underwriting or funding a loan;
(15) Closing or settlement; and
(16) Any other services which requires a borrower or seller to pay.

(b) Beneficial interest includes an ownership interest or the control of a company. Beneficial interest shall also include a situation in which the applicant or licensee receives a gain from the affiliated business that is outside the normal course of business transactions.

(c) Nothing herein shall be construed to prohibit or authorize the applicant or licensee from using the affiliated business to provide services to a consumer. It is the licensee's duty to obtain all necessary approvals, licenses, and permits, and to comply with all applicable state and federal legal and contractual requirements.

(d) Nothing herein is intended to authorize the charging or regaining of a fee or charge which may be prohibited under other federal or state law.

RULE 5005-4 BACKGROUND CHECKS.

In connection with each application for the issuance of a loan officer license under the Act, the Commissioner shall initiate a background check. The background check shall include:

(a) Fingerprints. The applicant shall submit fingerprints to the Commissioner via the NMLS&R for submission to the Federal Bureau of Investigations in such a form that they may be used to review the state, federal, and international criminal background of an applicant.

(b) Independent Credit Report. The applicant shall submit an authorization to the Commissioner via the NMLS&R to receive and review the applicant's credit report along with the application.

(1) Review of Credit Report. The determination to approve or deny an application shall not be solely based upon the credit report of an applicant. The credit report shall be used as a factor to determine the applicant's financial responsibility, character, and general fitness.

(2) For purposes of this subsection ~~a~~ disregard of the management of an applicant's own financial condition is an indicator that the applicant does not meet the financial responsibility, character, and general fitness provisions of the Act. A determination that an individual has not shown financial responsibility, character, and general fitness provisions of the Act may include, but is not limited to:

(i) Bankruptcies within the past five years filed by the applicant or any entity controlled by the applicant;

(ii) Current outstanding judgments, except judgments solely as a result of medical expenses;

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

(iv) Foreclosures within the past three years; or

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

(c) Criminal, Civil, or Administrative Proceedings. The applicant shall disclose all criminal, civil, or administrative proceedings in which the applicant is or has been involved.

(1) The information provided to the Commissioner, should include, but is not limited to; copies of all relevant court documents, disposition of the case if the proceeding is concluded, and a written statement disclosing the background and any pertinent facts regarding the proceeding.

(2) If the proceeding is an on-going proceeding, any relevant developments of the proceeding should be disclosed to the Department in accordance with Rule 5011-2 and section 23-39-511(d) of the Act.

(d) The applicant or licensee shall be responsible for any fees and costs necessary to comply with this Rule.

RULE 5005-5 PRE-LICENSING AND RE-LICENSING EDUCATION OF LOAN OFFICERS.

(a) Minimum Educational Requirements. In order to meet the pre-licensing education requirement of section 23-39-505(b)(3) of the Act, a person applying to be licensed as a loan officer under the Act shall complete at least twenty hours of education approved in accordance with subsection (b) of this section, which shall include at least:

(1) Three hours of federal law and regulations;

(2) Three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) Approved Educational Courses. For purposes of subsection (a) of this section, pre-licensing education courses shall be reviewed, and approved by the NMLS&R based upon reasonable standards. Review and approval of a pre-licensing education course shall include review and approval of the course provider.

(c) Approval of Employer and Affiliate Educational Courses. Nothing in this section shall preclude any pre-licensing education course, as approved by the NMLS&R that is provided by the employer of the applicant or an entity which is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such employer or entity.

(d) Venue of Education. Pre-licensing education may be offered either in a classroom, online, or by any other means approved by the NMLS&R.

(e) Reciprocity of Education. The pre-licensing education requirements approved by the NMLS&R in subsection (a) of this section for any state shall be accepted as credit toward the completion of pre-licensing education requirements in Arkansas.

(f) Re-licensing Education Requirements. A person previously licensed under this Act subsequent to the effective date of these Rules applying to be licensed again must prove that they have completed all of the education requirements as required by Rule 5007-1 and Rule 5018.

(g) The applicant or licensee shall be responsible for all fees and costs associated with this Rule.

RULE 5005-6 TESTING OF LOAN OFFICERS.

(a) In General. In order to meet the written test requirement of section 23-39-505(b)(3) of the Act, an individual applying to be a loan officer licensed under this Act shall pass, in accordance with the standards established under this subsection, a qualified written national test developed by the NMLS&R, and a qualified written state test developed by the Commissioner. Both the national test and the state test shall be administered by a test provider approved by the NMLS&R based upon reasonable standards.

(b) Qualified Test. The qualified written tests for purposes of subsection (a) of this section shall adequately measure the applicant's knowledge and comprehension in appropriate subject areas, including:

(1) Ethics;

(2) Federal law and regulation pertaining to mortgage loan origination;

(3) State law and regulation pertaining to mortgage loan origination; and

(4) Federal and State law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage loan marketplace, and fair lending issues.

(c) Test Components. The national test and the state test may be combined into ~~to~~ one test, or broken in to two distinct components.

(d) Testing Location. Nothing in this section shall prohibit a test provider approved by the NMLS&R from providing a test at the location of the employer of the applicant, the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a loan officer.

(e) Minimum Competence.

(1) Passing Score. 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 percent correct answers to questions.

(2) Initial Retests. An individual may retake the national or state component of the written test three consecutive times with each consecutive testing occurring at least thirty days after the preceding test.

(3) Subsequent Retests. After failing three consecutive tests, an individual shall wait at least six months before taking the test again.

(f) Retests after Lapse of License. A licensed loan officer who fails to maintain a valid license for a period of two years or longer shall retake the national and state components of the test. If a loan officer maintains a valid license in another jurisdiction for this two year period, only the state portion of the test shall be taken.

(g) The applicant or licensee shall be responsible for all fees and costs associated with this Rule.

RULE 5005-7 OTHER EXPERIENCE OR COMPETENCY REQUIREMENTS.

(a) As used in the section 23-39-505(c) of the Act, a person shall be considered to have acquired "experience in mortgage lending" if:

(1) During any documented period that person's employment income was principally derived from employment in the banking, mortgage banking, mortgage brokerage industry, or real estate industry; or

(2) That person has passed either the Uniform Certified Public Accountants Exam, or a state bar exam; and that person remains in good standing.

(b) The Commissioner may use an applicant's educational background as a contributing factor for experience.

RULE 5005-8 SURETY BONDS.

(a) A surety bond, as required by section 23-39-505(f) of the Act, for a mortgage broker or mortgage banker shall be based on the aggregate amount of residential mortgage loans secured by Arkansas residential mortgage loans that the licensee accepted or originated, or both, in the preceding calendar year.

(b) A surety bond, as required by section 23-39-505(f) of the Act, for a mortgage servicer shall be based upon the aggregate amount of Arkansas residential

mortgage loans held in the mortgage servicer's portfolio during the preceding calendar year.

(c) A mortgage broker, mortgage banker, or mortgage servicer applicant shall post a surety bond in the amount of $100,000.

(d) The amount of the surety bond shall be:

(1) Mortgage Broker and Mortgage Banker.

(A) $100,000 Bond. If the aggregate amount of originated or funded mortgage loans which are secured by Arkansas residential real property was no more than $~~5,000,000~~ 10,000,000 during the prior calendar year, mortgage broker or mortgage banker licensees shall post a surety bond in the amount of $100,000.

(B) ~~$125,000 Bond. If the aggregate amount of originated or funded mortgage loans which are secured by Arkansas residential real property was greater than $5,000,000, but not more than $10,000,000, during the prior calendar year, mortgage broker or mortgage banker licensees shall post a surety bond in the amount of $125,000.~~

~~(C)~~ $150,000 Bond. If the aggregate amount of originated or funded mortgage loans which are secured by Arkansas residential real property was greater than $10,000,000, but not more than $25,000,000, during the prior calendar year, mortgage broker or mortgage banker licensees shall post a surety bond in the amount of $150,000.

~~(D)~~(C)$200,000 Bond. If the aggregate amount of originated or funded mortgage loans which are secured by Arkansas residential real property was greater than $25,000,000 during the prior calendar year, mortgage broker or mortgage banker licensees shall post a surety bond in the amount of $200,000.

(2) Mortgage Servicer.

(A) $100,000 Bond. If the aggregate amount of mortgage loans which are secured by Arkansas residential real property held in the mortgage servicer licensee's portfolio was no more than $~~5,000,000~~ 10,000,000 during the prior calendar year, mortgage servicer licensees shall post a surety bond in the amount of $100,000.

(B) ~~$125,000 Bond. If the aggregate amount of mortgage loans which are secured by Arkansas residential real property held in the mortgage servicer licensee's portfolio was more than $5,000,000, but not more than $10,000,000, during the prior calendar year, mortgage servicer licensees shall post a surety bond in the amount of $125,000.~~

~~(C)~~ $150,000 Bond. If the aggregate amount of mortgage loans which are secured by Arkansas residential real property held in the mortgage servicer licensee's portfolio was more than $10,000,000, but not more than $25,000,000, during the prior calendar year, mortgage servicer licensees shall post a surety bond in the amount of $150,000.

~~(D)~~(C) $200,000 Bond. If the aggregate amount of mortgage loans which are secured by Arkansas residential real property held in the mortgage servicer licensee's portfolio was more than $25,000,000 during the prior calendar year, mortgage servicer licensees shall post a surety bond in the amount of $200,000.

(e) If an increase in surety bond is required~~, in response to the annual report filing,~~ the surety bond must be increased by March 31~~, of the calendar year~~. Failure to maintain the proper surety bond amount shall be grounds for discipline under the Act.

(f) All licensees with surety bonds under section 23-39-505(f) of the Act must ensure that the full amount of the surety bond is in effect at all times. In the event of reduction of the bond, the licensee shall have thirty days to reinstate the bond to the level required by these Rules. Failure to maintain the surety bond at the level required in section 23-39-505(f) of the Act and these Rules shall be grounds for disciplinary action in accordance with the Act.

(g) All surety bonds under section 23-39-505(f) of the Act shall remain in effect for a minimum of five years after lapse or termination of coverage of the bond in order to satisfy possible claims for failure to faithfully fulfill obligations during the term of the bond.

(h) The surety bond must list the full name and any trade or doing-business-as names used by the licensee in Arkansas.

RULE 5005-9 NONTRANSFERABILITY OF A LICENSE.

(a) Any attempt to transfer or assign a license through a change of control without the prior consent of the Commissioner shall:

(1) Be ineffective and grounds for immediate revocation of such license;

(2) Be cause for imposition of a fine; ~~and~~

(3) Render the assignor licensee responsible for any and all actions or omissions of its assignee which occur while acting under the apparent authority of such license.

(b) A change in the identity of a licensee's control person or any material change in the licensee's organizational structure shall be considered a transfer or assignment of the license. However, the Commissioner shall authorize such change without requiring the licensee to apply for a new license, provided:

(1) The licensee gives notice to the Commissioner at least thirty days in advance of the effective date of the proposed change; and

(2) The Commissioner determines that permitting the licensee to continue to operate under its existing license would be consistent with the purposes of the Act.

(c) A notice pursuant to Subparagraph (b) of this Rule shall include sufficient detail to enable the Commissioner to make the determination described in that Subparagraph (b) of this Rule.

(d) The Commissioner may waive or reduce the advance notice requirement of Subparagraph (b)(1) of this Rule if circumstances beyond the licensee's reasonable control would make strict compliance therewith unduly burdensome to the licensee.

RULE 5006 LICENSE RENEWAL-TERMINATION.

RULE 5006-1 LICENSE RENEWAL.

(a) A licensee may renew a license through the NMLS&R automatic licensing system between November 1 and December 31 of <u>the</u> calendar ~~the~~ year by:

(1) Submitting a completed application for renewal in a form provided by the NMLS&R and approved by the Commissioner. The application shall be accompanied by all information required by section 23-39-506(a) of the Act or these Rules and shall be verified by the oath of the licensee, and if applicable, a principal officer of the licensee;

(2) All licensing fees required by the Act shall be submitted with the application, though NMLS&R;

(3) Submitting proof that the loan officer licensee remains eligible under the licensing qualifications of section 23-39-505(o) of the Act;

(4) Submitting proof that the loan officer licensee has completed all necessary continuing education requirements for the upcoming year~~;~~.

(5) Submitting proof that a mortgage broker, mortgage banker, or mortgage servicer's surety bond is still in effect; and

(6) Providing financial statements of a mortgage banker or mortgage servicer licensee within ninety days of the fiscal year end of the mortgage banker of mortgage servicer.

(b) If the renewal application is not received by December 31~~, of the calendar year~~, the license shall expire in accordance with section 23-39-505(j) of the Act.

(c) A renewal application will be accepted by the Department for fifteen days after December 31, so long as the late fee of one hundred ($100) dollars is submitted with the renewal application.

(1) The renewed license will not cover the period from the date the license expired until the date of the license renewal is approved; and

(2) The licensee may not conduct any activity after the license has expired and until the license has been renewed by the Department any activity will be deemed unlicensed activity and will be treated as a violation of the Act and Rules.

(d) If the licensee does not file a renewal application during the renewal period, or before the end of the late renewal period, the licensee shall be required to file a new application and shall comply with all licensing requirements of a new licensee, where applicable.

(e) The Commissioner may require a loan officer to re-submit fingerprints or authorization for an independent credit report at the time of renewal.

RULE 5006-2 ~~ANNUAL REPORTING REQUIREMENTS.~~[Reserved]

~~(a) A mortgage broker or mortgage banker licensed at anytime in Arkansas during the reporting period shall file a report containing information regarding the mortgage activity in Arkansas. The annual report shall be filed on a form provided by NMLS&R, and approved by the Commissioner.~~

~~(1) The annual report must be filed with the Commissioner by March 31 of each year.~~

~~(2) The reporting period is the calendar year immediately preceding the year in which the report is due.~~

~~(3) In addition, the Commissioner may require the annual report to be supplemented with additional information about operations, characteristics of loans made, or other similar composite data if the Commissioner determines that this additional information is necessary in order to protect the interests of the borrowing public.~~

~~(b) A mortgage servicer licensed anytime during the reporting period shall file a report containing information regarding the loans in the portfolio of the mortgage servicer. The annual report shall be filed on a form provided by NMLS&R, and approved by the Commissioner.~~

~~(1) The annual report must be filed with the Commissioner by March 31 of each year.~~

~~(2) The reporting period is the calendar year immediately preceding the year in which the report is due.~~

~~(c) The annual report required by this Rule shall be verified by the oath of the licensee or a principal officer thereof.~~

~~(d) Failure of a licensee to submit an annual report in the manner required by this Rule shall be grounds for discipline pursuant to the Act.~~

~~(e) For purposes of this section, in order to reduce points of contact, the Commissioner authorizes the NMLS&R to collect and distribute the annual report information, unless additional information is requested by the Commissioner.~~

RULE 5007 CONTINUING EDUCATION.

RULE 5007-1 CONTINUING EDUCATION FOR LOAN OFFICERS.

(a) In General. In order to meet the annual continuing education requirements of section 23-39-507 of the Act, each calendar year a licensed loan officer shall complete at least eight hours of education that is approved in accordance with subsection (b) of this section, which shall include at least:

(1) Three hours of Federal law and regulations;

(2) Two hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace~~;~~.

(b) Approved Educational Courses. For purposes of subsection (a) of this section, continuing education courses shall be reviewed, and approved by the NMLS&R based upon reasonable standards.

(c) Approved Educational Providers. For purposes of subsection (a) of this section, continuing education providers shall be reviewed, and approved by the NMLS&R based upon reasonable standards.

(d) Approval of Employer and Affiliate Educational Courses. Nothing in this section shall preclude any education course, as approved by the NMLS&R, which is provided by the employer of the loan officer or an entity which is affiliated with the loan officer by an agency contract, or any subsidiary or affiliate of such employer or entity.

(e) Venue of Education. Continuing education may be offered either in a classroom, online or by any other means approved by the NMLS&R.

(f) Calculation of Continuing Education Credits.

(1) Except for subsections (g) and (h) of this section, a licensed loan officer may only receive credit for a continuing education course in the year in which the course is taken; and

(2) A licensed loan officer may not take the same approved course in the same or following year to meet the annual requirements for continuing education.

(g) Instructor Credit. A licensed loan officer who is an approved instructor of an approved continuing education course may receive credit for the licensed loan officer's own annual continuing education requirement at the rate of two hours credit for every one hour taught.

(h) Reciprocity of Education. A person having successfully completed the education requirements approved by the NMLS&R in subsections (a)(1), (2) and (3) of this section for any state shall be accepted as credit towards completion of continuing education requirements in Arkansas.

(i) Completion Date. Continuing education shall be completed prior to submission of the renewal application, but in any event, prior to the end of the calendar year.

(j) Lapse in License. A licensed loan officer who subsequently becomes unlicensed must complete the continuing education requirements for the last year in which the license was held prior to issuance of a new license.

(k) Extension of Continuing Education. Upon written request and receipt of an extension fee of fifty dollars, the Commissioner may allow an extension of up to

thirty days beyond December 31 of the present calendar year in order to allow a loan officer to obtain continuing education hours and meet the requirements of these Rules.

(l) Failure to Complete. Failure to comply the continuing education requirement of section 23-39-507 and this Rule may result in disciplinary action in accordance with ~~as defined by~~ the Act.

RULE 5008 MANAGING PRINCIPALS AND BRANCH MANAGERS.

RULE 5008-1 SUPERVISION.

(a) Each licensee shall be supervised by the managing principal and branch manager to insure compliance with the Act and these Rules.

(b) The managing principal or branch manager of the licensee shall:

(1) Establish, maintain, and enforce written procedures of the licensee. The procedures shall be reasonably designed to achieve compliance with applicable federal and state laws and rules;

(2) Provide a copy of the procedures to each loan officer employed by the licensee; and

(3) Establish procedures for handling consumer complaints.

RULE 5009 OFFICES-ADDRESS CHANGES-LOCATIONS OF RECORDS.

[RESERVED]

RULE 5010 LICENSEE DUTIES.

RULE 5010-1 SERVICING.

(a) New loans. Payment instructions shall be issued in time to reasonably assure receipt by the customer at least fifteen days before the first payment is due and shall include, but not limited to the following:

(1) The name, address, and telephone number of the entity to which payments are to be made as well as the name of the person to whom inquiries should be directed. Such telephone numbers shall be toll free to the customer;

(2) The exact amount of the monthly payment including a breakdown of the principle and interest, any escrow amounts, if applicable, and an

explanation of the method of calculation that a reasonable person can understand; and

(3) A clear and conspicuous statement as to the monthly due date of each payment, regardless of the interval between the due date and assessment of any late payment penalty.

(b) Payment Processing. A licensee shall make a good faith effort to process and properly credit to a mortgage loan account any payment from a customer on the same calendar date the payment is physically delivered, either in person or via the United States Mail, at the address designated by the licensee for payments.

(c) Notice of Transfer. A mortgage servicing licensee transferring the mortgage servicing rights under a mortgage loan shall give the customer of said loan written notice of the transfer of servicing rights at least fifteen days before the first payment affected by the transfer is due. The notice shall include, but not limited to the following:

(1) The name, address, and telephone number of the entity to which payments are to be made as well as the name of the person to whom inquiries should be directed. Such telephone numbers shall be toll free to the customer;

(2) The exact amount of the monthly payment including a breakdown of the principle and interest, any escrow amounts, if applicable, and an explanation of the method of the calculation that a reasonable person can understand; and

(3) A clear and conspicuous statement as to the monthly due date of each payment, regardless of the interval between the due date and assessment of any late payment penalty.

RULE 5010-2 FINANCIAL PRIVACY.

(a) A licensee shall institute and utilize all reasonably necessary and prudent procedures and measures to protect a loan applicant's or borrower's financial information and social security number. Any unauthorized disclosure or breach of a loan applicant's or borrower's financial information or social security number shall be reported by the licensee from whom the information was obtained to the Commissioner within two business days following the date on which the licensee either discovered or, in the exercise of reasonable diligence, should have discovered the unauthorized disclosure or breach. The licensee shall use reasonable diligence to notify the applicant or borrower and all other affected persons of the unauthorized disclosure or breach within a reasonable time following the disclosure or breach.

(b) Upon a licensee's discovery of a breach of the security of their system as defined in Arkansas Code Section 4-110-103(1), the licensee shall immediately provide to the Commissioner a copy of any notification which the licensee is required to give under the Arkansas Personal Information Protection Act, located at Arkansas Code Sections 4-110-101 through 4-110-108.

RULE 5010-3 REPORTING REQUIREMENTS

(a) A mortgage broker or mortgage banker licensed at anytime in Arkansas during the reporting period shall file a quarterly report containing information regarding the mortgage activity in Arkansas. The quarterly report shall be filed on a form provided by NMLS&R, and approved by the Commissioner.

(1) The quarterly report must be filed with the Commissioner no later than 45 days from the end of every calendar quarter.

(2) The reporting period is the calendar quarter immediately preceding the calendar quarter in which the report is due.

(3) In addition, the Commissioner may require the quarterly report to be supplemented with additional information about operations, characteristics of loans made, or other similar composite data if the Commissioner determines that this additional information is necessary in order to protect the interests of the borrowing public.

(b) A mortgage servicer licensed anytime during the reporting period shall file a quarterly report containing information regarding the loans in the portfolio of the mortgage servicer. The quarterly report shall be filed on a form provided by NMLS&R, and approved by the Commissioner.

(1) The quarterly report must be filed with the Commissioner no later than 45 days from the end of every calendar quarter.

(2) The reporting period is the calendar quarter immediately preceding the calendar quarter in which the report is due.

(3) In addition, the Commissioner may require the quarterly report to be supplemented with additional information about operations, characteristics of loan services, or other similar composite data if the Commissioner determines that this additional information is necessary in order to protect the interests of the borrowing public.

(c) The quarterly report required by this Rule shall be verified by the oath of the licensee or a principal officer thereof.

(d) Failure of a licensee to submit a quarterly report in the manner required by this Rule shall be grounds for discipline pursuant to the Act.

(e) For purposes of this section, in order to reduce points of contact, the Commissioner authorizes the NMLS&R to collect and distribute the quarterly report information, unless additional information is requested by the Commissioner.

(f) The Commissioner may require a supplemental report detailing the aggregate amount of Arkansas mortgage loans accepted, originated, or serviced in the prior calendar year, as required by Rule 5005-8, if no report is available through the NMLS&R system.

RULE 5011 RECORDS-ESCROW FUNDS OR TRUST ACCOUNTS.

RULE 5011-1 AMENDMENTS TO INFORMATION ON FILE WITH THE COMMISSIONER.

(a) A licensee shall notify the Commissioner, within thirty days of any material change in any document or information previously submitted to the Commissioner during the application process, upon renewal, upon filing of the annual report, or otherwise filed with the Commissioner. For purposes above, a material change includes, but is not limited to:

(1) Notice of a pending administrative action by any state or federal authority to which the licensee is subject;

(2) An administrative order by any state or federal authority to which the licensee is subject;

(3) Notice of a pending criminal charge against a person licensed under the Act ~~this statute~~ for actions related to financial services;

(4) A conviction or other plea agreement on a criminal charge against a person licensed under this statute for actions related to financial services;

(5) Criminal felony indictment, arraignment or conviction of a licensee or any of a licensee's officers, directors, principal stockholders, or affiliates; ~~or~~

(6) Suspension or termination of the licensee's status as an approved seller or seller/servicer by the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Government National Mortgage Association, or suspension or termination of the licensee’s status as a loan correspondent or direct endorsement mortgagee by Federal Housing Administration;

(7) Initiation of trustee process, bankruptcy filing, or any other form of attachment on any of the Licensee's assets;

(8) Notice in the event of a drop below the $25,000 net worth requirement of a mortgage banker or mortgage servicer; or

(9) Any change in the beneficial interest of a licensee as defined by Rule 5005-3;.

(b) Notification shall be deemed accomplished by submission of revised pages of the data submitted through the NMLS&R or by letter to the Commissioner, if applicable.

RULE 5011-2 BOOKS AND RECORDS REQUIREMENTS.

(a) Record Availability. In addition to any state or federal laws and rules, or other requirements regarding records, each licensee shall maintain books, records, and documents sufficient to allow the Commissioner to determine the licensee's compliance with the Act and these Rules.

(1) The licensee shall maintain all records required by this Rule for at least five years.

(A) Records may be kept in an electronic format that is convertible into legible, tangible documents, provided that the means to examine such records is acceptable to the Commissioner, is available at the office of the licensee, and the hardware and software needed to access the records is maintained during the retention period.

(B) Records shall be made available to the Commissioner immediately upon request, or within seventy-two hours after notice to the licensee if the records are not readily available.

(2) All records required by this Rule shall be available for inspection and copying at the expense of the licensee upon request by the Commissioner;.

(3) All records required to be maintained shall be secured against unauthorized access and damage.

(4) All records required to be maintained shall at all times be true, accurate and complete to the best of the knowledge, information and belief of the licensee and its agents.

(5) A licensee shall notify the Commissioner, through the NMLS&R of any change in the location of its books and records within thirty days following such change.

(b) Required Books and Records.

(1) A licensed mortgage broker and mortgage banker shall maintain a list of all mortgage loan applications or executed fee agreements. The list should include:

(A) The loan applicant's name;

(B) The date of the loan application;

(C) The amount of the loan;

(D) The property address;

(E) The purpose of the loan;

(F) The final disposition of the loan application (whether funded, denied, etc.) and the date of such disposition;

(G) The name of the entity that funded the loan, if that entity differs from the licensee;

(H) The name of each loan officer or employee, including any employee processing the application or offering the fee agreement, who receives compensation other than such person's normal hourly wages as a result of the funding of the loan; and

(I) Broker fees collected.

(2) A mortgage broker shall maintain a file for each mortgage loan application containing:

(A) A copy of any agreement with the borrower concerning the licensee's services;

(B) A document showing the final disposition of the application, such as a Form HUD 1, other settlement statement or denial or withdrawal letter;

(C) All material correspondence sent or received by the licensee to or from the borrower or any agent of the borrower;

(D) A copy of the initial loan application and the final loan application that is signed and dated by the loan applicant and the loan officer;

(E) All contracts, agreements, and escrow instructions to or with any depository institution, to the extent applicable when used by a mortgage broker to table fund a mortgage loan; and

(F) The initial and final documents showing compliance with the Consumer Credit Protection Act disclosure requirements (15 U.S.C. §§ 1601 *et seq.*,) and the Real Estate Settlement Procedures Act disclosure requirements (12 U.S.C. §§ 2601 *et seq.*,).

(3) A mortgage banker shall maintain a file for each mortgage loan containing the information required by Rule 5011-2(b)(2) in addition to the following information:

(A) A copy of all closing documents including the closing instructions, any applicable rescission notice, Form HUD-1, other settlement statement, final truth-in-lending disclosure, executed note, executed deed of trust or mortgage, and each assignment of beneficial interest by the licensee to the extent applicable; and

(B) A copy of the each appraisal obtained in connection with the mortgage loan, whether or not the loan actually closed.

(4) A mortgage servicer shall maintain a file for each Arkansas mortgage loan serviced containing:

(A) The borrower's name;

(B) The property address;

(C) The original loan amount;

(D) The original lender;

(E) The loan number;

(F) A copy of the servicing letter to the borrower;

(G) The current loan balance;

(H) The amount of the monthly payment, including a breakdown of the principal and interest payments;

(I) The taxes and insurance escrowed;

(J) The payment history;

(K) Any additional fees collected on the loan; and

(L) A copy of the year end notice sent to the borrower~~;~~.

(c) Required Accounting Records:

(1) A record of all money received in connection with each mortgage loan containing:

(A) The payor's name;

(B) The date received;

(C) The amount; and

(D) The purpose of the receipt including identification of each mortgage loan. The records shall include bank statements, cancelled checks, and a monthly reconciliation of all accounts, including, but not limited to, operating accounts and escrow accounts.

(2) A sequential listing of checks written for each bank account relating to the licensee's business as a mortgage loan broker, mortgage loan banker, or mortgage loan servicer containing:

(A) The payee's name;

(B) The amount;

(C) The date; and

(D) The purpose of the payment including identification of the related mortgage loan, if applicable.

(3) A copy of the receipts and invoices for all third party transactions or pre-paid fees relating to the mortgage loan transactions.

(d) Miscellaneous Books and Records:

(1) A copy of all advertisements used by the licensee in Arkansas that sets forth any rates or terms of a mortgage loan.

(2) A copy of all federal or state governmental or regulatory reviews or examination reports.

(3) If the licensee is not a natural person, a file containing:

(A) A copy of the organizational documents for the licensee with any amendments thereto;

(B) All minutes of meetings of directors, shareholders, partners, or similar parties;

(C) If the licensee is a non-public company, a record, such as a stock or ownership transfer ledger, showing ownership of all proportional equity interests in the licensee, ascertainable as of any given record date; and

(D) All Franchise Tax Reports or Annual Reports required by law to be filed with the Arkansas Secretary of State.

(4) A copy of each broker agreement or independent contractor agreement that has been entered into with an investor or organization that funds the loans~~;~~.

(5) A copy of each employment agreement or independent contractor agreement that has been entered into with each loan officer licensed under the licensee.

(6) A file containing copies of all complaint letters or correspondence received containing all complaints made against the licensee, its loan officers, employees, or agents by borrowers, loan applicants, lenders, or any other person. In addition to the home office of the licensee, each branch office shall maintain this complaint file for all complaints involving all business conducted through the branch or by loan officers operating under the supervision of the branch.

(7) A balance sheet and income statement prepared in accordance with generally accepted accounting principles reflecting that the licensee's net worth. If the licensee is a mortgage banker or mortgage servicer, the net worth should reflect at least twenty-five thousand ($25,000) dollars.

(e) All of the books and records set forth in Rule 5011-2 shall be kept current on at least a monthly basis, except those set forth in subparagraph (d)(7) which shall be prepared and kept current on at least a quarterly basis;

RULE 5011-3 TRUST ACCOUNTS OR ESCROW ACCOUNTS.

(a) The escrow account(s) shall contain only those funds collected from loan applicants or borrowers.

(b) The licensee shall maintain complete and accurate escrow account records. The licensee shall produce, upon request, all documents pertaining to escrow account

activity, including, but not limited to: bank statements, check stubs, cancelled, voided or unused checks, deposit tickets, and reconciliations or other comparable account records.

(c) No person licensed under the Act shall commingle money collected for fees from clients with its own funds or use any part of a client's money in the conduct of the licensee's business.

(d) A licensee shall notify the Commissioner immediately of any shortage or improper withdraw from an escrow account.

RULE 5012 PUBLIC INSPECTION OF RECORDS-EXCEPTIONS.

[RESERVED]

RULE 5013 PROHIBITED ACTIVITIES.

RULE 5013-1 ADVERTISING.

(a) An advertisement includes any printed or published material, or descriptive literature concerning a mortgage loan to be solicited, processed, negotiated, or funded by a licensee or exempt entity whether disseminated by direct mail, newspaper, magazine, radio or television broadcast, electronic mail, or other electronic means, billboard, or similar display.

(b) Advertisement does not include any disclosures, program descriptions, or other materials prepared or authorized by any state or federal government agency, nor shall such term include any material or communication which has been excluded for purposes of any regulation of the Board of Governors of the Federal Reserve System regulating consumer credit disclosures.

(c) An advertisement will be found to have violated Section 23-39-513(7) of the Act, if the licensee engages in:

(1) Advertising that states that mortgage loans will be made within a specified time after the mortgage loan application is received;

(2) Advertising that makes claims that cannot reasonably be fulfilled or supported;

(3) Advertising that indicates that mortgage loans are available to borrowers ~~buyers~~ with “previous bankruptcy”, “no credit”, “bad credit”, or similar language, unless the advertisement clearly explains any limitations that apply, or states that “certain limitations apply, call for details”. In any written advertisement, the actual limitations or warnings must appear in a font no smaller than an 8 font;

(4) Advertising that may indicate or imply that interest rates or charges for loans are in any way "recommended", "approved", "set", or "established" by the Department or Act;

(5) Advertising with envelopes or stationery that contain an official-looking emblem designed to resemble a government mailing or that suggest an affiliation that does not exist and is used in such a way as to mislead the recipient to believe that the advertisement is from a state or federal government agency~~;~~.

(6) Advertising that uses the borrower's current loan information shall be deemed misleading unless the advertisement includes a statement that the advertiser is not affiliated with the borrower's lender or mortgage banker~~.~~; and

(7) Any other advertising that is misleading or deceptive.

RULE 5014 PRACTICE AND PROCEDURE.

RULE 5014-1 SCOPE OF RULES.

(a) Chapter 5014 of these Rules applies in all investigations, proceedings, and rule-making conducted by the Department. The purpose of Chapter 5014 is to provide guidance and direction in the procedures used by the Department to formulate orders and conduct investigations and proceedings. In connection with any particular matter, reference should also be made to any special requirements of procedure and practice that may be contained in the particular statute involved or the rules and forms adopted by the Commissioner thereunder, or any relevant laws of the State of Arkansas, which special requirements are controlling.

(b) Rule 5014 should be read in conjunction with the APA.

RULE 5014-1.01 LOCATION OF THE OFFICE, CONTACT INFORMATION AND BUSINESS HOURS.

All communication and inquiries shall be delivered to:

(a) Arkansas Securities Department, 201 East Markham, Heritage West Building, Suite 300, Little Rock, Arkansas 72201.

(b) The general information number for the Department is (501) 324-9260, or the toll free number is (800) 981-4429. The fax number for the Department is (501) 324-9268.

(c) The Department's website is located at http://www.securities.arkansas.gov.

(d) The business hours of the Department are 8:00 a.m. to 4:30 p.m. each day except for Saturdays, Sundays, and legally declared state holidays.

(e) Copies of documents filed and recorded in the office of the Commissioner will be provided at a charge of ten cents per page. Certified copies will be provided at an additional charge of one dollar per document.

RULE 5014-1.02 POWERS OF THE COMMISSIONER.

The Commissioner shall have all the powers necessary to conduct investigations and proceedings in a fair and impartial manner and to avoid unnecessary delay. The powers of the Commissioner include, but are not limited to, the following:

(a) Administer oaths and affirmations;

(b) Subpoena witnesses, documents, or records;

(c) Permit discovery by deposition or otherwise;

(d) Preside over a hearing or designate a hearing officer to preside over a hearing;

(e) Maintain order by regulating the course of the hearing and the conduct of the parties and their attorney, including the power to receive relevant and material evidence, to exclude repetitious evidence, rule upon the admissibility of evidence and offers of proof, and exclude or suspend a party's attorney from the proceedings for dilatory, obstructionist, egregious, contemptuous, or contumacious conduct;

(f) Schedule and hold prehearing conferences and conferences prior to and during the course of a hearing for purposes of settlement or simplification of issues;

(g) Consider and rule upon all procedural and other pleadings and motions appropriate in a proceeding, including petitions to add a party or intervenor;

(h) Recuse for bias or conflict of interest himself or herself on a motion made by a party and appointing a new hearing officer in his place;

(i) Take such action as the circumstances warrant against a person who engages in dilatory or obstructionist conduct during the course of a deposition, including exclusion of the offending person from participation in the deposition or contested case; <u>and</u>

(j) Perform all other functions necessary and appropriate to discharge the duties of Commissioner.

RULE 5014-2 INVESTIGATIONS, PROCEEDINGS, AND HEARINGS.

Rule 5014-2.01 INVESTIGATIONS.

(a) Investigations conducted pursuant to Section 23-39-514 of the Act are not hearings, either formal or informal, as that term is used in this Rule.

(b) Upon sufficient evidence, the Commissioner shall enter an order directing an investigation and appointing investigative officers from the Staff.

(c) Any person compelled to appear, or who appears by his own request in person at any investigation proceeding may be accompanied, represented and advised by counsel.

(d) The right to be accompanied, represented, and advised by an attorney mean the right of a person testifying to have an attorney present during any investigative proceeding and to have an attorney advise such person before, during, and after the conclusion of such examination; question such person briefly at the conclusion of the examination to clarify any of the answers such person has given; and make summary notes during such examination solely for the use of such person.

RULE 5014-2.02 PROCEEDINGS AND HEARINGS.

(a) Governing Law and Procedure. All formal hearings before the Commissioner shall be in accordance with the provisions of the Act, the APA and these Rules.

(b) Commencement of a Proceeding. The filing of a pleading, other than a request for subpoena or a request for an order directing investigation and designating officers pursuant to Section 23-39-514(g)~~(f)~~ of the Act, by the Staff with the Commissioner shall be deemed to be the institution of a proceeding. The entering of a summary order postponing or suspending a license shall be deemed to be the institution of a proceeding as well.

(c) Types of Hearings. The Department shall engage in two forms of hearings:

(1) Informal hearings or conferences. Informal hearings or conferences conducted on an informal basis, at the direction of the Commissioner or by mutual consent of the parties, may be held in person at a specified time and place or with the Commissioner by telephone. Informal hearings or conferences may be held, upon reasonable notice to all parties, prior to or subsequent to a scheduled formal hearing, or in circumstances where no pleading was issued and no formal hearing has yet been scheduled, or during a recess of the formal hearing. Issues that may be determined at an informal hearing or conference include the following:

(A) Clarification or simplification of the issues as to pleadings filed;

(B) Exchange of witness and exhibit lists and copies of exhibits;

(C) Stipulations, admissions of fact, as well as the contents, authenticity, and admissibility of documents into evidence;

(D) Matters of which official notice may be taken;

(E) Issues relating to witnesses and exhibits;

(F) Summary disposition of any and all issues;

(G) Resolution of document production issues or disputes;

(H) Amendments to pleadings;

(I) Need for formal action by the Department;

(J) Possibility of settlement among parties; and

(K) Such other matters the Commissioner determines to be within the scope of such an informal hearing or conference.

(2) Formal Hearings.

(A) Parties. The parties to the proceedings before the Commissioner shall be styled Staff, applicants, licensees, petitioners, intervenors, complaintants, or respondents, etc., according to the nature of the proceedings and relationship of the parties thereto.

(B) Liberal Construction. All pleadings shall be liberally construed with a view to effect justice between the parties, and the Commissioner will at every stage of any proceeding disregard errors or difficulties in the pleadings which do not affect materially the substantive rights of the parties involved.

(C) Pre-Hearing Orders. At or within a reasonable time following the conclusion of a scheduling conference or any pre-hearing conference, the Commissioner may serve on each party an order setting forth any agreements reached and any procedural determinations made. If the Commissioner has ordered a party to disclose all witnesses or exhibits, no witness may testify and no exhibit may be introduced at the hearing if such witness or exhibit was not disclosed pursuant to such order, unless the Commissioner allows a party the sufficient time to prepare in the light of the undisclosed witness or exhibit.

(D) Informal Discussions. Following any discussion among the Commissioner, the parties, and the Staff addressing any issues in a contested case that occur during a hearing recess, the Commissioner shall place the substance of the communication on the record including any action taken and any agreements made by the parties as to any matters that were discussed.

RULE 5014-3 PLEADINGS AND PRACTICE.

RULE 5014-3.01 PLEADINGS ALLOWED.

Pleadings shall include all forms of petitions, requests, complaints, answers, responses, replies, proposals, notices, applications, briefs, and filings of any nature that are placed before the Commissioner.

RULE 5014-3.02 FORM.

The form to be followed in the filing of pleadings pursuant to these Rules will vary to the extent necessary to provide for the nature of the legal rights, duties, or privileges involved therein. Except as otherwise provided by law or the Commissioner otherwise determines, the pleadings shall include the following:

(a) A statement setting forth clearly and concisely the authorization or other relief sought, as well as:

(1) The exact legal name of each person seeking authorization or relief and the address or principal place of business for each such person, unless the pleading is filed by the Department. If any applicant, petitioner, respondent, or movant is a corporation, limited liability company, partnership, trust, association, or other organized group, it shall also specify the state under which it was created or organized;

(2) The name, title, address, and telephone number of the attorney to whom the correspondence or communication in regard to the pleading is to be addressed. Notices, orders, and other papers may be served upon the person so named and such service shall be deemed to be service on the petitioner, respondent, or applicant;

(3) A concise and explicit statement of the facts on which the Commissioner is expected to rely in granting the authorization or other relief sought; and

(4) An explanation of any unusual circumstances involved in the pleading to which the Commissioner will be expected to direct particular attention, including the existence of emergency conditions or any request for the

granting of interlocutory relief by way of an interim order during the pendency of the pleading.

(b) Any exhibits, sworn written testimony, data, models, illustrations, or other materials that the applicant, petitioner, respondent, or movant deems necessary or desirable to support the granting of the pleading or that any statute or regulation may require for the lawful determination of the pleading.

(c) All documents, whenever practicable, shall be printed, typewritten, or reproduced on one side of the paper only, and double-spaced with a normal margin on all four sides. All pleadings shall be on paper 8 ½ by 11 inches in size.

(d) The venue as "Before the Arkansas Securities Commissioner," the title of the proceedings, the case number assigned, and an appropriate designation of the pleading.

RULE 5014-3.03 MOTIONS.

(a) All requests for relief will be by motion. Motions must be in writing or orally if made on the record during a hearing, unless the Commissioner directs that such motion be reduced to writing.

(b) A motion must fully state the relief sought and the grounds relied upon. It may be accompanied by a proposed order. Written memoranda, briefs, affidavits or other relevant materials or documents may be filed in support of or in opposition to a motion.

(c) The original written motion will be filed with the Commissioner. There shall be an original and two copies of each pleading and each exhibit.

(d) A response to a motion must be filed by a party within ten days of the date of service of a written motion. This time may be extended as permitted by the Commissioner for good cause shown.

(e) No oral arguments may be held on written motions except as otherwise directed by the Commissioner.

(f) The Commissioner shall not rule on any oral or written motion before each party has had an opportunity to respond. The failure of a party to oppose a motion is deemed consent by that party to the entry of an order granting the relief sought.

(g) The Commissioner or his designee as hearing officer may conduct such proceedings and enter such orders as are deemed necessary to address issues raised by the motion. However, a hearing officer, other than the Commissioner, will not enter a dispositive order unless expressly authorized in writing to do so.

(h) Upon written request from a Respondent made no less than ten days prior to a scheduled hearing, the following information shall be provided:

(1) The names and addresses of persons whom the Staff intends to call as witnesses at any hearing;

(2) Any written or recorded statements and the substance of any oral statements made by the license holder, or a copy of the same;

(3) Any reports or statements of experts made in connection with the particular case, including results of physical or mental examinations, scientific tests, experiments, or comparisons, or copies of the same;

(4) Any books, papers, documents, photographs, or tangible objects which the Staff intends to use in any hearing or which were obtained from or belong to the license holder, or copies of the same; and

(5) Disclosure shall not be required of research or records, correspondence, reports, or memoranda to the extent that they contain the opinions, theories, or conclusions of the Staff or members of the legal Staff or other state agents of the Staff.

RULE 5014-3.04 BRIEFS.

Briefs may be filed by a party or interested non-party either before or during the course of a hearing or within such time as the Commissioner designates. Failure to file a brief shall in no way prejudice the rights of any party. The order of filing briefs or reply briefs shall be designated by Commissioner. A party may request an extension of the briefing schedule set by the Commissioner prior to the due date. Late briefs may be considered by the Commissioner at his discretion.

RULE 5014-3.05 COMPUTATIONS OF TIME.

In computing any period of time prescribed or allowed by the Act or these rules, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legally declared state holiday. When the period of time prescribed or allowed is less than ten days, intermediate Saturdays, Sundays, and legally declared state holidays shall be excluded in the computation.

RULE 5014-3.06 EXTENSIONS OF TIME.

(a) Except as otherwise provided by law, the Commissioner may, for good cause shown, extend any time limit prescribed or allowed by the Act, these Rules, or by any notice or order issued in a contested case, hearing, or other proceeding.

(b) In determining whether to grant an extension of time, the Commissioner may consider:

(1) Prior continuances or extensions of time;

(2) The interests of all parties;

(3) The likelihood of informal settlements;

(4) The existence of an emergency;

(5) Any objection;

(6) Any applicable time requirement;

(7) The existence of a conflict of the schedules of attorneys, parties, or witnesses;

(8) The time limits of the request; and

(9) Other relevant factors.

(c) Any party may request an extension of time via a motion. The Commissioner may grant an extension of time once notice and opportunity to respond is afforded to all parties. The Commissioner may grant extensions of time on his own motion.

(d) Requests for extensions of time, other than motions for continuances, must be made as soon as practicable and, except in cases of emergencies, no later than five days prior to the date noticed for the hearing. The Commissioner may require documentation of any grounds for extensions.

RULE 5014-3.07 EFFECT OF FILING.

The filing with the Commissioner of any pleadings, requests for no action or interpretive opinions, or any other document shall not relieve any person of the obligation to comply with any statute, rule, or order of the Commissioner. Acceptance of such filing by the Commissioner shall not constitute a waiver of any failure to comply with the Act or these Rules. Where appropriate, the Commissioner may require the amendment of any filing.

RULE 5014-3.08 FILING AND SERVICE.

(a) Any pleading filed by the Staff or notice of hearing summary order issued by the Commissioner for the purpose of commencing a proceeding shall be served on each respondent by personal service, registered or certified mail, or any express delivery service which provides a written confirmation of delivery.

(b) Following the date of commencement of a proceeding, all pleadings may be filed with the Commissioner via United States Mail or hand- delivery.

(c) Pleading filed with the Commissioner shall reflect the parties upon whom the pleading was served.

(d) A copy of every pleading filed with the Commissioner by a party shall be served upon the attorney of record for every other party and upon any person appearing *pro se*.

(e) Written interrogatories, requests for production, and other discovery requests shall not be filed with the Commissioner, but shall be served by the party making the discovery request upon the attorney of record for every other party and upon any person appearing *pro se*.

RULE 5014-3.09 SUBMISSION OF INFORMATION.

Any information filed or submitted to the Department in connection with an application or otherwise given voluntarily to the Department may, where competent and relevant, be used in any criminal prosecutions under the Act or other laws of the State of Arkansas or other jurisdiction.

RULE 5014-4 HEARING PROCEDURES.

RULE 5014-4.01 NOTICE OF HEARINGS.

(a) A notice of hearing shall be served upon each party. This may be by hand delivery or United States Mail within a reasonable amount of time prior to the hearing. For purposes of this Rule, service of a notice of hearing by the Commissioner upon any licensee may be by United States Mail to the business address of the licensee.

(b) The notice of hearing will include:

(1) A statement of the time, place, and nature of the hearing;

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) The name(s) of the respondents; and

(4) A short and plain statement of the matters of fact and law asserted.

(c) The Commissioner may in his discretion amend the notice of hearing at any stage of a proceeding provided that the parties are provided reasonable notice of the

amendment and allowed sufficient time to prepare their case in light of the amendment.

RULE 5014-4.02 RIGHTS OF WITNESSES.

Any person who appears and testifies in a deposition, under oath, or in a contested case may be accompanied, represented, and advised by an attorney. The right to be accompanied, represented, and advised by an attorney means the right of a person testifying to have an attorney present at all times while testifying and to have an attorney:

(a) Advise the person before and after conclusion of the testimony;

(b) Question the person briefly at the conclusion of testimony to clarify any of the answers given; and

(c) Make summary notes during the testimony solely for the use of the person.

RULE 5014-4.03 NOTICE TO INTERESTED PARTIES.

If it appears that the determination of the rights of parties in a proceeding will necessarily involve a determination of the substantial interests of persons who are not parties, the Commissioner may enter an order requiring that an absent person be notified of the proceeding and be given an opportunity to be joined as a party of record.

RULE 5014-4.04 SUBPOENAS.

(a) At the request of any party, the Commissioner shall issue subpoenas for the attendance of witnesses at a hearing. The requesting party shall specify whether the witness is also requested to bring documents and reasonably identify said documents.

(b) A subpoena for appearance may be served via certified mail or by personal service by any person specified by law to serve process or by any person who is not a party and who is eighteen years of age or older. Delivering a copy to the person named in the subpoena shall make service. Proof of service may be made by affidavit of the person making service. The party seeking the subpoena shall have the burden of obtaining service of the process and shall be charged with the responsibility of tendering appropriate mileage fees and witness fees pursuant to Rule 45, Arkansas Rules of Civil Procedure. The witness must be served a reasonable time prior to the hearing.

(c) Any motion to quash or limit the subpoena shall be filed with the Commissioner and shall state the grounds relied upon.

RULE 5014-4.05 HEARING LOCATION.

Unless the Commissioner designates a different location, all hearings shall be held at the offices of the Department.

RULE 5014-4.06 CONSOLIDATION AND SEVERANCE.

(a) The Commissioner may, for good cause, upon the Commissioner's own motion or upon motion by a party, consolidate separate matters that involve related questions of law or fact, or identical parties if it appears that consolidation would promote a just, speedy, and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a party.

(b) The Commissioner may, for good cause, upon the Commissioner's own motion or upon motion by a party, sever the proceeding for separate resolution of the matter as to any party or issue. In determining whether to sever the proceeding, the Commissioner shall consider whether any undue prejudice or injustice would result from not severing the proceeding outweighs the interests of judicial economy and expeditiousness in the complete and final resolution of the proceeding.

RULE 5014-4.07 CONDUCT OF HEARING.

(a) The Commissioner presides at the hearing and may rule on motions, require briefs, and issue such orders as will ensure the orderly conduct of the proceedings; provided, however, any hearing officer other than the Commissioner shall not enter a dispositive order or proposed decision unless expressly authorized in writing to do so.

(b) All objections must be made in a timely manner and stated on the record.

(c) Parties have the right to participate or to be represented by an attorney in hearings or prehearing conferences related to their case.

(d) Subject to the terms and conditions prescribed by the APA, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses as necessary for a full and true disclosure of the facts, present evidence in rebuttal, engage in oral argument, and, upon request, may submit briefs.

(e) The Commissioner is charged with maintaining the decorum of the hearing and may refuse to admit, or may expel, anyone whose conduct is disorderly.

RULE 5014-4.08 ORDER OF PROCEEDINGS.

The Commissioner will conduct the hearing in the following manner:

(a) The Commissioner will give an opening statement, briefly describing the nature of the proceedings.

(b) The parties are to be given the opportunity to present opening statements~~;~~.

(c) The parties will be allowed to present their cases in the sequence determined by the presiding officer.

(d) Each witness must be sworn or affirmed by the Commissioner, or the court reporter, and be subject to examination and cross-examination as well as questioning by the Commissioner. The Commissioner may limit questioning in a manner consistent with the law.

(e) When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

(f) The Commissioner may, at any time prior to the rendering of a final decision, reopen the hearing upon the motion of the Commissioner or any party for good cause shown. The parties shall be notified of the reopening and the hearing shall be convened not less than ten days after the sending of such notice unless waived by the parties and the Staff.

RULE 5014-4.09 FAILURE TO REQUEST OR APPEAR AT A HEARING.

(a) When a party fails to request a hearing within the time specified in the cease and desist order or other administrative order, the allegations against the party may be deemed admitted.

(b) If a party fails to appear or participate in an administrative adjudication after proper service of notice, the Staff may proceed with the hearing and the Commissioner may render a decision in the absence of the party. The allegations against the party may be deemed admitted. Without further proceedings or notice to the party, the Commissioner shall issue a final decision. The Commissioner may, if deemed necessary, receive evidence from the Staff, as part of the record, concerning the appropriateness of the amount of any civil penalty sought in the request.

RULE 5014-4.10 APPEARANCE, PRACTICE, AND WITHDRAWAL BEFORE THE COMMISSIONER.

~~(g)~~ (a) Any party appearing in any proceeding has the right, at the party's own expense, to be represented by an attorney. The attorney must be duly admitted to practice law in the State of Arkansas and in good standing with the bar of the State of Arkansas. The Commissioner, at his discretion, may require any attorney who desires to represent a person before the Commissioner to first file with the Commissioner a written declaration that he is currently qualified and is authorized to represent the particular party in whose behalf he acts. Attorneys in good standing from other jurisdictions may request and, for good cause shown, be

allowed to appear in a contested case, provided an attorney admitted to practice in Arkansas is present during the entire proceeding, signs all pleadings and other papers filed in the proceeding and agrees to take full responsibility for supervising the conduct of the attorney.

~~(h)~~ (b) Any party may appear on his or her own behalf in a contested case. Other duly authorized individuals include a partner, member, or manager of a partnership or limited liability company may appear and represent the partnership or limited liability company; and a duly authorized officer, director, or employee of any agency, institution, corporation, or authority may appear and represent the agency, institution, corporation, or authority.

~~(i)~~ (c) Any party acting pro se shall so notify the Commissioner in writing. The notice of appearance shall include accurate contact information.

~~(j)~~ (d) Service on the attorney of record is the equivalent of service on the party represented.

~~(k)~~ (e) After a notice of appearance is filed by a party or attorney, copies of all subsequent pleadings shall be provided to the person named in the notice of appearance and the person designated to represent the Staff.

RULE 5014-4.11 RECORDING THE PROCEEDING AND TRANSCRIPT CORRECTIONS.

(a) The responsibility to record the testimony heard at a hearing is borne by the Department. Any party may request a copy of the transcript from the court reporter and such copy shall be made available to any party upon payment of the cost of the transcript.

(b) The Commissioner shall have the authority to order the transcript corrected upon a motion to correct, upon stipulation of the parties, or upon the Commissioner's own motion following notice to the parties. The Commissioner may call for the submission of proposed corrections and may order the corrections at appropriate times during the course of the proceedings. Corrections in the official transcript may be made only to make it conform to the evidence presented at the hearing. Transcript corrections may be incorporated into the record at any time during the hearing or after the close of evidence, but not more than thirty days from the date of receipt of the transcript by the Commissioner.

RULE 5014-4.12 EVIDENCE.

(a) The Commissioner shall rule on the admissibility of evidence and may, when appropriate, take official notice of facts and generally recognized technical or scientific facts.

(b) Stipulation of facts is encouraged. Parties may stipulate as to relevant matters of fact or the authentication of relevant documents that may be entered as evidence at the commencement of or during the hearing. The Commissioner may make a decision based on stipulated facts.

(c) A party seeking admission of an exhibit must provide four copies of each exhibit at the hearing. The Commissioner must provide the opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. All exhibits admitted into evidence must be appropriately marked and be made part of the record.

(d) Formal exceptions to rulings on evidence and procedure are unnecessary. It is sufficient that a party, at the time an evidentiary ruling is sought, makes known to the Commissioner the objections to such action and the grounds for such objection. The objection, the ruling on the objection, and the reasons for the ruling will be noted in the record. Failure to object to the admission of evidence or any ruling constitutes a waiver of the objection. The Commissioner may rule on the objection at the time it is made or may reserve the ruling until the written decision.

(e) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded or rejected oral testimony will briefly provide a summarized statement of the testimony. If the excluded evidence consists of a document, record, or written form, a copy of such evidence shall be marked as part of an offer of proof and inserted in the record.

(f) Irrelevant, immaterial, and unduly repetitive evidence will be excluded. Any other oral or documentary evidence, not privileged, may be received if it is of a type commonly relied upon by reasonably prudent people in the conduct of their affairs.

(g) The Commissioner may base the finding of facts upon reasonable inferences derived from evidence received. During the hearing the finder of fact shall have the authority to employ the Staff's experience, technical competence, and specialized knowledge in evaluating the evidence presented at the hearing for the purpose of making findings of fact and arriving at a decision in any contested case.

(h) At any stage of the hearing, the Commissioner may call for further evidence upon any issue and require that such evidence be produced by the relevant party, or may authorize any party to file specific documentary evidence as part of the record, either at the hearing or within a specified time, provided every party shall be afforded a reasonable opportunity to review and rebut or object to such evidence.

RULE 5014-4.13 ORDERS.

(a) All decisions and orders of the Commissioner concluding a proceeding shall be in writing and served on all parties.

(1) The order will include a recitation of facts found based on testimony, other evidence presented, and reasonable inferences derived from the evidence pertinent to the issues of the case. It will also state conclusions of law and directives or other disposition entered against or in favor of the respondent.

(2) The order will be served personally or by mail on the parties. If respondent is represented by an attorney, service of the order on respondent's attorney shall be deemed service on the respondent.

(b) Summary Order. In addition to the procedures set forth in Rule 5014-2.02, Rule 5014-4.01, Rule 5014-4.10, and 5014-4.13~~4~~(a) the Commissioner may issue a summary order:

(1) Whether a person is an applicant, licensee, or other person, to cease and desist from an act or practice or apply directly to a court of competent jurisdiction for such relief as the Commissioner deems appropriate pursuant to Sections 23-39-514(e)~~(d)~~ and 23-39-514(m)~~(l)~~ of the Act:

(A) If it is in the public interest; and

(B) The Commissioner deems it necessary.

(2) To postpone the approval of a license for an applicant or suspend the license of a licensee, if the Staff learns that an applicant or licensee has failed to comply with the Act or Rules.

(A) If such a summary order is entered, the Commissioner must promptly notify the applicant or licensee (as well as the employer or prospective employer, if applicable). Notification or service shall by United States Mail.

(B) The summary order remains in effect pending final determination of a proceeding to deny or revoke the application as a result of a hearing.

(C) The date for a hearing on a summary order shall be set no more than fifteen days after receipt of a written request to hold such a hearing; if no hearing is requested, the summary order will remain in effect until modified or vacated by the Commissioner.

(D) A summary order entered prior to a hearing can be used to postpone or suspend applications or license. Revocation can occur only after the filing of a pleading and notice of hearing.

(c) Amended Orders. All orders may be vacated or modified if conditions change or it is otherwise in the public interest to do so. Such modifications will be evidenced by an Amended Order.

(d) Nothing shall prohibit or restrict informal disposition of a pleading or order by stipulation, settlement, consent, or default in lieu of a formal or informal hearing on the matter or in lieu of sanctions imposed. An order shall be entered if administrative proceedings have been instituted or a pleading has been filed. All orders shall be public.

RULE 5014-4.14 RIGHT TO APPEAL.

A person who is aggrieved by the final decision of the Commissioner may seek judicial review of the decision in accordance with the provisions of Section 23-39-515 of the Act.

RULE 5014-5 CHALLENGE OF INFORMATION IN THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.

(a) Subject to any state or federal privacy laws, the Commissioner shall report regularly on the NMLS&R, any enforcement actions against a licensee or any person found to be in violation of the Act, as well as any other relevant information.

(b) The information reported to the NMLS&R may be challenged by filing a written complaint to the Commissioner.

(c) A complaint shall be deemed filed with the Commissioner upon receipt of the complaint by the Commissioner.

RULE 5014-6 EXAMINATIONS.

(a) Control Access to Records. In making any examination authorized by this Act, the Commissioner may control access to any documents and records of the licensee or person under examination. The Commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the commissioner. Unless the Commissioner has reasonable grounds to believe the documents or records of the licensee have been, or are at risk of being altered or destroyed for purposes of concealing a violation of this Act, the licensee or owner

of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

(b) In order to carry out the purposes of this Rule, the Commissioner may:

(1) Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

(2) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information or evidence obtained under this section;

(3) Use, hire, contract, or employ public or privately available analytical systems, methods or software to examine or investigate the licensee, individual or person subject to the Act;

(4) Accept and rely on examination or investigation reports made by other government officials, within or without this state; or

(5) Accept audit reports made by an independent certified public accountant for the licensee or person subject to this Act.

RULE 5014-7 LICENSURE OF INDIVIDUALS

RULE 5014-7.01 LOAN OFFICER, MORTGAGE BROKER, MORTGAGE BANKER, OR MORTGAGE SERVICER

(a) A licensee may agree in writing to allow the Commissioner or the Staff additional time after withdrawal becomes effective in which to investigate or examine facts or mortgage loan activities thus extending the time limitation in which a suspension or revocation proceeding can be instituted.

(b) When the Staff or the Commissioner learns, through examination or otherwise, of an applicant's or licensee's possible failure to comply with the Act or Rules or when it is determined that the applicant or licensee might be subject to one of the provisions set forth in Section 23-39-514(a) of the Act or a cancellation of registration pursuant to Section 23-39-514(d) of the Act, the Staff shall notify such applicant or licensee of the alleged violation or action and set a period of time in which the applicant or licensee must show compliance. If the applicant's or licensee's response to the Staff's letter is deemed not to show compliance with the Act or Rules or shows the applicant or licensee to be subject to Section 23-39-514(d) of the Act, a pleading may be filed by the Staff with the Commissioner asking that the matter be set for a hearing. The sending of such a letter shall not

be deemed to be the institution of a proceeding.

(c) If the Staff files a pleading with the Commissioner or the Commissioner summarily suspends or postpones a license, the applicant or licensee (as well as the employer or prospective employer if the applicant or licensee is a loan officer) shall be promptly served with a copy of the pleading or order.

(d) If the Commissioner issues an order which imposes a suspension, revocation, or cancellation of the license of a person or bars that person from further association with any licensee, the licensee shall not allow that person to remain associated with it in any capacity whatsoever, including clerical or ministerial functions. When an individual is suspended, a licensee, in addition to the above, shall not pay or credit any salary, commission, profit, or other remuneration which results directly or indirectly from any mortgage loan activity which that individual might have earned during the period of suspension.

~~Rule~~ RULE 5015 REVIEW OF ORDER OF THE COMMISSIONER.

[RESERVED]

~~Rule~~ RULE 5016 CRIMINAL PENALTY.

[RESERVED]

~~Rule~~ RULE 5017 TRANSITION.

[RESERVED]

~~Rule~~ RULE 5018 COOPERATION WITH OTHER REGULATORY AGENCIES.

[RESERVED]

~~(a) Effective January 1, 2010, the continuing education regulations promulgated in these Rules will become effective.~~

~~(b) Effective July 31, 2010, every new loan officer applicant applying for a license under the Act, shall have completed all necessary licensing requirements of the Act, and these Rules, as follows:~~

~~(1) Complete the pre-licensing education requirement as of section 23-39-505(b)(3) of the Act and Rule 5005-5;~~

~~(2) Satisfy the written test requirement of by section 23-39-505(b)(3) of the Act and Rule 5005-6;~~

~~(3) Provide fingerprints as required by section 23-39-505(b)(4)(A) of the Act and Rule 5005-4; and~~

~~(4) Provide authorization to obtain an independent credit report as required by section 23-39-505(b)(4)(A) of the Act and Rule 5005-4.~~

~~(c) Upon surrender or termination of a loan officer license on or after July 31, 2010, prior to the issuance of a new license, the applicant shall have completed all necessary licensing requirements of the Act, and these Rules, as follows:~~

~~(1) Complete the pre-licensing education requirement as of section 23-39-505(b)(3) of the Act and Rule 5005-5;~~

~~(2) Satisfy the written test requirement of by section 23-39-505(b)(3) of the Act and Rule 5005-6;~~

~~(3) Provide fingerprints as required by section 23-39-505(b)(4)(A) of the Act and Rule 5005-4; and~~

~~(4) Provide authorization to obtain an independent credit report as required by section 23-39-505(b)(4)(A) of the Act and Rule 5005-4.~~

~~(d) On or before November 1, 2010, every loan officer licensed under the Act shall have completed all necessary licensing requirements of the Act, and these Rules, as follows:~~

~~(1) Complete the pre-licensing education requirement as of section 23-39-505(b)(3) of the Act and Rule 5005-5;~~

~~(2) Satisfy the written test requirement of by section 23-39-505(b)(3) of the Act and Rule 5005-6;~~

~~(3) Provide fingerprints as required by section 23-39-505(b)(4)(A) of the Act and Rule 5005-4; and~~

~~(4) Provide authorization to obtain an independent credit report as required by section 23-39-505(b)(4)(A) of the Act and Rule 5005-4.~~