

NOTICES OF EMERGENCY RULEMAKING

Under the Administrative Procedure Act, an agency may determine that adoption, amendment, or repeal of a rule is necessary for immediate preservation of the public health, safety, or welfare and the notice and public participation requirements are impracticable. Under this determination, the agency may adopt the rule as an emergency and submit it to the Attorney General for review. The Attorney General approves the rule and then files it with the Secretary of State. The rule remains in effect for 180 days. An emergency rule may be renewed for one 180-day period if the requirements of A.R.S. § 41-1026 are met. If the emergency rule is not renewed or the rule is not permanently adopted by the end of the 180-day period, the emergency rule expires and the text of the rule returns to its former language, if any.

NOTICE OF EMERGENCY RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 4. DEPARTMENT OF FINANCIAL INSTITUTIONS

Editor's note: The following Notice of Emergency Rulemaking was reviewed per Laws 2009, 3rd Special Session, Ch. 7, § 28 (page 855) and the Governor's Regulatory Review Plan memorandum, January 22, 2009 and the continuations issued April 30, June 29 and October 16, 2009 (15 A.A.R. 241, January 23, 2009; 15 A.A.R. 735, May 1, 2009; 15 A.A.R. 1130, July 3, 2009; and 15 A.A.R. 1759, October 23, 2009; respectively.) The Governor's Office authorized the notice to proceed through the rulemaking process on April 1, 2009.

[R10-50]

PREAMBLE

1. Sections Affected

Article 13
R20-4-1301
R20-4-1302
R20-4-1303
R20-4-1304
R20-4-1305

Rulemaking Action

New Article
New Section
New Section
New Section
New Section
New Section

2. The specific statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 6-123(2)

Implementing statute: A.R.S. §§ 6-126, 6-991.01, 6-991.02, 6-991.03, 6-991.04, 6-991.07

3. The effective date of the rules:

April 27, 2010

The rules shall become legally effective immediately, on the date the Attorney General's office files them with the Secretary of State's office. Here is the context and reasoning for requiring that these new rules must be effective as soon as the Attorney General approves them.

Public Peace, Health, and Safety. This rulemaking is compelled by this state's enactment of HB 2143 in this year's 49th Legislature's First Regular Session (2009). That Arizona legislation amended and modernized the scheme put in place by A.R.S. §§ 6-991 through 6-991.08 that were passed in 2008 during the 48th Legislature's Second Regular Session as SB 1028. Those statutes are an expression of the legislature's determination that regulation of loan originators is necessary to the public peace, health, and safety of both the Arizona mortgage lending industry and of Arizona consumers. A.R.S. § 41-1032(A)(1).

The statutes require the Department of Financial Institutions ("DFI") to license, supervise, and regulate 5,000 to 8,000 loan originators who practice their occupation in Arizona. The effective date of HB 2143 is October 1, 2009. Its compliance date, by which loan originators must be licensed, is July 1, 2010. HB 2143, Section 5, amending A.R.S. § 6-991.02.

While Arizona's legislation intended to license loan originators has passed, there are no administrative rules in place to clarify and implement the new statutes. These emergency rules will establish fees, pre-licensure education requirements, pre-licensure testing standards, education standards that are necessary to fulfill the statutory mandate to regulate loan originators, and will implement financial responsibility standards established in HB 2143. DFI is concerned that, without an immediate effective date, it will be unable to collect fees for license applications or will be forced to

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process thousands of applications in a very short period of time. Any resulting backlog may prevent qualified applicants from timely receiving their license.

The time needed to adequately protect the public peace, health, and safety. Each of these new Sections proposed as emergency rules is part of the system for licensing loan originators required by state legislation. Given the procedures mandated by Arizona's Administrative Procedure Act, and the administrative rules of G.R.R.C. and the Office of the Secretary of State for a "regular rulemaking," these rules cannot be legally effective in time for DFI to begin collecting fees and accepting license applications in time to meet the July 1, 2010 deadline if they are processed as "regular" rules. In fact, for the sake of feasibility, these emergency rules must be in place on the statutes' effective date of October 1, 2009. For that reason, the rules are being proposed as an emergency and they require an immediate effective date. They are necessary to preserve the public peace, health, or safety. A.R.S. § 41-1032(A)(1)

4. Is this rulemaking a renewal of a previous emergency rulemaking?

No

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

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6. An explanation of the rules, including the agency's reasons for initiating the rules:

On July 7, 2008, Governor Napolitano signed SB 1028 enacting amendments to existing statutes and adding Title 6, Chapter 9, Article 4 of A.R.S. (A.R.S. §§ 6-991 through 6-991.08) creating the licensed profession of loan originator. The provisions of HB 2143 enlarge upon those statutes, and harmonize them with the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 U.S.C. 5101 through 5116, "the S.A.F.E Act"). The new state statutes recite that the fees specified in these new Sections shall be determined by the Superintendent. New Section R20-4-1304 fulfills that mandate.

The rest of the new Sections establish critical elements of the licensing program authorized by SB 1028 and revised by HB 2143. R20-4-1301 states the scope of the new Article of rules for the program.

R20-4-1302 outlines the pre-licensure course of study loan originators must complete to be licensed.

R20-4-1303 details the specifics of the statutory financial responsibility requirements that begin with the original application for a license.

Finally, R20-4-1305 describes the licensing program's education requirements, clarifying the details of the statutory mandate for pre-licensure education.

7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. A summary of the economic, small business, and consumer impact:

A. The Department of Financial Institutions

Benefit: The Department will realize no immediate economic benefit from this rulemaking. Licensing fees collected under the present statutory scheme accrue to the Financial Services Fund, established by HB 2143, Section 12, adding A.R.S. § 6-991.21. Under that provision, at a point in the future the Department will realize the benefit of those funds when sums are appropriated by the legislature for use in supervising and regulating loan originators. That future, contingent benefit arises not under these rules but as a result of possible legislative appropriations. The Department expects to realize an indirect economic benefit from these rules because they will facilitate communication with licensees and applicants about how to satisfy the demands of the new licensing program.

Cost: The Department will incur administrative and overhead costs to collect, account for, and remit the licensing and other fees. Likewise, the Department will incur costs to operate the licensing program including evaluating applications and other submissions, as well as documentation of loan originators' pre-licensure education units.

B. Other Public Agencies

There are no known costs or benefits to other public agencies.

C. Private Persons and Businesses Directly Affected

Benefit: Loan originators will benefit from this rulemaking because it establishes licensing fees, allowed by the provisions of state law and HB 2143 to be determined by the Superintendent. They will also benefit from the rules' detailed information about the qualifications for licensure.

The state's real estate and mortgage lending education and training providers will benefit from the demand for their services created by the new program. They will also have the benefit of the rules' detailed information about what training and education will be required for loan originators.

Cost: Loan originators will bear the cost of licensing fees that have not been previously required. Loan originators are required by law to be employed by licensed mortgage brokers, mortgage bankers, or consumer lenders. The employer has the option of paying the loan originators' licensing fees.

D. Consumers

Benefit: Arizona consumers will benefit from trained, educated, accountable, licensed, and regulated loan originators.

Cost: There is a possibility that some mortgage lenders will pay the cost of their loan originators' licensure and pass those costs on to consumers through higher fees.

E. Private and Public Employment

Benefit: By implementing the legislative mandate to license loan originators these new Sections will allow loan originators to remain employed in their chosen profession.

Cost: The Department cannot estimate the costs of this rulemaking to public and private employment with any precision or accuracy.

F. State Revenues

Benefit: DFI's current projection is that 5,000 to 8,000 loan originators will apply to be licensed in the first year of the licensing program. The state will realize revenues from application and licensing fees.

Cost: The Department, and therefore the state, will incur the cost of this rulemaking and the cost of creating and administering the licensing program.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

10. Incorporations by reference and their location in the rules:

There is no material incorporated by reference in these rules.

11. An explanation of the situation justifying the rules' making as emergency rules:

There is one circumstance that justifies making these new Sections as emergency rules. The circumstance is not a result of any delay or inaction by the Department. The circumstances could not have been averted by timely compliance with the notice and public participation provisions of the Administrative Procedure Act.

Public health, safety or welfare. Failure to have these rules in place by October 1, 2009 will endanger the public health, safety, or welfare. The legislature has established a loan originator licensing program, in HB 2143 and the existing statutes it amends, to protect the mortgage lending industry and the public from unskilled and unaccountable loan originators. Under those provisions of state law, loan originators are required to be licensed from and after July 1, 2010. The law also requires that licensed loan originators shall have taken and passed a licensing examination within the year preceding the date on which the license is issued. They must also complete a pre-licensure course of study that has not been defined in the new state statute and must be required in these rules.

To make pre-licensure course of study and the licensing examination available in time to meet the licensing deadline requires the state to establish the program as early as possible. A "regular" rulemaking under the Arizona Administrative Procedure Act's, and the Governor's Regulatory Review Council's, normal operating procedures cannot possibly have the necessary new Sections in place in time to meet the licensure deadline of July 1, 2010. The only method of rulemaking that will accommodate the short timetable is emergency rulemaking.

A failure to put these rules in place by emergency rulemaking will further damage the public health, safety, and welfare by leaving hundreds of mortgage loan officers in fear that they will not be able to practice their trade because, while licensure is required, the licensing program will not be in place. People who work in loan origination have families to feed and bills to pay. Their interests will be severely compromised if the state fails timely to establish the licensing program the legislature mandated. This emergency rulemaking will satisfy the short time constraints and permit the licensing program to go forward.

SB 1028 passed, without an enabling appropriation, on the last day of the 2008 legislative session. The budget negotiations had finished just before the bill's passage. The Governor's budget item to fund the loan officer licensing program was not included in the agreed-upon budget. Subsequent revisions to the licensing program under HB 2143 harmonized Arizona's statutory law with the S.A.F.E. Act. The provisions of HB 2143 required revision of these

rules, further delaying the possibility of their enactment. HB 2143 also passed without any appropriation to fund the effort so the Department remains understaffed, which continues the need to quickly begin the licensing process.

The licensing system must be developed with far fewer employees than would be planned if adequate funds were available. Prompt completion of this rulemaking is necessary because the failure to appropriate funds to hire new examiners and other employees means DFI has to create, establish, and implement a licensing program for 5,000 to 8,000 loan originators without funding. This creates a desperate crisis situation for the Department that is already short of resources and understaffed. To mitigate the crisis, it is very important to get the program up and running as quickly as possible so that the burden of processing thousands of new license applicants can be spread over a longer period of time. Emergency rulemaking will allow an earlier start on the task of processing license applications so that the job can be done deliberately and as quickly as possible. It is helpful that the 49th legislature saw fit to extend the compliance date to July 1, 2010, but it is still important to begin processing applications as soon as possible. These Sections are all crucial to that effort.

This Department has a good relationship with the mortgage industry. That allows DFI to keep consumer protection readily accessible to Arizona citizens. The mortgage industry in Arizona, subject to extreme peaks and valleys that have plagued the economy recently, needs meaningful and effective state regulation of mortgage lending, including loan origination.

For that reason, making these rules as an emergency is imperative because it will allow the Department to fulfill its legislative charge.

12. The date of the Attorney General's approval of the emergency rules:

April 22, 2010

13. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 4. DEPARTMENT OF FINANCIAL INSTITUTIONS

ARTICLE 13. ~~RESERVED~~ LOAN ORIGINATORS

Section

<u>R20-4-1301.</u>	<u>Scope of Article</u>
<u>R20-4-1302.</u>	<u>Course of Study to Qualify for Licensure</u>
<u>R20-4-1303.</u>	<u>Financial Responsibility</u>
<u>R20-4-1304.</u>	<u>Fees</u>
<u>R20-4-1305.</u>	<u>Education Units</u>

ARTICLE 13. ~~RESERVED~~ LOAN ORIGINATORS

R20-4-1301. Scope of Article

The rules in this Article apply to:

1. All loan originating activities of any person licensed under Arizona law as a loan originator, and
2. The conduct of any applicant for a loan originator license.

R20-4-1302. Course of Study to Qualify for Licensure

A. A course provider shall submit the following items to the Superintendent to request approval of the course of study it offers:

1. Course materials,
2. Class content outlines on a session-by-session basis, and
3. Sample final exam.

B. The Superintendent shall approve the course provider's course of study upon review of the items submitted under subsection (A) if the Superintendent determines the proposed course of study contributes to the development, maintenance, and improvement of professional competence. The Superintendent may audit a course of study at any time. If the Superintendent finds that a course of study is unsatisfactory the Superintendent may withhold or suspend approval. The Superintendent shall, under the authority of A.R.S. § 6-991.03(E) and (F), approve courses that have been approved by the Nationwide Mortgage Licensing System.

C. An applicant for a loan originator license shall satisfactorily complete a course of study by:

1. Attending at least 20 units of instruction, and
2. Receiving a passing grade of not less than 75 percent correct answers on the final examination required by A.R.S. § 6-991.07.

D. A "unit" of class instruction, as that term is used in this Article, shall consist of a minimum of 50 continuous minutes of

instruction.

E. A course of study shall include 20 units of instruction in the following areas:

1. Federal law and regulation, including the Real Estate Settlement Procedures Act ("RESPA"), the Truth in Lending Act ("TILA"), good faith estimates, federal privacy laws, fair lending laws including the Equal Credit Opportunity Act ("ECOA") and the Fair Credit Reporting Act ("FCRA"): 3 units.
2. Business ethics, including fraud, consumer protection laws, and fair lending practices: 3 units.
3. Non-traditional mortgage product lending standards: 2 units.
4. Arizona real estate and mortgage lending law, including loan origination and processing, Arizona law relating to agency, and the obligations between principal and agent, and state privacy laws: 4 units.
5. The remaining eight units should be comprised of instruction in the obligations between principal and agent, the statutory and regulatory law governing loan originators, arithmetical computations common to mortgage lending, principles of real estate lending, the purpose and effect of mortgages, deeds of trust, and security agreements, the terms and conditions of conforming and non-conforming residential mortgages, real estate appraisal and the principles of appraisal independence.

R20-4-1303. Financial Responsibility

An applicant for a loan originator license shall demonstrate financial responsibility, as required by A.R.S. § 6-991.03, by either:

1. Depositing with the Superintendent a bond as specified by A.R.S. § 6-991.03(B)(4) and paying to the Superintendent, for deposit into the Mortgage Recovery Fund, the sum of \$100 at the time of filing an original or a renewal application pursuant to A.R.S. § 6-991.03(B)(6); or
2. Depositing with the Superintendent a bond as specified by A.R.S. § 6-991.03(B)(4) and depositing with the Superintendent a bond as specified by A.R.S. § 6-991.03(B)(6).

R20-4-1304. Fees

Loan Originator program fees shall be as set out in this subsection:

1. Initial Application fee (non-refundable) pursuant to A.R.S. § 6-126(A)(34): \$350.
2. Initial license fee (prorated according to the number of quarters remaining until the next annual renewal) pursuant to A.R.S. § 6-126(B): \$150.
3. Annual renewal fee pursuant to A.R.S. § 6-126(C)(12) or fee for change to inactive status pursuant to A.R.S. § 6-126(C)(13): \$150.
4. Transfer license to new employer: \$50.
5. Change residence address pursuant to A.R.S. § 6-991.04(J): \$50.
6. Examination fee: The amount charged by the vendor.
7. Late renewal fees pursuant to A.R.S. § 6-991.04(E) of \$25 per day after the filing deadline.

R20-4-1305. Education Units

A. Loan originators can earn education units, as defined in Section R20-4-1302(D), by attendance at classes, or participation in interactive online class sessions. Units shall be approved by the Superintendent if they contribute to the development, maintenance, and improvement of professional competence.

B. The Department shall give credit for education units, as defined in R20-4-1302(D). Credit shall be given for whole units only.

C. A loan originator may earn education units for a program that provides a formal course of learning at a professional level and contributes directly to the professional competence of participants.

1. Qualified programs shall:
 - a. Be developed by persons knowledgeable and experienced in the subject matter.
 - b. Provide written outlines or full text.
 - c. Be administered by an instructor or organization knowledgeable in the program content, and
 - d. Utilize teaching methods consistent with the study program.
2. An ethics program taught or developed by an employer or co-worker of a loan originator does not qualify for the ethics requirements of subsection R20-4-1302(E)(2).

D. Applicants shall deliver to the Department an affidavit detailing the education units they have completed, together with original certificates evidencing completion for each unit. The affidavit shall show:

1. Sponsoring organization.
2. Location of program.
3. Title of program or description of content.
4. Education units earned, and
5. Dates of attendance.

E. Applicants shall maintain for three years, and provide the Superintendent upon request, the following documents: course outline, proof of attendance or participation, and photocopied certificates evidencing completion.