

Marked-Up Version
Proposed

Amendments to the following Rules of the Fair Mortgage Lending Act (“Rules”):

- 5002 Definitions - NMLS&R
- 5003-1 License Required - Licensee Records - Soliciting or Accepting or Offering to Solicit or Accept an Application for a Mortgage Loan
- 5003-3 License Required - Licensee Records - Miscellaneous
- 5005-8 Qualifications for Licensure - Issuance - Surety Bonds
- 5010-1 Licensee Duties - Servicing
- 5011-2 Records - Escrow Funds or Trust Accounts- Books and Records Requirements
- 5013-1 Prohibited Activities - Advertising
- 5014-1.01 Practice and Procedure - Location of the Office, Contact Information, and Business Hours

Proposed amendments to the Rules, shown with strike-through and underline marks, are as follows:

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.

...

- (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~~ and loan officers.

RULE 5003 LICENSE REQUIRED – LICENSEE RECORDS.

Rule 5003-1 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) 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.
- (2) Recommending, referring, or steering a borrower to a specific lender based upon a duty to or incentive from the lender;
- (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; and
- (5) Referring a consumer to a loan officer or mortgage broker.

...

Rule 5003-3 MISCELLANEOUS.

...

~~(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.~~

RULE 5005 QUALIFICATIONS FOR LICENSURE – ISSUANCE.

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~~ real property that the licensee accepted or originated, or both, in the preceding calendar year.

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) Any notice required under federal law or regulation;

~~(2)~~(3) 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 a schedule of the ranges and categories of the mortgage servicer's costs and fees for its servicing-related activities;

~~(3)~~(4) 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; and

(5) A notice in the form and content acceptable to the Department that the mortgage servicer is licensed in Arkansas and that complaints about the mortgage servicer may be submitted to the Department

- (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 electronic transfer, 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) Any notice required under federal law or regulation;

~~(2)~~(3) 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 a schedule of the ranges and categories of the mortgage servicer's costs and fees for its servicing-related activities;

~~(3)~~(4) 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; and

(5) A notice in the form and content acceptable to the Department that the mortgage servicer is licensed in Arkansas and that complaints about the mortgage servicer may be submitted to the Department.

RULE 5011 RECORDS-ESCROW FUNDS OR TRUST ACCOUNTS.

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 are in a format that is compatible with the electronic examination software and is in a form 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 and NMLS number 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; and
 - (J) A record of all monies received from a borrower for fees to be paid to third parties for services in connection with the loan.
 - (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) Any other document on which the licensee relied in underwriting the loan;
 - ~~(D)~~(E) 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)~~(F) 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)~~(G) 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 name and NMLS license number for the original lender that originated the loan;

- ~~(D)~~(E) The loan number;
- ~~(E)~~(F) A copy of the servicing letter to the borrower;
- ~~(F)~~(G) The current loan balance;
- ~~(G)~~(H) The amount of the monthly payment, including a breakdown of the principal and interest payments;
- ~~(H)~~(I) The taxes and insurance escrowed;
- ~~(I)~~(J) The payment history;
- ~~(J)~~(K) Any additional fees collected on the loan; ~~and~~

(L) Optional insurance:

- (1) Insurance information regarding optional insurance coverage purchased by the borrower in connection with the loan, including the amount charged, the types of coverage, and written authorization from the borrower for each type of coverage;
- (2) This does not apply to hazard insurance on the property securing the loan;

(M) A copy of all notices sent to the borrower related to any foreclosure proceeding filed against the property securing the loan;

(N) A record of the final disposition of the loan, including a copy of any collateral release document, record of a servicing transfer, charge-off, or REO disposition;

~~(L)~~(O) 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.
 - (8) A copy of the licensee's Anti-Money Laundering Program including policy and procedures and proof of training of the Anti-Money Laundering Program with all employees.
- (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 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 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:
 - (i) 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; ~~or~~
 - (ii) that the product is or relates to a government benefit, or is endorsed, sponsored by, or affiliated with any government or other program;
- (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; or mortgage servicer;~~ ~~and~~
- ~~(7) Advertising that indicates the consumer’s ability or likelihood to obtain a refinancing or modification of any mortgage credit product or term, including but not limited to misrepresentations concerning whether the consumer has been preapproved or guaranteed for any such refinancing or modification;~~
- ~~(8) Advertising that indicates the consumer’s ability or likelihood to obtain any mortgage credit product or term, including but not limited to misrepresentations concerning whether the consumer has been preapproved or guaranteed for any such product or term;~~
- ~~(9) Any other advertising that is misleading or deceptive.~~

RULE 5014 PRACTICE AND PROCEDURE.

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.~~