

NOTICE OF EMERGENCY RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 4. DEPARTMENT OF FINANCIAL INSTITUTIONS

PREAMBLE

<u>1.</u>	<u>Sections Affected</u>	<u>Rulemaking Action</u>
	R20-4-1301	New Section
	R20-4-1302	New Section
	R20-4-1303	New Section
	R20-4-1304	New Section
	R20-4-1305	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, 6-991.03, 6-991.04

3. The effective date of the rules:

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.

This rulemaking is compelled by this State’s enactment of SB1028 in last year’s legislative session. That Arizona legislation enacted A.R.S. §§ 6-991 through 6-991.08. 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 beginning January 1, 2010. A.R.S. § 6-991.03.

While SB1028, Arizona’s first legislation intended to license loan originators, is already in the statute books, 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, and continuing education standards that are necessary to fulfill the statutory mandate to regulate loan originators. DFI is concerned that, without an immediate effective date, it will be unable to collect fees for license applications or will be forced to process thousands of applications in a very short period of time. Any resulting backlog may prevent qualified applicants from timely receiving their license.

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 GRRC and the Office of the Secretary of State for a “regular rulemaking,” these rules cannot be legally effective in time for DFI to meet the January 1, 2010 deadline if they are processed as “regular” rules. 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 Senate Bill 1028 enacting amendments to existing statutes and adding Title 6, Chapter 9, Article 4 of Arizona Revised Statutes (A.R.S. §§ 6-991 through 6-991.08) creating the licensed profession of loan originator. The new statute recites 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. 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 exemption from a pre-licensure course of study.

Finally, R20-4-1305 describes the licensing program's continuing education requirements, clarifying the statutory mandate of continuing education as a requirement of license renewal.

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 economic benefit from this rulemaking. Licensing fees collected under the present statutory scheme accrue to the State of Arizona's General Fund. The Department expects to realize an indirect 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 storing and evaluating applications and other submissions about experience submitted to qualify for an exemption from the course of study requirement, as well as documentation of loan originators' continuing 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 SB 1028 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 or mortgage bankers. 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 before January 1, 2009 will endanger the public health, safety, or welfare. The legislature

has established a loan originator licensing program in SB 1028 to protect the mortgage lending industry and the public from unskilled and unaccountable loan originators. Under the provisions of SB 1028, loan originators are required to be licensed from and after January 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 would, ideally, require the State to establish the program by January 1, 2009. However, SB1028 was signed into law on July 7, 2008 at the end of a legislative session in which the bill was given little chance of passage. A normal or “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 January 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.

SB1028 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.

As a result, the licensing system must be developed with far fewer employees than planned. 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.

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:

13. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 4. DEPARTMENT OF FINANCIAL INSTITUTIONS

ARTICLE 13. LOAN ORIGINATORS

R20-4-1301. Scope of Article

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

**R20-4-1303. Loan Originator Experience to Qualify for Exemption from Course
of Study**

R20-4-1304. Fees

R20-4-1305. Continuing Education Units

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CHAPTER 4. DEPARTMENT OF FINANCIAL INSTITUTIONS

ARTICLE 13. LOAN ORIGINATORS

R20-4-1301. Scope of Article

The rules in this Article apply to all loan originating activities of any person licensed under Arizona law as a loan originator.

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

- A.** A course of study shall be satisfactorily completed if the applicant has:
1. Attended at least 20 units of class instruction, and
 2. Received a passing grade of not less than 75 percent correct answers on the final exam.
- B.** A “unit” of class instruction, as that term is used in subsection A, shall consist of a minimum of 50 continuous minutes of instruction.
- C.** A course of study shall include 20 units of instruction in the following subjects:
1. Federal law and regulation, including the Real Estate Settlement Procedures Act (“RESPA”) and the Truth in Lending Act (“TILA”) 8 units
 2. Ethics, including fraud, consumer protection, and fair lending 3 units
 3. Non-traditional mortgage products lending standards 2 units
 4. Arizona real estate and mortgage lending law, including loan origination & processing 4 units
 5. Appraisal 1 units
 6. Federal Housing Administration (“FHA”) 1 units
 7. U.S. Dept. of Veterans Affairs (“VA”) home loans 1 units

R20-4-1303. Loan Originator Experience to Qualify for Exemption from Course of Study

An applicant for a loan originator’s license is exempt from the requirement of a course of study, under A.R.S. § 6-991.03, if the applicant proves satisfactorily to the Department that the applicant has at least three years of loan originator experience immediately preceding the time of application. At least one half of the experience shall be proven to be in the practice of originating loans secured by a mortgage, deed of trust, or other lien on residential real estate located in Arizona.

R20-4-1304. Fees

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

1. Application fee (non-refundable) \$350;
2. Initial license fee (prorated according to the number of quarters remaining until the next annual renewal) \$150;
3. Annual renewal fee or fee for change to inactive status \$150;
4. Transfer license to new employer \$50;
5. Change residence address \$50;
6. Examination fee the amount charged by the vendor;
7. Late fees \$25 per day after the filing deadline.

R20-4-1305. Continuing Education Units

- A.** Loan originators can earn continuing education units by attendance at classes, authorship of articles, conducting or teaching courses, and self-study courses. Courses shall be approved by the Superintendent if they contribute to the maintenance and improvement of professional competence.

- B.** The Department shall use the following standards to measure the hours of credit given for continuing education units completed by an individual loan originator.
1. A class hour shall consist of a minimum of 50 continuous minutes of instruction. Credit shall be given for whole class-hours only. The Department shall give credit for one continuing education unit for each class hour of instruction.
 2. Courses taken at accredited colleges and universities count as continuing education units as follows:
 - a. Each semester system credit hour is worth 15 continuing education units;
 - b. Each quarter system credit hour is worth 10 continuing education units;and
 3. Each correspondence program hour, which includes on-line instruction courses, is worth one continuing education unit. A “correspondence program hour” means instruction taken from a vendor that sends lessons and examinations by mail, courier, or by electronic means to a student who then completes the assigned work and returns the material for grading.
 4. Acting as a lecturer or discussion leader in a continuing education class or course, including college courses, may be counted as continuing education units. Each actual presentation hour counts as one continuing education unit. One additional hour of actual preparation time for each hour of presentation is also allowed as a continuing education unit. A loan originator may only claim as much preparation time as is actually spent for a presentation. Total continuing education units earned under this subsection for service as a

lecturer or discussion leader, including preparation time, may not exceed 4 credit hours of the renewal period's requirement. Continuing education units are earned by the first presentation of any seminar or course. No continuing education units can be earned by repeat teaching of that course.

5. Writing and publishing articles or books that contribute to the mortgage lending profession may be counted for a maximum of 2 continuing education units during each renewal period.

a. Credit may be earned for writing published mortgage lending material not used in conjunction with a seminar if the material addresses an audience of loan originators, mortgage brokers, mortgage bankers, or is at least 3,000 words in length and is published by a recognized third-party publisher of mortgage lending continuing education material or a sponsor of continuing education programs.

b. For each 3,000 words of original published material written, the author may earn two continuing education units. For professional writings of less than 3,000 words, but more than 1,000 the author may earn one continuing education unit. No continuing education credit is available for written material less than 1,000 words in length, whether published or unpublished.

6. A loan originator may earn a combined maximum of 4 continuing education units under subsections (B)(4) and (5) above during each renewal period.

C. A loan originator may earn continuing 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. Correspondence programs will qualify, if they meet the provisions above and if the sponsors maintain written records of each student's participation and records of the program outline for three years following the conclusion of the program.
 3. 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 (D)(2).
- D.** A loan originator shall complete a total of 6 continuing education units, as specified in this subsection, for each renewal period. A minimum of 3 continuing education units in each renewal period shall be completed in a live classroom setting, either as a teacher or a student, or through interactive online instruction. As required in subsection E, a loan originator shall report total continuing education units completed during the renewal period. Units in excess of the number required for the current renewal may not be carried forward to a subsequent renewal period.
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| 1. Federal law | 2 units |
| 2. Ethics | 2 units |
| 3. Non-traditional mortgage products | 1 units |

4. Arizona statutory law and regulations 1 unit

E. Applicants for renewal shall deliver to the Department an affidavit detailing the continuing education units they have completed for renewal, 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. Continuing education units earned, and
5. Dates of attendance.

F. Applicants for renewal 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.