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Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	Department of Financial Institutions
Division:	Compliance
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Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0180-17	Rules Pertaining to Mortgage Lending, Loan Servicing and Loan Brokering
Rule Number	Rule Title
0180-17-.01	Definitions
0180-17-.02	Accounting for Fees to Third Persons
0180-17-.03	Notice of Mortgage Transfer
0180-17-.04	Lock-In Agreement
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(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 0180-17
Rules Pertaining to Mortgage Lending, Loan Servicing and Loan Brokering

Amendments

Chapter 0180-17, Rules Pertaining to Mortgage Lending, Loan Servicing and Loan Brokering, is amended by deleting the Chapter in its entirety and substituting the following language so that as amended the Chapter shall read:

Chapter 0180-17
Rules Pertaining to Mortgage Lending, Loan Servicing and Loan Brokering

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0180-17-.01 Definitions.

As used herein:

- (1) "Brokerage Fee" means a fee charged by a mortgage loan broker or residential mortgage lender that is paid by or charged to a loan applicant for mortgage loan origination in which no part of the fee is for service rendered by a third party provider. For the purpose of this rule, brokerage fee is synonymous with finder fee.
- (2) "Commitment" means a written offer to make a residential mortgage loan that is signed by a mortgage lender or that is signed by an employee authorized to sign such a written offer on behalf of a mortgage lender.
- (3) "Commitment agreement" means a commitment accepted by an applicant for a residential mortgage loan, as evidenced by the applicant's signature thereon.
- (4) "Fees paid to third persons" means the bona fide fees or charges paid by the applicant for a residential mortgage loan to third persons other than the mortgage lender or mortgage loan broker or paid by the applicant to or retained by the mortgage lender or mortgage loan broker for transmittal to such third persons in connection with the residential mortgage loan, including, but not limited to, mail service charges, tax service charges, recording taxes and fees, reconveyance

or releasing fees, appraisal fees, credit report fees, attorney fees, fees for title reports and title searches, title insurance premiums, surveys, and similar charges.

- (5) "Commitment fee" means any fee or charge accepted by a mortgage lender, or by a mortgage loan broker for transmittal to a mortgage lender, as consideration for binding the mortgage lender to make a residential mortgage loan in accordance with the terms of the commitment or as a requirement for acceptance by the applicant of a commitment. "Commitment fee" does not include interest or fees paid to third persons.
- (6)
 - (a) "Lock-in agreement" means a written agreement between a mortgage lender and an applicant for a residential mortgage loan that establishes and sets an interest rate, discount points, and lock-in fees to be charged in connection with a residential mortgage loan that is closed within the time period specified in the agreement. A lock-in agreement can be entered into before a residential mortgage loan approval, subject to a residential mortgage loan being approved and closed, or after a residential mortgage loan approval.
 - (b) A "commitment agreement" that establishes and sets an interest rate, discount points, and the commitment fees to be charged in connection with a residential mortgage loan that is also closed within the time period specified in the agreement is a lock-in agreement.
- (7) "Lock-in fee" means a fee or charge accepted by a mortgage lender, or by a mortgage loan broker for transmittal to a mortgage lender, as consideration for making a lock-in agreement. "Lock-in fee" does not include interest or fees paid to third persons.
- (8) "Discount points" means a fee or charge retained or received by a mortgage lender or mortgage loan broker that is stated or calculated as a percentage or fraction of the principal amount of the residential mortgage loan. "Discount points" does not include interest, origination fees, or any fees paid to third persons.
- (9) Unless otherwise provided, all other terms used herein shall have the meaning ascribed to them in the Tennessee Residential Lending, Brokerage and Servicing Act, Chapter 499 of the Public Acts of 2009.

Authority: T.C.A., Title 45, Chapter 13, Tennessee Residential Lending, Brokerage and Servicing Act; T.C.A. §§ 45-1-107(h), 45-13-206 and 45-13-103.

0180-17-.02 Accounting for Fees to Third Persons.

All moneys received by a licensee from an applicant for fees paid to third persons shall be accounted for separately (such as by use of the HUD-1 Settlement Statement), and all disbursements for fees paid to third persons shall be supported by adequate documentation of the services for which such fees were or are to be paid.

Authority: T.C.A. §§ 45-1-107(h), 45-13-103, 45-13-206(a) and 45-13-208.

0180-17-.03 Notice of Mortgage Transfer.

A transferor of servicing rights under a residential mortgage loan shall give the mortgagor under the loan written notice of the transfer of servicing rights. The notice shall specify the name and address to which future payments are to be made and shall be mailed or delivered to the mortgagor at least ten (10) calendar days before the first payment affected by the notice is due. The mortgagor under the loan shall be entitled to continue to make payments to the transferor of the servicing rights until the mortgagor is given the notice specified herein, and neither the transferor nor the transferee of the servicing rights shall be entitled to enforce any penalties for late payment or non-payment against the mortgagor based on such continuation.

Authority: T.C.A. §§ 45-1-107(h) and 45-13-103.

0180-17-.04 Lock-In Agreement.

- (1) A lock-in agreement shall include, but not necessarily be limited to, the following:
 - (a) The interest rate and discount points to be paid by the applicant on the residential mortgage loan, and if the residential mortgage loan has an adjustable interest rate, the initial interest rate to be paid by the applicant on the residential mortgage loan;
 - (b) The amount of any lock-in fee and the time within which the lock-in fee must be paid;
 - (c) The length of the lock-in period;
 - (d) A statement that if the residential mortgage loan is not closed within the lock-in period, the mortgage lender will no longer be obligated by the lock-in agreement and that any lock-in fee paid by the applicant may not be refundable except under certain conditions (the conditions do not have to be specified);
 - (e) A statement that any terms not locked in by the lock-in agreement are subject to change until the residential mortgage loan is closed at settlement; and
 - (f) Any other terms and conditions of the lock-in agreement required by the mortgage lender.

Authority: T.C.A. §§ 45-1-107(h), 45-13-103 and 45-13-206(a).

0180-17-.05 Refund of Lock-In Fee.

A failure by a licensee to return a lock-in fee to an applicant pursuant to the terms of its agreement with the applicant shall constitute grounds to revoke the license of such licensee.

Authority: T.C.A. §§ 45-1-107(h), 45-13-103 and 45-13-405(a).

0180-17-.06 Refund of Commitment Fee.

A failure by a licensee to return a commitment fee to an applicant pursuant to the terms of its agreement with the applicant shall constitute grounds to revoke the license of such licensee.

Authority: T.C.A. §§ 45-1-107(h), 45-13-103, 45-13-206(a), 45-13-401(5) and 45-13-405(a).

0180-17-.07 Brokerage/Finder Fees.

- (1) Licensees that charge or pay a brokerage/finder fee must provide a schedule of fees paid or charged in their filing papers and cannot alter those charges without thirty (30) days prior written notice to the Department of Financial Institutions.
- (2) A brokerage/finder fee of two percent (2%) or less of the principal amount of the residential mortgage loan is considered fair and reasonable. A brokerage/finder fee that is more than two percent (2%) of the principal amount of the loan is presumed unfair and unreasonable and shall be grounds to revoke the license of such licensee, unless such licensee can provide evidence showing that the fee constitutes fair and reasonable compensation, subject to the restrictions in T.C.A. § 47-14-101, et seq.

Authority: T.C.A. §§ 45-1-107(h), 45-13-103, 45-13-401(5), 45-13-405(a) and 47-14-113(c).

0180-17-.08 Surety Bond Requirements.

- (1) As a condition of renewing a mortgage lender or mortgage loan broker license, the licensee shall file a surety bond in a form approved by the commissioner, providing coverage for each of its mortgage loan originators in an amount reflecting the dollar amount of Tennessee residential mortgage loans originated by the licensee in the calendar year immediately preceding the calendar year in which the renewal application is filed, as follows:
 - (a) For mortgage loan brokers:

1. Less than \$10,000,000 in loans – bond amount of \$45,000;
2. \$10,000,000 or more in loans, but less than \$50,000,000 – bond amount of \$90,000; or
3. \$50,000,000 or more in loans – bond amount of \$135,000.

(b) For mortgage lenders:

1. Less than \$10,000,000 in loans – bond amount of \$100,000;
2. \$10,000,000 or more in loans, but less than \$50,000,000 – bond amount of \$200,000; or
3. \$50,000,000 or more in loans – bond amount of \$300,000.

- (2) If the renewal application is being filed in the year in which the license was issued, or in a year in which the license was issued in the immediately preceding calendar year, the mortgage lender or mortgage loan broker shall file as a condition of renewal a surety bond providing coverage for each of its mortgage loan originators in the amount of \$200,000 for a mortgage lender and in the amount of \$90,000 for a mortgage loan broker.
- (3) If the applicant or licensee is a combination of a mortgage lender, mortgage loan broker, and/or mortgage loan servicer, the applicant or licensee is only required to provide one (1) surety bond, which shall be in the highest amount required if the applicant or licensee were solely a mortgage lender, mortgage loan broker, or mortgage loan servicer, and not a combination thereof. An applicant or licensee that is solely a loan servicer shall maintain as a condition of renewal a surety bond in the amount of \$200,000.

Authority: T.C.A. §§ 45-1-107(h), 45-13-103 and 45-13-204.

0180-17-.09 Letter of Exemption.

The Department of Financial Institutions may issue a letter of exemption to any entity or person that provides the Department with sufficient written evidence of exemption that is signed by an authorized legal or corporate representative.

Authority: T.C.A. §§ 45-1-107(h), 45-13-103, and 45-13-201(d).

0180-17-.10 Fee for Substitute License.

The nonrefundable fee to obtain a substitute license for any license issued under the Tennessee Residential Lending, Brokerage and Servicing Act is twenty-five dollars (\$25.00).

Authority: T.C.A. §§ 45-1-107(h), 45-13-103 and 45-13-107.

0180-17-.11 Experience Required for a License.

- (1) Experience Required. The Department of Financial Institutions shall not issue a mortgage lender, mortgage loan broker, or mortgage loan servicer license unless the applicant demonstrates at least three (3) years of relevant and substantive experience in the mortgage loan industry. Experience is considered relevant if it occurred within the five (5) years preceding the date of application. The Department shall deny an application for licensure if the applicant does not provide the Department with satisfactory evidence of experience. Experience may be verified with any past or current employers, with taxing authorities, and/or with any other professional references. The experience required under this paragraph is a continuing requirement and the failure of a mortgage lender, mortgage loan broker or mortgage loan servicer to maintain the requisite experience (e.g. if the individual demonstrating the company's experience at initial licensure leaves the company) shall constitute grounds to suspend or revoke the license.

- (2) Mortgage Lenders and Mortgage Loan Brokers. An applicant seeking licensure as a mortgage lender and/or mortgage loan broker must demonstrate experience by the individual designated in the application as the "managing principal." The experience required under paragraph (1) applies to mortgage lenders and mortgage loan brokers licensed prior to the effective date of this rule upon any change in managing principal.
 - (a) Change in Managing Principal. Upon any change in a mortgage lender's or mortgage loan broker's managing principal, the Department may, as a condition of continued licensure, request such evidence as it finds reasonably necessary to verify that the new managing principal has the requisite three (3) years experience in the mortgage loan industry.
- (3) Mortgage Loan Servicers. An applicant seeking licensure solely as a mortgage loan servicer must demonstrate experience by the single individual identified in the application possessing significant managerial control over the applicant (such as the president or chief executive officer). If the applicant servicer is a sole proprietor, the applicant must demonstrate experience by the sole proprietor. The experience required under paragraph (1) applies to a mortgage loan servicer licensed prior to the effective date of this rule upon any change in the individual designated as demonstrating such experience in its 2010-2011 mortgage loan servicer renewal application.
 - (a) Change in Individual Demonstrating Experience. Upon any change in a mortgage loan servicer's designated individual demonstrating the experience required under paragraph (1), the Department may, as a condition of continued licensure, request such evidence as it finds reasonably necessary to verify that the new individual has the requisite three (3) years experience in the mortgage loan industry.

Authority: T.C.A. §§ 45-1-107(h), 45-13-103, 45-13-203, 45-13-211, 45-13-401(5) and 45-13-405(a-b).

0180-17-.12 Financial Statements.

Financial statements submitted to the Department of Financial Institutions shall be compiled in accordance with generally accepted accounting principles and certified by an independent certified public accountant or certified public accounting firm. Financial statements shall show compliance with the net worth requirements set forth in T.C.A. § 45-13-203. Financial statements shall include, but are not limited to, an income statement, balance sheet, statement of cash flows, and relevant disclosures.

Authority: T.C.A. §§ 45-1-107(h), 45-13-103, 45-13-206 and 45-13-208(a-b).

0180-17-.13 Nationwide Mortgage Licensing System and Registry Challenge Process.

- (1) A person may challenge information entered by the Department of Financial Institutions into the Nationwide Mortgage Licensing System and Registry. A challenge must be made in writing to the Department and addressed to the attention of the Assistant Commissioner for the Compliance Division. The grounds for the challenge shall be limited to a review of the factual accuracy of the information regarding the person's record submitted to the Nationwide Mortgage Licensing System and Registry by the Department. A challenge shall be considered moot if the challenged information is no longer available in the Nationwide Mortgage Licensing System and Registry.
- (2) The challenge shall include the person's name, unique identifier, and a statement of the alleged inaccuracy of the information entered into the Nationwide Mortgage Licensing System and Registry. The challenge shall include available proof or corroboration that supports the person's challenge, including, but not limited to, certified copies of official documents or court orders.
- (3) Upon receipt of the challenge, the commissioner shall investigate the challenge, along with any information provided, and determine whether the challenged information entered into the Nationwide Mortgage Licensing System and Registry is factually accurate.

- (4) The commissioner shall notify the person of the determination within 60 days of the receipt of the written challenge.
- (5) If the commissioner determines that the information submitted to the Nationwide Mortgage Licensing System and Registry is factually inaccurate, the commissioner shall take prompt steps to correct the information submitted.
- (6) A person aggrieved by the commissioner's determination regarding a challenge may request a hearing on the question of whether the challenged information is factually accurate. The request for hearing must be in writing within 30 days of the commissioner's determination. If the hearing is timely requested, it shall be conducted under the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, and the burden of proving that the challenged information is factually inaccurate is on the person aggrieved by the commissioner's decision regarding the challenge.

Authority: 12 U.S.C. § 5107(d)(4); T.C.A. §§ 45-1-107(h), 45-13-103, 45-13-501(a)(1), and 45-13-504.

0180-17-.14 Notification Requirements.

- (1) In addition to the events set forth in T.C.A. § 45-13-108, a licensee shall, within fifteen (15) days of the occurrence of any of the following events, file a written report with the commissioner describing the event and its expected impact on the activities of the licensee in this state:
 - (a) The entry of a publicly available administrative order against the licensee by a state or federal regulatory agency, including, but not limited to, an emergency cease and desist order, an order to cease and desist, an order to pay civil penalties, and an order to make refunds.

Authority: T.C.A. §§ 45-1-107(h), 45-13-103 and 45-13-108(6).

0180-17-.15 Preservation of Records.

All books and records required to be preserved by any regulation of the commissioner or required to by any federal statute, regulation or regulatory guideline, as applicable to a licensed mortgage lender, mortgage loan broker, and mortgage loan servicer, shall be preserved and made available to the commissioner for twenty-five (25) months on all rejected applications and twenty-four (24) months on all loans paid in full.

Authority: T.C.A. §§ 45-1-107(h), 45-13-103, 45-13-206 and 45-13-207(a).

0190-17-.16 Annual Report

The annual report required under T.C.A. § 45-13-208(b) shall be in the form of and submitted on the date of the renewal application required under T.C.A. § 45-13-203(c). The annual report shall be subscribed and affirmed as true by the licensee under the penalties of perjury and include the names of all directors, officers, general partners, and stockholders owning or controlling 25% or more of the outstanding capital stock of the licensee, any limited partner owning more than 25% of the partnership interest of the licensee, any changes among officers, directors, or general partners within the preceding year, and any change in principal place of business of the licensee.

Authority: T.C.A. §§ 45-1-107(h), 45-13-103, 45-13-203(c) and 45-13-208(b)-(c).

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Commissioner of the Tennessee Department of Financial Institutions on 05/19/2010, and is in compliance with the provisions of TCA 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 5/19/10

Signature: [Handwritten Signature]

Name of Officer: Michael Igney

Title of Officer: Assistant Commissioner

Subscribed and sworn to before me on: 5/19/10

Notary Public Signature: [Handwritten Signature]

My commission expires on: 3/7/2011



All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

[Handwritten Signature]
Robert E. Cooper, Jr.
Attorney General and Reporter
5-26-10
Date

Department of State Use Only

Filed with the Department of State on: 5/28/10

Effective on: 10/29/10

[Handwritten Signature]
Tre Hargett
Secretary of State

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Regulatory Flexibility Addendum

Pursuant to § T.C.A. 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

1. Identify the type or types of small businesses and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule.

Proposed Rule 0180-17-.08 – Surety Bond Requirements

The proposed surety bond rule would apply to all mortgage lenders and brokers who make or propose to make residential mortgage loans in Tennessee. The proposed rule would decrease the required surety bond amount from \$200,000 to \$100,000 for mortgage lenders originating less than \$10,000,000 in loans in the previous year; maintain the current surety bond requirement of \$200,000 for those mortgage lenders originating loans in the amount of \$10,000,000 or more but less than \$50,000,000 in the previous year; and increase the required surety bond amount from \$200,000 to \$300,000 for those mortgage lenders originating \$50,000,000 or more in loans in the previous year. The proposed rule would decrease the required surety bond amount from \$90,000 to \$45,000 for mortgage loan brokers originating less than \$10,000,000 in loans in the previous year; maintain the current surety bond requirement of \$90,000 for those mortgage loan brokers originating loans in the amount of \$10,000,000 or more but less than \$50,000,000 in the previous year; and increase the required surety bond amount from \$90,000 to \$135,000 for those mortgage loan brokers originating \$50,000,000 or more in loans in the previous year.

The Department specifically solicited comments on current loan volumes and the surety bond costs at industry sessions and via a memorandum sent to the mortgage industry on December 2, 2009 but received no comments from the industry directly addressing the Department's inquiry. Nevertheless, the Department anticipates that most, if not all, small businesses originate less than \$50,000,000 in loans per year, and will thus fall within the two lower categories of the scale. Accordingly, the Department anticipates that the proposed rule will either a) directly benefit small business mortgage lenders and brokers by lessening the required surety bond amount, or b) have no impact on small business mortgage lenders and brokers in maintaining the current required surety bond amount.

Proposed Rule 0180-17-.11 – Experience Required for a License

The proposed rule would apply to all residential mortgage lenders, brokers and servicers (collectively, "licensees") in Tennessee. This rule may have an economic impact on some small business entities because a small business that chooses to engage in residential mortgage lending, brokerage and/or servicing activities must ensure that it has a managing principal (or the individual possessing significant managerial control in the case of a servicer) with the requisite number of years of experience.

It is the Department's position, however, that the proposed experience requirement will have minimal, if any, economic impact on small businesses. Furthermore, the benefits of ensuring that licensees retain at least one individual experienced in the mortgage industry in a managerial/controlling position are substantial.

The Department solicited comments regarding the proposed experience requirement at industry sessions and via a memorandum sent to the mortgage industry on December 2, 2009 but received no comments from the industry directly addressing this inquiry.

Proposed Rule 0180-17-.12 – Financial Statements

The proposed rule would apply to all residential mortgage lenders, brokers and servicers in Tennessee.

The Department solicited comments regarding the financial statements requirement at industry sessions and via a memorandum sent to the mortgage industry on December 2, 2009 but received no comments from the industry directly addressing this inquiry. It is the Department's position, however, that the proposed financial statements requirement will have minimal, if any, economic impact on small businesses.

2. The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

Proposed Rule 0180-17-.08 – Surety Bond Requirements

There are no significant changes in reporting, recordkeeping or other administrative costs that will result from the promulgation of this proposed rule. The businesses affected by this rule are already keeping track of the information that will be required to be reported for the purpose of determining the amount of the bond.

Proposed Rule 0180-17-.11 – Experience Required for a License

There are no significant changes in reporting, recordkeeping or other administrative costs that will result from the promulgation of this proposed rule.

Proposed Rule 0180-17-.12 – Financial Statements

There are no significant changes in reporting, recordkeeping or other administrative costs that will result from the promulgation of this proposed rule.

3. A statement of the probable effect on impacted small businesses and consumers.

Proposed Rule 0180-17-.08 – Surety Bond Requirements

The proposed rules increase the current surety bond amount for those mortgage brokers and lenders that originate more than \$50,000,000 in loans per year. It is believed that most small businesses originate less than \$50,000,000 loans per year. Thus, the proposed rules will likely either lessen the regulatory burden on small businesses by imposing a reduced surety bond requirement or not affect the regulatory burden on small business registrants by maintaining current surety bond requirements. It is believed that the surety bond rules will have no effect on consumers.

Proposed Rule 0180-17-.11 – Experience Required for a License

It is the Department's view that the proposed experience requirement will have minimal, if any, effect on small businesses. It is believed that consumers will benefit from the experience requirements in the form of improved quality of mortgage services.

Proposed Rule 0180-17-.12 – Financial Statements

It is the Department's view that the financial statements requirement will have minimal, if any, effect on small businesses and consumers.

4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business.

Proposed Rule 0180-17-.08 – Surety Bond Requirements

This proposed rule is not burdensome, intrusive or costly. Most of the businesses affected already have surety bonds, which have been required under the previous Mortgage Act, 1988 Public Acts Chapter 846, for several years, and most of the industry is familiar with this type of security device.

Proposed Rule 0180-17-.11 – Experience Required for a License

This proposed rule is not burdensome, intrusive, or costly. Most of the businesses affected already necessarily employ managing principles or control persons with prior experience in the mortgage industry.

Proposed Rule 0180-17-.12 – Financial Statements

This proposed rule is not burdensome, intrusive or costly. Any less stringent rule regarding financial statements would not further the goals of the Department.

5. A comparison of the proposed rule with any federal or state counterparts.

Proposed Rule 0180-17-.08 – Surety Bond Requirements

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008, 12 USCA § 5101 *et. seq.*, requires states to establish minimum net worth or surety bond requirements that reflect the dollar amount of loans originated by a residential mortgage loan originator, or to establish a recovery fund paid into by loan originators. 12 USCA § 5107(d)(6) (2010). Although a few states have enacted the recovery fund option, the majority of states are requiring surety bond coverage for mortgage loan originators. Most states requiring surety bond coverage for mortgage loan originators are establishing a tier system (anywhere from 3 to 5 tiers) whereby a company whose loan volume falls within the lowest tier has the lowest bond, and so forth.

Similar to the proposed rule, North Carolina, Michigan, Montana, New Mexico, Vermont and West Virginia impose a 3 tier scalable surety bond.

- The proposed rule was modeled after North Carolina's bond scale which ranges from \$0 to \$10 million with a bond requirement of \$150,000; greater than \$10 million but less than \$50 million with a bond requirement of \$250,000; and greater than \$50 million with a bond requirement of \$500,000. N.C. Gen. Stat. § 53-244.013.
- Michigan's bond scale ranges less than \$12 million with a bond requirement of \$25,000; \$12 million or greater but less than \$24 million with a bond requirement of \$25,000; and \$24 million or greater with a bond requirement of \$50,000. S.B. 462, Laws of 2009, § 29.
- Montana's bond scale ranges from less than \$50 million with a bond requirement of \$25,000; \$50 million or greater but less than \$100 million with a bond requirement of \$50,000; and \$100 million or greater with a bond requirement of \$100,000. Mont. Code Ann. § 39-9-123.
- New Mexico's bond scale ranges from \$0 to \$3 million with a bond requirement of \$50,000; greater than \$3 million but less than \$10 million with a bond requirement of \$100,000; and \$10 million or greater with a bond requirement of \$150,000. S.B. 342, Laws of 2009, § 17.
- Vermont's bond scale ranges from \$0 to \$1 million with a bond requirement of \$50,000; \$1 million to \$15 million with a bond requirement of \$75,000; and greater than \$15 million with a bond requirement of \$100,000. Vt. Stat. Ann. tit 8, § 2203.
- West Virginia's bond scale ranges from \$0 to \$3 million with a bond requirement of \$100,000; greater than \$3 million and up to \$10 million with a bond requirement of \$150,000; and greater than \$10 million with a bond requirement of \$250,000.

The District of Columbia imposes a scalable surety bond based on a 4 tier loan volume amount with the lowest tier ranging from \$0 to \$1 million with a bond requirement of \$12,500 and the highest tier greater than \$3 million with a bond requirement of \$200,000. D.C. Code Ann. § 26-1103; 26A DCMR § 1109.1 *et. seq.*

Louisiana requires lenders to post a \$25,000 bond if the previous year's total loan volume was between \$0 and \$99,999,999 and a \$50,000 bond if the previous year's loan volume was greater than \$100 million. La. Rev. Stat. Ann. § 6:1088.

Virginia imposes a 5 tier scalable surety bond with the lowest tier ranging from \$0 to \$5 million with a bond requirement of \$25,000 and the highest tier greater than \$100 million with a bond requirement of \$150,000. 10 Va. Admin. Code § 5-161-50.

A few states chose to enact the recovery fund option, including Idaho, which requires every mortgage loan originator pay into the Idaho administrative recovery fund in the amount of \$100 per year. Idaho Code Ann. § 26-31-110. Washington has proposed rules for a similar recovery fund system. See 2009-19 Washington State

There is no federal counterpart to the proposed rule.

Proposed Rule 0180-17-.11 – Experience Required for a License

Most states impose some type of experience requirement for persons applying for licensure as a mortgage broker, lender, and/or servicer and the experience requirements generally range from one (1) to three (3) years.

- Alabama: Requires evidence in the application for a mortgage broker's license that at least one principal or executive officer have at least two (2) years of experience in the mortgage industry. Said experience shall have been within the previous four (4) years from the date of application. 2009 Al. Pub. Act 624 (2009).
- Kentucky: Requires the managing principal of a mortgage loan broker have at least two (2) years' experience working in the mortgage industry. Ky. Rev. Stat. Ann. § 286.8-032(6) (2010).
- Texas: In order to be issued a license as a mortgage broker, an individual applicant must establish, *inter alia*, that he/she has had either (A) eighteen (18) months or more of actual experience in the mortgage lending field as evidenced by documentary proof of full-time employment for the required period as a licensed mortgage broker or licensed loan officer; (B) is currently licensed in the state of Texas as a real estate broker, active attorney, an active insurance agent, or holds an equivalent insurance license; or (C) has three (3) years or more experience in the mortgage lending field as evidenced by documentary proof of full-time employment for the required period as a loan officer. 7 Tex. Admin. Code § 80.4(a)(4) (2010).
- Massachusetts: Requires applicants for a mortgage broker and mortgage lender licenses to demonstrate appropriate "business experience." See 209 Mass. Code Regs. 42.06(2), 42.03(2) (2010). An applicant for a mortgage broker license shall provide evidence, as of the filing of the application, of three (3) years of full-time experience or the equivalent in part time experience, working for a licensed mortgage broker, mortgage lender, or financial institution exempt from licensing, or a similar institution licensed or chartered in another state. See Mass. Division of Banks Regulatory Bulletin 5.1-102: *Experience Requirements for Mortgage Broker and Mortgage Lender Licensing* (2010). An applicant for a mortgage lender license shall demonstrate, as of the filing of the application, five (5) years of full-time experience, or the equivalent in part-time experience. *Id.* An individual designated as a Branch Manager of a mortgage broker or a mortgage lender shall likewise provide evidence of three (3) years of business experience in accordance with these standards. *Id.*

Proposed Rule 0180-17-.12 – Financial Statements

Many state mortgage regulators require mortgage licensees to provide financial statements according to generally accepted accounting principles and certified by an independent certified public accountant.

- Wisconsin: As a condition of application for licensure, Wisconsin requires mortgage brokers and lenders to submit evidence of net worth, which includes the "submission of recent financial statements accompanied by a written statement by an independent certified public accountant attesting that he or she as reviewed the financial statements in accordance with generally accepted accounting principles." Wis. Stat. § 224.72(4)(a)(4) (2009).
- California: As a condition of application for licensure, California requires mortgage servicers and lenders to submit "statements of financial solvency, noting the net worth requirements and supported by an audited financial statement prepared by an independent certified public accountant" Cal. Fin. Code § 50122(b)(1) (2009). California requires a licensed residential mortgage lender or servicer to annually "cause its books and accounts to be audited by an independent certified public accountant." *Id.* at § 50200(a).
- Illinois: Requires an annual audit of a licensee's books and records by a "certified public accountant not connected with such licensee."

- Massachusetts: Requires mortgage lender applicants to submit financial statements audited in accordance with generally accepted accounting practices by a certified public accountant at the time of initial application and on an annual basis. 209 Mass. Code Regs. 42.03(2)(a) (2010).

6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

There are no small business exemptions that would be consistent with the protection of the public welfare.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Proposed rules 0181-17-.01, 0181-17-.02, 0181-17-.03, 0181-17-.04, 0181-17-.05, 0181-17-.06, 0181-17-.07 and 0181-17-.09 were in effect prior to the implementation of the Mortgage Act and remain substantively unchanged.

- Proposed rule 0180-17-.01 provides definitions for the chapter and removes the terms “registrant” and registration from the definitions, as the new Mortgage Act renders these terms obsolete.
- Proposed rule 0181-17-.02 provides that licensees are to adequately document and account for monies paid to third persons separately and supported by adequate documentation. This rule effectuates no changes in previous regulations.
- Proposed rule 0181-17-.03 provides notice provisions regarding a transfer of servicing rights. This rule effectuates no changes in previous regulations.
- Proposed rule 0181-17-.04 defines a lock-in agreement. This rule effectuates no changes in previous regulations.
- Proposed rule 0181-17-.05 provides the consequences of a failure to return a lock-in fee to an applicant pursuant to the terms of an agreement. This rule effectuates no changes in previous regulations.
- Proposed rule 0181-17-.06 provides the consequences of a failure to return a commitment fee to an applicant pursuant to the terms of an agreement. This rule effectuates no changes in previous regulations.
- Proposed rule 0181-17-.07 provides rules regarding brokerage/finder fees. This rule effectuates no changes in previous regulations.
- Proposed rule 0181-17-.09 provides that the Department may issue a letter of exemption when sufficient written evidence of qualification for exemption is furnished. This rule effectuates no changes in previous regulations.

Proposed rules 0180-17-.08, 0180-17-.10, 0180-17-.11, 0180-17-.12, 0180-17-.13, 0180-17-.14, 0180-17-.15 and 0180-17.16 are new additions to the mortgage rules chapter.

- Proposed rule 0180-17-.08(1) computes a mortgage licensee’s surety bond amount for renewal applications via a 3 tier system based on the dollar amount of Tennessee residential loans the mortgage licensee originated in the previous year. For a mortgage licensee filing a renewal application in the calendar year or previous calendar year in which its license was issued, proposed rule 0180-17-.08(2) requires a fixed surety bond in the amount of \$200,000 for a mortgage lender and a fixed surety bond in the amount of \$90,000 for a mortgage loan broker. Proposed rule 0181-17-.08(3) provides that a licensee or applicant that is a combination of a mortgage lender, broker and/or servicer shall be required to post only one bond, which shall be in the highest amount required if the applicant or licensee were not a combination of a mortgage lender, broker and/or servicer.
 - The proposed rule alters previous regulations by implementing a surety bond system required by TCA § 45-13-204(c–d). Under the previous Mortgage Act, mortgage lenders were required to post a bond in the amount of \$200,000 and mortgage brokers were required to post a bond in the amount of \$90,000. TCA § 45-13-204(c) provides that mortgage lenders and mortgage brokers shall provide surety bond coverage for each mortgage loan originator in an amount in accordance with TCA § 45-13-204(d), however for the calendar years 2009-2010, mortgage lenders shall have a surety bond in the amount of \$200,000 and mortgage brokers shall have a surety bond in the amount of \$90,000. TCA § 45-13-204(d) provides that the “penal sum of the

surety bond of any mortgage lender or mortgage loan broker shall be maintained in an amount that reflects the dollar amount of loans originated, as determined by the commissioner.”

- As such, mortgage loan brokers originating less than \$10,000,000 in loans must pay a bond in the amount of \$45,000; brokers originating \$10,000,000 or more in loans, but less than \$50,000,000 in loans must post a bond in the amount of \$90,000; and brokers originating \$50,000,000 or more in loans must post a bond in the amount of \$135,000.
 - Mortgage lenders originating less than \$10,000,000 in loans must post a bond in the amount of \$100,000; lenders originating \$10,000,000 or more in loans, but less than \$50,000,000 in loans must post a bond in the amount of \$100,000; and lenders originating \$50,000,000 or more in loans must post a bond in the amount of \$300,000.
 - A person operating solely as a mortgage servicer must post a fixed bond in the amount of \$200,000.
- Proposed rule 0180-17-.10 imposes a fee of \$25.00 for any substitute license issued under the Mortgage Act. This rule does not alter previous regulations as the current rule 0180-17-.10 imposes a \$25.00 fee for obtaining a substitute license, certificate of registration, or mortgage loan originator certificate.
 - Proposed rule 0180-17-.11 outlines the experience required for a mortgage lender, broker and/or servicer license. Proposed rule 0180-17-.11 alters previous regulations by imposing an experience requirement for lender, broker and servicer licenses in that no experience requirement was previously imposed via regulation.
 - Proposed rule 0180-17-.11(1) requires an applicant to demonstrate at least three (3) years of relevant and substantive experience in the mortgage loan industry. Such experience must have occurred in the five (5) years preceding the date of application to be considered relevant. Applicants who do not demonstrate this kind of experience will be denied licensure under the Mortgage Act. The rule maintains that the experience requirement is a continuous one and the failure of a licensee to maintain this requirement shall constitute grounds to revoke or suspend its license.
 - Proposed rule 0180-17-.11(2) provides that the experience required for applicants seeking licensure as a mortgage lender and/or mortgage broker must be demonstrated by the applicant's managing principal. The rule maintains that this experience requirement applies to mortgage lenders and brokers licensed prior to the rule's effective date upon any change in their managing principal. Proposed rule 0180-17-.11(2)(a) provides that upon any change in a mortgage lender or broker's managing principal, the Department can request evidence that the new managing principal has the requisite experience.
 - Proposed rule 0180-17-.11(3) provides that the experience required for a mortgage servicer must be demonstrated by a single individual identified in the application who also possesses significant managerial control over the applicant. The rule maintains that this experience requirement applies to mortgage servicers licensed prior to the rule's effective date upon any change in the individual designated as demonstrating the requisite experience in its 2010-2011 renewal application. Proposed rule 0180-17-.11(3)(a) provides that upon any change in a mortgage servicer's designated individual demonstrating the requisite experience, the Department can request evidence that the new individual has the requisite experience.
 - Proposed rule 180-17-.12 provides that all financial statements shall be compiled in accordance with generally accepted accounting principles, certified by an independent certified public accountant or certified public accounting firm and contain certain information. The previous Mortgage Act required a licensee to adhere to these guidelines in compiling its annual financial statements. The proposed rule alters previous regulations in that it extends the certification requirement to any and all financial statements submitted to the Department.
 - Proposed rule 0180-17-.13 provides the method by which a person may challenge information entered by the Department into the Nationwide Mortgage Licensing System and Registry. This proposed rule necessarily alters previous regulations as NMLS did not exist under the previous Mortgage Act.
 - Proposed rule 0180-17-.14 provides that a licensee shall notify the Department within fifteen (15) days

of the occurrence of an entry of a publicly available administrative order against the licensee by a state or federal regulatory agency. The proposed rule alters previous regulations by imposing this additional duty on a licensee.

- Proposed rule 0180-17-.15 provides that licenses shall preserve books and records relating to mortgage transactions for twenty-five months (25) on all rejected applications and for twenty-four (24) months on all closed loans. This rule does not substantively alter previous regulations as licensees are already required to preserve their books and records according to this schedule.
- Proposed rule 0180-17-.16 provides that the annual report shall be in the form of the renewal application under TCA § 45-13-203(c). This rule fulfills statutory requirements that the annual report be on a form subscribed by the commissioner by regulation and include the names of all directors, officers, general partners, and stockholders owning or controlling 25% or more of the outstanding capital stock of the licensee, any limited partner owning more than 25% of the partnership interest of the licensee, any changes among officers, directors, or general partners within the preceding year, and any change in principal place of business of the licensee. This rule slightly alters previous regulations in that licensees will be required to submit this statutorily required information at the time of license renewal.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Proposed Rule 0180-17-.08 – Surety Bond Requirements

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008, 12 USCA § 5101 *et. seq.*, (“SAFE Act”) requires state loan originator supervisory authorities to “establish minimum net worth or surety bond requirements that reflect the dollar amount of loans originated by a residential mortgage loan originator, or establish a recovery fund paid into by the loan originators.” 12 USCA § 5107(d)(6) (2009). Additionally, 2009 Public Acts Chapter 499 mandates that the “surety bond shall provide coverage for each mortgage loan originator in an amount that reflects the dollar amount of residential mortgage loans originated by the registrant, as determined by the commissioner. . . .” TCA § 45-5-202(c) (2009).

The SAFE Act provides the U.S. Department of Housing and Urban Development (“HUD”) with the backup authority to establish a loan originator system should it determine a state has not met the SAFE Act requirements for state mortgage originator licensure system. See 12 USCA § 5107(a). HUD has determined that a state may comply with the SAFE Act surety bond requirement by providing that, in the case of a company that employs more than one loan originator, the bonding requirement may be met at the company level. See HUD Commentary on Model State Law, available at <http://www.hud.gov/offices/hsg/ramh/safe/cmsl.cfm> (last visited Mar. 15, 2009).

Proposed Rule 0180-17-.13 – NMLS Challenge Process

The SAFE Act provides state law licensing requirements which includes the requirement that “the State loan originator supervisory authority has a process in place for challenging information contained in the Nationwide Mortgage License System and Registry.” 12 USCA § 5107(d)(3). Additionally, 2009 Public Acts Chapter 499 mandates that the “commissioner shall establish a process whereby mortgage loan originators may challenge information entered into the nationwide Mortgage Licensing and Registry by the commissioner.” TCA 45-13-504 (2010).

Proposed Rule 0180-17.15 – Preservation of Records

The Mortgage Act provides that all books and records required to be preserved by any regulation of the commissioner or required by any federal statute, regulation, or regulatory guideline, as applicable to each licensed mortgage lender, mortgage loan broker, and mortgage loan servicer, shall be preserved and made available to the commissioner, as provided in this chapter, for the time that the commissioner may by rule or regulation require, not to exceed twenty-five (25) months on all rejected applications and not to exceed twenty-four (24) months on loans paid in full. TCA § 45-13-207(a).

Proposed Rule 0180-17-.16 – Annual Report

The Mortgage Act provides that each licensee shall file an annual report with the commissioner and said annual

report shall be on a form prescribed by the commissioner by regulation. TCA § 45-13-208(b). Pursuant to T.C.A. § 208(c), the annual report shall be subscribed and affirmed as true by the licensee under the penalties of perjury and include the names of all directors, officers, general partners, and stockholders owning or controlling 25% or more of the outstanding capital stock of the licensee, any limited partner owning more than 25% of the partnership interest of the licensee, any changes among officers, directors, or general partners within the preceding year, and any change in principal place of business of the licensee.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

These rules will affect mortgage originators, brokers, lenders and servicers in Tennessee. The Department has solicited comments from the mortgage industry regarding the proposed rules on several occasions. While the mortgage industry has neither urged adoption nor rejection of this rule, it appears the industry is generally unopposed to the rules' promulgation.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

There are no known attorney general opinions directly relating to this rule.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

This rule does not increase or decrease existing licensing fees and there is no expected change in government revenues or expenditures.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Jera L. Bradshaw, Staff Attorney, Tennessee Department of Financial Institutions

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Jera L. Bradshaw, Staff Attorney, Tennessee Department of Financial Institutions

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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Nashville, TN 37219

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- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

**RULES
OF THE
TENNESSEE DEPARTMENT OF FINANCIAL INSTITUTIONS**

**CHAPTER 0180-17
RULES PERTAINING TO MORTGAGE LENDING,
LOAN SERVICING AND LOAN BROKERING**

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0180-17-.01 DEFINITIONS.

As used herein:

- (1) "Brokerage fee" means **any** fee [charged by a mortgage loan broker or residential mortgage lender] that is paid by or charged to a loan applicant for [mortgage] loan origination ~~charged by a broker or lender when~~ [in which] no part of **such** [the] fee is for service rendered by a third party provider. For the purpose of this rule, brokerage fee is synonymous with finder fee.
- (2) ~~The term~~ "[C]ommitment" means a written offer to make a [residential] mortgage loan [that is] signed by a mortgage lender, or [that is signed] by an employee authorized to sign ~~such instruments~~, [such a written offer] on behalf of a mortgage lender.
- (3) ~~The term~~ "[C]ommitment agreement" means a commitment accepted by an applicant for a [residential] mortgage loan, as evidenced by the applicant's signature thereon.
- (4) ~~The term~~ "[F]ees paid to third persons" means the bona fide fees or charges paid by the applicant for a [residential] mortgage loan to third persons other than the mortgage lender or mortgage broker or paid by the applicant to or retained by the mortgage lender or mortgage broker for transmittal to such third persons in connection with the [residential] mortgage loan, including, but not limited to, mail service charges, tax service charges, recording taxes and fees, reconveyance or releasing fees, appraisal fees, credit report fees, attorney fees, fees for title reports and title searches, title insurance premiums, surveys[,] and similar charges.
- (5) ~~The term~~ "[C]ommitment fee" means any fee or charge accepted by a mortgage lender, or by a mortgage broker for transmittal to a mortgage lender, as consideration for binding the mortgage lender to make a [residential] mortgage loan in accordance with the terms of the commitment or as a requirement for acceptance by the applicant of a

commitment[.] ~~but the term~~ ["Commitment fee"] does not include interest or fees paid to third persons.

- (6)
- (a) ~~The term~~ "[L]ock-in agreement" means a written agreement between a mortgage lender and an applicant for a [residential] mortgage loan ~~which~~ [that] establishes and sets an interest rate[,], ~~and the~~ discount points[,], and lock-in fees to be charged in connection with a [residential] mortgage loan that is closed within the time period specified in the agreement. A lock-in agreement can be entered into before [a residential] mortgage loan approval, subject to ~~the~~ [a residential] mortgage loan being approved and closed, or after ~~such~~ [a residential mortgage loan] approval.
- (b) A "commitment agreement" ~~which~~ [that] establishes and sets an interest rate[,], ~~and the~~ discount points[,], and commitment fees to be charged in connection with a [residential] mortgage loan that is also closed within the time period specified in the agreement is a lock-in agreement.
- (7) ~~The term~~ "[L]ock-in fee" means ~~any~~ fee or charge accepted by a mortgage lender, or by a mortgage broker for transmittal to a mortgage lender, as consideration for making a lock-in agreement[.] ~~but the term~~ ["Lock-in fee"] does not include interest or fees paid to third persons.
- (8) ~~The term~~ "[D]iscount points" means ~~any~~ fee or charge retained or received by a mortgage lender or mortgage broker [that is] stated or calculated as a percentage or fraction of the principal amount of the [residential mortgage] loan. ~~The term~~ ["Discount points"] ~~shall~~ [does] not include interest, origination fees[,], or any fees paid to third persons.
- (9) Unless otherwise provided, all other terms used herein shall have the meaning ascribed to them in ~~Chapter 846~~ [the Tennessee Residential Lending, Brokerage and Servicing Act, Chapter 499] of the Public Acts of ~~1988~~. [2009].

Authority: ~~T.C.A. § 45-13-117~~. [Title 45, Chapter 13, Tennessee Residential Lending, Brokerage and Servicing Act, T.C.A. §§ 45-1-107(h), 45-13-103, 45-13-206.]

0180-17-.02 ACCOUNTING FOR FEES TO THIRD PERSONS.

All moneys received by a licensee ~~or registrant~~ from an applicant for fees paid to third persons shall be accounted for separately (such as by use of the HUD-1 Settlement Statement), and all disbursements for fees paid to third persons shall be supported by adequate documentation of the services for which such fees were or are to be paid.

Authority: ~~T.C.A. §§ 45-13-109 and 45-13-117~~. [T.C.A. §§ 45-1-107(h), 45-13-103 and 45-13-206(a).]

0180-17-.03 NOTICE OF MORTGAGE TRANSFER. A transferor of servicing rights under a [residential] mortgage loan shall give the mortgagor under ~~such~~ [the] loan written notice of such transfer of servicing rights. The notice shall specify the name and address to which future payments are to be made and shall be mailed or delivered to the mortgagor at least ten (10) calendar days before the first payment affected by the notice is due. The mortgagor under ~~such~~ [the] loan shall be entitled to continue to make payments to the transferor of the servicing rights until ~~such~~ [the] mortgagor is given the notice specified herein, and neither the transferor nor the transferee of ~~such~~ [the] servicing rights shall be entitled to enforce any penalties for late payment or non-payment against ~~such~~ [the] mortgagor based on such continuation.

Authority: ~~T.C.A. § 45-13-117~~. T.C.A. §§ 45-1-107(h) and 45-13-103.

0180-17-.04 LOCK-IN AGREEMENT.

- (1) A lock-in agreement shall include, but not necessarily be limited to, the following:
 - (a) The interest rate and discount points to be paid by the borrower on the [residential] mortgage loan, and if the [residential mortgage] loan ~~is~~ [has] an adjustable [interest] rate, the initial interest rate;
 - (b) The amount of any lock-in fee and the time within which the lock-in fee must be paid;
 - (c) The length of the lock-in period;
 - (d) A statement that if the [residential mortgage] loan is not closed within the lock-in period, the mortgage lender is no longer obligated by the lock-in agreement and that any lock-in fee paid by the applicant may not be refundable except under certain conditions (the conditions do not have to be specified);
 - (e) A statement that any terms not locked in by the lock-in agreement are subject to change until the [residential mortgage] loan is closed at settlement; and
 - (f) Any other terms and conditions of the lock-in agreement required by the [mortgage] lender.

Authority: ~~T.C.A. §§ 45-13-109 and 45-13-117.~~ [T.C.A. §§ 45-13-107(h), 45-13-103 and 45-13-405(a).]

0180-17-.05 REFUND OF LOCK-IN FEE.

Any failure by a licensee ~~or a registrant~~ to return a lock-in fee to an applicant pursuant to the terms of its agreement with ~~such~~ [the] applicant shall constitute grounds to revoke the license of such licensee. ~~or registrant.~~

Authority: ~~T.C.A. §§ 45-13-108, 45-13-109 and 45-13-117.~~ [T.C.A. §§ 45-1-107(h), 45-13-103, 45-13-405(a).]

0180-17-.06 REFUND OF COMMITMENT FEE.

Any failure by a licensee ~~or a registrant~~ to return a commitment fee to an applicant pursuant to the terms of its agreement with ~~such~~ [the] applicant shall constitute grounds to revoke the license of such licensee. ~~or registrant.~~

Authority: ~~T.C.A. §§ 45-13-108, 45-13-109 and 45-13-117.~~ [T.C.A. §§ 45-1-107(h), 45-13-103, 45-13-206(a), 45-13-401(5) and 45-13-405(a).]

0180-17-.07 BROKERAGE/FINDER FEES.

- (1) ~~Any~~ [L]icensee[s] ~~or registrant under the Act who~~ [that] charges or pays a brokerage/finder fee must provide a schedule of fees paid or charged in their filing papers and cannot alter those charges without thirty (30) days prior written notice to the Department of Financial Institutions.
- (2) Any brokerage/finder fee of two percent (2%) or less of the principal amount of the [residential mortgage] loan will be considered fair and reasonable. Any brokerage/finder fee ~~of~~ [that is more than] two percent (2%) of the principal amount of the loan ~~will be~~ [is] presumed to be unfair and unreasonable and shall be grounds to revoke the license ~~or registration~~ of such licensee ~~or registrant~~, unless such licensee ~~or registrant~~ can provide evidence showing that ~~such~~ [the] fee constitutes fair and reasonable compensation, subject to the restrictions ~~contained~~ in T.C.A. § 47-14-101, et seq.

Authority: ~~T.C.A. §§ 45-13-105, 45-13-108, 45-13-117 and 47-14-113 (3).~~ T.C.A. §§ 45-1-107(h), 45-13-103, 45-13-401(5), 45-13-405(a) and 45-14-113(c).

~~0180-17-.08. SURETY BOND/LETTER OF CREDIT.~~

- ~~———— (1) ——— The surety required by T.C.A. § 45-13-106 may be in the form of a bond issued by any bonding company qualified to do business in Tennessee. The bond shall be issued for the calendar year and must provide coverage for legal action against the licensee for the following two (2) years.~~
- ~~———— (2) ——— If a letter of credit is filed with the Commissioner rather than a surety bond, the letter of credit must be issued for a period of three (3) years to provide coverage for any legal action brought against the licensee within that three (3) year period. A letter of credit shall be renewed annually to reflect three (3) years of coverage.~~

Authority: ~~T.C.A. § 45-13-106. Administrative History: Original rule filed January 25, 1989; effective May 1, 1989.~~

[0180-17-.08. Surety Bond Requirements.

- (1) As a condition of renewing a mortgage lender or mortgage loan broker license, the licensee shall file a surety bond in a form approved by the commissioner, providing coverage for each of its mortgage loan originators in an amount reflecting the dollar amount of Tennessee residential mortgage loans originated by the licensee in the calendar year immediately preceding the calendar year in which the renewal application is filed, as follows:
 - (a) For mortgage loan brokers:
 - 1. Less than \$10,000,000 in loans – bond amount of \$45,000;
 - 2. \$10,000,000 or more in loans, but less than \$50,000,000 – bond amount of \$90,000; or
 - 3. \$50,000,000 or more in loans – bond amount of \$135,000.
 - (b) For mortgage lenders:
 - 1. Less than \$10,000,000 in loans – bond amount of \$100,000;
 - 2. \$10,000,000 or more in loans, but less than \$50,000,000 – bond amount of \$200,000; or
 - 3. \$50,000,000 or more in loans – bond amount of \$300,000.
- (2) If the renewal application is being filed in the year in which the license was issued, or in a year in which the license was issued in the immediately preceding calendar year, the mortgage lender or mortgage loan broker shall file as a condition of renewal a surety bond providing coverage for each of its mortgage loan originators in the amount of \$200,000 for a mortgage lender and in the amount of \$90,000 for a mortgage loan broker.
- (3) If the applicant or licensee is a combination of a mortgage lender, mortgage loan broker, and/or mortgage loan servicer, the applicant or licensee is only required to provide one (1) surety bond, which shall be in the highest amount required if the applicant or licensee

were solely a mortgage lender, mortgage loan broker, or mortgage loan servicer, and not a combination thereof. An applicant or licensee that is solely a loan servicer shall maintain as a condition of renewal a surety bond in the amount of \$200,000.

Authority: T.C.A. §§ 45-1-107(h), 45-13-103 and 45-13-204.]

0180-17-.09. LETTER OF EXEMPTION.

The Department [of Financial Institutions] may issue a letter of exemption to any entity or person that provides the Department with sufficient written evidence of exemption [that is] signed by an authorized legal or corporate representative.

Authority: ~~T.C.A. § 45-13-103.~~ [T.C.A. § 45-1-107(h), 45-13-103 and 45-13-201(d).]

0180-17-.10. FEES.

~~(1) The commissioner hereby prescribes the following fees.~~

~~(a) Registration statement. Each registrant filing a registration statement pursuant to T.C.A. § 45-13-103(b)(1), shall pay to the commissioner, at the time of filing such registration statement, a non-refundable registration fee of one hundred dollars (\$100) and a non-refundable investigation fee of one hundred dollars (\$100). Each registrant shall file a renewal application and pay a renewal fee of one hundred dollars (\$100) to the commissioner on or before December 1 of each year for the following year's registration commencing on January 1. Should the registrant fail to file the renewal application and renewal fee by December 1, the registrant will have to file an application for registration together with the one hundred dollar (\$100) registration fee and the one hundred dollar (\$100) investigation fee to obtain the renewed registration.~~

~~(b) Fees for registration of each mortgage loan originator.~~

1. Initial registration	\$100.00
2. Annual renewal of registration	\$100.00
(c) Fee for obtaining substitute license, certificate of registration, or mortgage loan originator registration certificate	\$25.00

~~(2) Fees paid to the commissioner are non-refundable.~~

~~**Authority:** T.C.A. §§ 45-1-107(h), 45-13-105(c)(2), 45-13-117, 45-13-119, and Chapter 747 of Acts of 2004. **Administrative History:** Original rule filed July 26, 1996, effective November 28, 1996.~~

[0180-17-.10 FEE FOR SUBSTITUTE LICENSE.

The nonrefundable fee to obtain a substitute license for any license issued under the Tennessee Residential Lending, Brokerage and Servicing Act is twenty-five dollars (\$25.00).

Authority: T.C.A. §§ 45-1-107(h), 45-13-103 and 45-13-107.]

[0180-17-.11 Experience Required for a License.

(1) Experience Required. The Department of Financial Institutions shall not issue a mortgage lender, mortgage loan broker, or mortgage loan servicer license unless the applicant demonstrates at least three (3) years of relevant and substantive experience in

the mortgage loan industry. Experience is considered relevant if it occurred within the five (5) years preceding the date of application. The Department shall deny an application for licensure if the applicant does not provide the Department with satisfactory evidence of experience. Experience may be verified with any past or current employers, with taxing authorities, and/or with any other professional references. The experience required under this paragraph is a continuing requirement and the failure of a mortgage lender, mortgage loan broker or mortgage loan servicer to maintain the requisite experience (e.g. if the individual demonstrating the company's experience at initial licensure leaves the company) shall constitute grounds to suspend or revoke the license.

- (2) **Mortgage Lenders and Mortgage Loan Brokers.** An applicant seeking licensure as a mortgage lender and/or mortgage loan broker must demonstrate experience by the individual designated in the application as the "managing principal." The experience required under paragraph (1) applies to mortgage lenders and mortgage loan brokers licensed prior to the effective date of this rule upon any change in managing principal.
 - (a) **Change in Managing Principal.** Upon any change in a mortgage lender's or mortgage loan broker's managing principal, the Department may, as a condition of continued licensure, request such evidence as it finds reasonably necessary to verify that the new managing principal has the requisite three (3) years experience in the mortgage loan industry.

- (3) **Mortgage Loan Servicers.** An applicant seeking licensure solely as a mortgage loan servicer must demonstrate experience by the single individual identified in the application possessing significant managerial control over the applicant (such as the president or chief executive officer). If the applicant servicer is a sole proprietor, the applicant must demonstrate experience by the sole proprietor. The experience required under paragraph (1) applies to a mortgage loan servicer licensed prior to the effective date of this rule upon any change in the individual designated as demonstrating such experience in its 2010-2011 mortgage loan servicer renewal application.
 - (a) **Change in Individual Demonstrating Experience.** Upon any change in a mortgage loan servicer's designated individual demonstrating the experience required under paragraph (1), the Department may, as a condition of continued licensure, request such evidence as it finds reasonably necessary to verify that the new individual has the requisite three (3) years experience in the mortgage loan industry.

Authority: T.C.A. §§ 45-1-107(h), 45-13-103, 45-13-202(a)(5), 45-13-401(5) and 45-13-405(a-b).

[0180-17-.12 Financial Statements.

Financial statements submitted to the Department of Financial Institutions shall be compiled in accordance with generally accepted accounting principles and certified by an independent certified public accountant or certified public accounting firm. Financial statements shall show compliance with the net worth requirements set forth in T.C.A. § 45-13-203. Financial statements shall include, but are not limited to, an income statement, balance sheet, statement of cash flows, and relevant disclosures.

Authority: T.C.A. §§ 45-1-107(h), 45-13-103 and 45-13-208(a).]

[0180-17-.13 Nationwide Mortgage Licensing and Registry System Challenge Process.

- (1) A person may challenge information entered by the Department of Financial Institutions into the Nationwide Mortgage Licensing System and Registry. A challenge must be made in writing to the Department and addressed to the attention of the Assistant Commissioner for the Compliance Division. The grounds for the challenge shall be limited to a review of the factual accuracy of the information regarding the person's record submitted to the Nationwide Mortgage Licensing System and Registry by the Department. A challenge shall be considered moot if the challenged information is no longer available in the Nationwide Mortgage Licensing System and Registry.
- (2) The challenge shall include the person's name, unique identifier, and a statement of the alleged inaccuracy of the information entered into the Nationwide Mortgage Licensing System and Registry. The challenge shall include available proof or corroboration that supports the person's challenge, including, but not limited to, certified copies of official documents or court orders.
- (3) Upon receipt of the challenge, the commissioner shall investigate the challenge, along with any information provided, and determine whether the challenged information entered into the Nationwide Mortgage Licensing System and Registry is factually accurate.
- (4) The commissioner shall notify the person of the determination within 60 days of the receipt of the written challenge.
- (5) If the commissioner determines that the information submitted to the Nationwide Mortgage Licensing System and Registry is factually inaccurate, the commissioner shall take prompt steps to correct the information submitted.
- (6) A person aggrieved by the commissioner's determination regarding a challenge may request a hearing on the question of whether the challenged information is factually accurate. The request for hearing must be in writing within 30 days of the commissioner's determination. If the hearing is timely requested, it shall be conducted under the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, and the burden of proving that the challenged information is factually inaccurate is on the person aggrieved by the commissioner's decision regarding the challenge.

Authority: 12 U.S.C. § 5107(d)(4); T.C.A. §§ 45-1-107(h), 45-13-103, 45-13-501(a)(1), and 45-13-504.]

[0180-17-.14 Notification Requirements.

- (1) In addition to the events set forth in T.C.A. § 45-13-108, a licensee shall, within fifteen (15) days of the occurrence of any of the following events, file a written report with the commissioner describing the event and its expected impact on the activities of the licensee in this state:
 - (a) The entry of a publicly available administrative order against the licensee by a state or federal regulatory agency, including, but not limited to, an emergency cease and desist order, an order to cease and desist, an order to pay civil penalties, and an order to make refunds.

Authority: T.C.A. §§ 45-1-107(h), 45-13-103 and 45-13-108(6).

[0180-17-.15 Preservation of Records.

All books and records required to be preserved by any regulation of the commissioner or required to by any federal statute, regulation or regulatory guideline, as applicable to a licensed mortgage lender,

mortgage loan broker, and mortgage loan servicer, shall be preserved and made available to the commissioner for twenty-five (25) months on all rejected applications and twenty-four (24) months on all loans paid in full.

Authority: T.C.A. §§ 45-1-107(h), 45-13-103, 45-13-206 and 45-13-207(a).]

[0190-17-.16 Annual Report.

The annual report required under T.C.A. § 45-13-208(b) shall be in the form of and submitted on the date of the renewal application required under T.C.A. § 45-13-203(c). The annual report shall be subscribed and affirmed as true by the licensee under the penalties of perjury and include the names of all directors, officers, general partners, and stockholders owning or controlling 25% or more of the outstanding capital stock of the licensee, any limited partner owning more than 25% of the partnership interest of the licensee, any changes among officers, directors, or general partners within the preceding year, and any change in principal place of business of the licensee.

Authority: T.C.A. §§ 45-1-107(h), 45-13-103, 45-13-203(c) and 45-13-208(b)-(c).]