

**AGENDA
FINANCIAL SERVICES COMMISSION
OFFICE OF FINANCIAL REGULATION**

<http://www.flofr.com/StaticPages/NoticesOfPublicMeetingsHearingsAndWorkshops.htm>

September 29, 2015

MEMBERS

Governor Rick Scott Attorney
General Pam Bondi
Chief Financial Officer Jeff Atwater
Commissioner Adam Putnam

Contact: Jamie Mongiovi
Director of Communications & Governmental Relations (OFR)
(850) 410-9709

9:00 A.M.
LL-03, The Capitol
Tallahassee, Florida

Meredith Hinshelwood
Deputy Director of Governmental Relations (OFR)
(850) 410-9544

<u>ITEM</u>	<u>SUBJECT</u>	<u>RECOMMENDATION</u>
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1. **Consumer Finance:** The Office requests approval to file for final adoption of one new rule and amendments to fifteen rules in Chapter 69V-40, F.A.C., relating to the regulation of mortgage brokerage. The rules being amended specifically relate to the regulation of mortgage loan originators and mortgage entities.

New rule:

- Rule 69V-40.00111

Rules for amendment:

- Rule 69V-40.00112
- Rule 69V-40.003
- Rule 69V-40.011
- Rule 69V-40.0312
- Rule 69V-40.0321
- Rule 69V-40.036
- Rule 69V-40.0611
- Rule 69V-40.066
- Rule 69V-40.111
- Rule 69V-40.156
- Rule 69V-40.170
- Rule 69V-40.175
- Rule 69V-40.260
- Rule 69V-40.265
- Rule 69V-40.270

(ATTACHMENT 1)

APPROVAL FOR FINAL ADOPTION

2. **OFR Quarterly Report (FY 2014-15, Quarter 4: April 1, 2015 – June 30, 2015)**
(ATTACHMENT 2)

ATTACHMENT 1

**FINANCIAL SERVICES COMMISSION
OFFICE OF FINANCIAL REGULATION
AGENDA ITEM #1: REQUEST APPROVAL FOR FINAL ADOPTION**

Action Requested

The Office requests approval to file for final adoption Rules 69V-40.00111, 69V-40.00112, 69V-40.003, 69V-40.011, 69V-40.0312, 69V-40.0321, 69V-40.036, 69V-40.0611, 69V-40.066, 69V-40.111, 69V-40.156, 69V-40.170, 69V-40.175, 69V-40.260, 69V-40.265, and 69V-40.270, F.A.C. The rules relate to the regulation of mortgage loan originators and mortgage entities.

A copy of the incorporated material is provided herein.

Summary and Justification of Rules

Rule 69V-40.00111, F.A.C. (Determination of Common Terms Used Throughout Chapter 494, F.S., and Rule Chapter)

The rule will define common terms used throughout Chapter 494, F.S., and Rule Chapter 69V-40, F.A.C. In particular, the rule will define the term “material benefit” as used in Chapter 494, F.S. and Rule Chapter 69V-40, F.A.C.

Rule 69V-40.011, F.A.C. (Misleading Practice; Penalty)

The rule will remove obsolete terms, update the statutory citation for the law implemented, and remove obsolete statutory references in the law implemented section of the rule.

Rule 69V-40.00112, F.A.C. (Effect of Law Enforcement Records on Applications for Loan Originator, Mortgage Broker, and Mortgage Lender Licensure)

The rule will update form titles to reflect current names.

Rule 69V-40.003, F.A.C. (Electronic Filing of Forms and Fees)

The rule will clarify the rulemaking authority for the rule.

Rule 69V-40.0312, F.A.C. (Application Procedure for Loan Originator License)

The rule will update form names, delete obsolete form names, update web address links, remove obsolete web address links, correct grammatical mistakes, and delete obsolete rule requirements. Additionally, the rule will reduce the time allowed for responses to requests for additional information so that license applications can be processed more efficiently.

Rule 69V-40.0321, F.A.C. (Application Procedure for a Mortgage Broker License)

The rule will update form names, delete obsolete form names, update web address links, remove obsolete web address links, correct grammatical mistakes, and delete obsolete rule requirements.

Rule 69V-40.036, F.A.C. (Application Procedure for a Mortgage Broker Branch Office License)

The rule will update form names, delete obsolete form names, update web address links, remove obsolete web address links, correct grammatical mistakes, and delete obsolete rule requirements.

Rule 69V-40.0611, F.A.C. (Application Procedure for a Mortgage Lender License)

The rule will update form names, delete obsolete form names, update web address links, remove obsolete web address links, correct grammatical mistakes, and delete obsolete rule requirements.

Rule 69V-40.066, F.A.C. (Application Procedure for a Mortgage Lender Branch Office License)

The rule will update form names, delete obsolete form names, add incorporation of rule language in the same paragraph as the incorporated form, correct grammatical mistakes, and delete duplicative rule text.

Rule 69V-40.111, F.A.C. (Disciplinary Guidelines)

The rule will improve organization and clarity of the rule by removing the disciplinary matrix and placing it into an incorporated document entitled “Office of Financial Regulation Division of Consumer Finance Disciplinary Guidelines for Mortgage Loan Originators and Mortgage Entities.”

Rule 69V-40.156, F.A.C. (Third-party Fee Accounts)

The rule will update the law implemented section of the rule by removing obsolete statutory citations.

Rule 69V-40.170, F.A.C. (Books and Records)

The rule will update a form name, re-number paragraphs, and delete penalty provisions already found in rule 69V-40.111, F.A.C., and the “Disciplinary Guidelines for Mortgage Loan Originators and Mortgage Entities” form.

Rule 69V-40.175, F.A.C. (Mortgage Brokerage Files)

The rule will remove obsolete rule text and delete penalty provisions already found in rule 69V-40.111, F.A.C., and the “Disciplinary Guidelines for Mortgage Loan Originators and Mortgage Entities” form.

Rule 69V-40.260, F.A.C. (Mortgage Lender Files)

The rule will remove obsolete rule text and delete penalty provisions already found in rule 69V-40.411, F.A.C., and the “Disciplinary Guidelines for Mortgage Loan Originators and Mortgage Entities” form. The rule will also update the law implemented section to delete obsolete citations.

Rule 69V-40.265, F.A.C. (Mortgage Brokerage and Lending Transaction Journal)

The rule will delete penalty provisions already found in rule 69V-40.411, F.A.C., and the “Disciplinary Guidelines for Mortgage Loan Originators and Mortgage Entities” form.

Rule 69V-40.270, F.A.C. (Financial Guaranty in Lieu of Uniform Single Audit)

The rule will remove obsolete rule text and delete penalty provisions already found in rule 69V-40.411, F.A.C., and the “Disciplinary Guidelines for Mortgage Loan Originators and Mortgage Entities” form. The rule will also re-number paragraphs and update the law implemented section to delete obsolete citations and add current citations.

Procedural History of Rules

Rule 69V-40.00111, F.A.C. (Determination of Common Terms Used Throughout Chapter 494, F.S., and Rule Chapter)

On May 5, 2015, the Financial Services Commission approved the new rule for proposed rulemaking. On July 28, 2015, a Notice of Rule Development was published in the Florida Administrative Register (FAR) for Rule 69V-40.00111, F.A.C., to advise the public of the development of changes to the rule chapter, and to provide that, if requested in writing, a rule development workshop would be held. No written requests for a workshop were received by the Office. On July 29, 2015, the Notice of Proposed Rulemaking was published in the Florida Administrative Register (FAR). No requests for a hearing were received by the Office.

The Office did not receive comments from the Joint Administrative Procedures Committee (JAPC) regarding this rule.

Rule 69V-40.011, F.A.C. (Misleading Practice; Penalty)

On May 5, 2015, the Financial Services Commission approved the new rule for proposed rulemaking. On July 28, 2015, a Notice of Rule Development was published in the Florida Administrative Register (FAR) for Rule 69V-40.011, F.A.C., to advise the public of the development of changes to the rule chapter, and to provide that, if requested in writing, a rule development workshop would be held. No written requests for a workshop were received by the Office. On July 29, 2015, the Notice of Proposed Rulemaking was published in the Florida Administrative Register (FAR). No requests for a hearing were received by the Office.

The Office received comments from JAPC regarding the law implemented section of this rule. Specifically, JAPC asked the Office to explain how section 120.695, F.S., is implemented by the rule. As section 120.695, F.S., is not implemented by the rule, the Office removed section 120.695 from the law implemented section. The Office filed its response to JAPC's comments on September 11, 2015.

Rule 69V-40.00112, F.A.C. (Effect of Law Enforcement Records on Applications for Loan Originator, Mortgage Broker, and Mortgage Lender Licensure)

On May 5, 2015, the Financial Services Commission approved the new rule for proposed rulemaking. On July 28, 2015, a Notice of Rule Development was published in the Florida Administrative Register (FAR) for Rule 69V-40.00112, F.A.C., to advise the public of the development of changes to the rule chapter, and to provide that, if requested in writing, a rule development workshop would be held. No written requests for a workshop were received by the Office. On July 29, 2015, the Notice of Proposed Rulemaking was published in the Florida Administrative Register (FAR). No requests for a hearing were received by the Office.

The Office did not receive comments from the Joint Administrative Procedures Committee (JAPC) regarding this rule.

Rule 69V-40.003, F.A.C. (Electronic Filing of Forms and Fees)

On May 5, 2015, the Financial Services Commission approved the new rule for proposed rulemaking. On July 28, 2015, a Notice of Rule Development was published in the Florida Administrative Register (FAR) for Rule 69V-40.003, F.A.C., to advise the public of the development of changes to the rule chapter, and to provide that, if requested in writing, a rule

development workshop would be held. No written requests for a workshop were received by the Office. On July 29, 2015, the Notice of Proposed Rulemaking was published in the Florida Administrative Register (FAR). No requests for a hearing were received by the Office.

The Office did not receive comments from the Joint Administrative Procedures Committee (JAPC) regarding this rule.

Rule 69V-40.0312, F.A.C. (Application Procedure for Loan Originator License)

On May 5, 2015, the Financial Services Commission approved the new rule for proposed rulemaking. On July 28, 2015, a Notice of Rule Development was published in the Florida Administrative Register (FAR) for Rule 69V-40.0312, F.A.C., to advise the public of the development of changes to the rule chapter, and to provide that, if requested in writing, a rule development workshop would be held. No written requests for a workshop were received by the Office. On July 29, 2015, the Notice of Proposed Rulemaking was published in the Florida Administrative Register (FAR). No requests for a hearing were received by the Office.

The Office did not receive comments from the Joint Administrative Procedures Committee (JAPC) regarding this rule.

Rule 69V-40.0321, F.A.C. (Application Procedure for a Mortgage Broker License)

On May 5, 2015, the Financial Services Commission approved the new rule for proposed rulemaking. On July 28, 2015, a Notice of Rule Development was published in the Florida Administrative Register (FAR) for Rule 69V-40.0321, F.A.C., to advise the public of the development of changes to the rule chapter, and to provide that, if requested in writing, a rule development workshop would be held. No written requests for a workshop were received by the Office. On July 29, 2015, the Notice of Proposed Rulemaking was published in the Florida Administrative Register (FAR). No requests for a hearing were received by the Office.

The Office received comments from JAPC regarding correcting a form number mentioned in the rule. The correct form number was cited in the rule text; this was simply a coding error on the part of the agency. The Office filed its response to JAPC's comments on September 11, 2015.

Rule 69V-40.036, F.A.C. (Application Procedure for a Mortgage Broker Branch Office License)

On May 5, 2015, the Financial Services Commission approved the new rule for proposed rulemaking. On July 28, 2015, a Notice of Rule Development was published in the Florida Administrative Register (FAR) for Rule 69V-40.036, F.A.C., to advise the public of the development of changes to the rule chapter, and to provide that, if requested in writing, a rule development workshop would be held. No written requests for a workshop were received by the Office. On July 29, 2015, the Notice of Proposed Rulemaking was published in the Florida Administrative Register (FAR). No requests for a hearing were received by the Office.

The Office did not receive comments from the Joint Administrative Procedures Committee (JAPC) regarding this rule.

Rule 69V-40.0611, F.A.C. (Application Procedure for a Mortgage Lender License)

On May 5, 2015, the Financial Services Commission approved the new rule for proposed rulemaking. On July 28, 2015, a Notice of Rule Development was published in the Florida Administrative Register (FAR) for Rule 69V-40.0611, F.A.C., to advise the public of the

development of changes to the rule chapter, and to provide that, if requested in writing, a rule development workshop would be held. No written requests for a workshop were received by the Office. On July 29, 2015, the Notice of Proposed Rulemaking was published in the Florida Administrative Register (FAR). No requests for a hearing were received by the Office.

The Office did not receive comments from the Joint Administrative Procedures Committee (JAPC) regarding this rule.

Rule 69V-40.066, F.A.C. (Application Procedure for a Mortgage Lender Branch Office License)

On May 5, 2015, the Financial Services Commission approved the new rule for proposed rulemaking. On July 28, 2015, a Notice of Rule Development was published in the Florida Administrative Register (FAR) for Rule 69V-40.066, F.A.C., to advise the public of the development of changes to the rule chapter, and to provide that, if requested in writing, a rule development workshop would be held. No written requests for a workshop were received by the Office. On July 29, 2015, the Notice of Proposed Rulemaking was published in the Florida Administrative Register (FAR). No requests for a hearing were received by the Office.

The Office did not receive comments from the Joint Administrative Procedures Committee (JAPC) regarding this rule.

Rule 69V-40.111, F.A.C. (Disciplinary Guidelines)

On May 5, 2015, the Financial Services Commission approved the new rule for proposed rulemaking. On July 28, 2015, a Notice of Rule Development was published in the Florida Administrative Register (FAR) for Rule 69V-40.111, F.A.C., to advise the public of the development of changes to the rule chapter, and to provide that, if requested in writing, a rule development workshop would be held. No written requests for a workshop were received by the Office. On July 29, 2015, the Notice of Proposed Rulemaking was published in the Florida Administrative Register (FAR). No requests for a hearing were received by the Office.

The Office received comments from JAPC regarding the law implemented section of this rule. Specifically, JAPC asked the Office to explain how sections 494.0024, 494.00312, 494.00611, and 494.0074, F.S., are implemented by the rule. As those sections are not implemented by the rule, the Office removed those sections from the law implemented section. JAPC also asked the Office to remove section 494.0062 from the law implemented section, as it had been repealed. The Office removed this section. JAPC asked the Office to cite section 494.0063, F.S., as law implemented. The Office did not add this section, as this section is not implemented by Rule 69V-40.111, F.A.C. The Office filed its response to JAPC's comments on September 11, 2015.

Rule 69V-40.156, F.A.C. (Third-party Fee Accounts)

On May 5, 2015, the Financial Services Commission approved the new rule for proposed rulemaking. On July 28, 2015, a Notice of Rule Development was published in the Florida Administrative Register (FAR) for Rule 69V-40.156, F.A.C., to advise the public of the development of changes to the rule chapter, and to provide that, if requested in writing, a rule development workshop would be held. No written requests for a workshop were received by the Office. On July 29, 2015, the Notice of Proposed Rulemaking was published in the Florida Administrative Register (FAR). No requests for a hearing were received by the Office.

The Office received comments from JAPC regarding the law implemented section of this rule. Specifically, JAPC asked the Office to explain how section 120.695, F.S., is implemented by the rule. As section 120.695, F.S., is not implemented by the rule, the Office removed section 120.695, F.S., from the law implemented section. The Office filed its response to JAPC's comments on September 11, 2015.

Rule 69V-40.170, F.A.C. (Books and Records)

On May 5, 2015, the Financial Services Commission approved the new rule for proposed rulemaking. On July 28, 2015, a Notice of Rule Development was published in the Florida Administrative Register (FAR) for Rule 69V-40.170, F.A.C., to advise the public of the development of changes to the rule chapter, and to provide that, if requested in writing, a rule development workshop would be held. No written requests for a workshop were received by the Office. On July 29, 2015, the Notice of Proposed Rulemaking was published in the Florida Administrative Register (FAR). No requests for a hearing were received by the Office

The Office received comments from JAPC regarding the law implemented section of this rule. Specifically, JAPC asked the Office to explain how section 120.595, F.S., is implemented by the rule. As section 120.595, F.S., is not implemented by the rule, the Office removed section 120.595, F.S., from the law implemented section. The Office filed its response to JAPC's comments on September 11, 2015.

Rule 69V-40.175, F.A.C. (Mortgage Brokerage Files)

On May 5, 2015, the Financial Services Commission approved the new rule for proposed rulemaking. On July 28, 2015, a Notice of Rule Development was published in the Florida Administrative Register (FAR) for Rule 69V-40.175, F.A.C., to advise the public of the development of changes to the rule chapter, and to provide that, if requested in writing, a rule development workshop would be held. No written requests for a workshop were received by the Office. On July 29, 2015, the Notice of Proposed Rulemaking was published in the Florida Administrative Register (FAR). No requests for a hearing were received by the Office

The Office received comments from JAPC regarding the law implemented section of this rule. Specifically, JAPC asked the Office to explain how sections 494.0038 and 494.0043, F.S., are implemented by the rule. As those sections are not implemented by the rule, the Office removed those sections from the law implemented section. The Office filed its response to JAPC's comments on September 11, 2015.

Rule 69V-40.260, F.A.C. (Mortgage Lender Files)

On May 5, 2015, the Financial Services Commission approved the new rule for proposed rulemaking. On July 28, 2015, a Notice of Rule Development was published in the Florida Administrative Register (FAR) for Rule 69V-40.260, F.A.C., to advise the public of the development of changes to the rule chapter, and to provide that, if requested in writing, a rule development workshop would be held. No written requests for a workshop were received by the Office. On July 29, 2015, the Notice of Proposed Rulemaking was published in the Florida Administrative Register (FAR). No requests for a hearing were received by the Office

The Office received comments from JAPC regarding the law implemented section of this rule. Specifically, JAPC asked the Office to explain how section 120.695, F.S., is implemented by the rule. As section 120.695, F.S., is not implemented by the rule, the Office removed section 120.695,

F.S., from the law implemented section. The Office filed its response to JAPC's comments on September 11, 2015.

Rule 69V-40.265, F.A.C. (Mortgage Brokerage and Lending Transaction Journal)

On May 5, 2015, the Financial Services Commission approved the new rule for proposed rulemaking. On July 28, 2015, a Notice of Rule Development was published in the Florida Administrative Register (FAR) for Rule 69V-40.265, F.A.C., to advise the public of the development of changes to the rule chapter, and to provide that, if requested in writing, a rule development workshop would be held. No written requests for a workshop were received by the Office. On July 29, 2015, the Notice of Proposed Rulemaking was published in the Florida Administrative Register (FAR). No requests for a hearing were received by the Office

The Office received comments from JAPC regarding the law implemented section of this rule. Specifically, JAPC asked the Office to explain how section 120.695, F.S., is implemented by the rule. As section 120.695, F.S., is not implemented by the rule, the Office removed section 120.695, F.S., from the law implemented section. The Office filed its response to JAPC's comments on September 11, 2015.

Rule 69V-40.270, F.A.C. (Financial Guaranty in Lieu of Uniform Single Audit)

On May 5, 2015, the Financial Services Commission approved the new rule for proposed rulemaking. On July 28, 2015, a Notice of Rule Development was published in the Florida Administrative Register (FAR) for Rule 69V-40.270, F.A.C., to advise the public of the development of changes to the rule chapter, and to provide that, if requested in writing, a rule development workshop would be held. No written requests for a workshop were received by the Office. On July 29, 2015, the Notice of Proposed Rulemaking was published in the Florida Administrative Register (FAR). No requests for a hearing were received by the Office

The Office received comments from JAPC regarding the law implemented section of this rule. Specifically, JAPC asked the Office to explain how section 120.695, F.S., is implemented by the rule. As section 120.695, F.S., is not implemented by the rule, the Office removed section 120.695, F.S., from the law implemented section. The Office filed its response to JAPC's comments on September 11, 2015.

Comments on Rules

[Begins on next page.]



Representative W. Travis Cummings, Chair
Senator Denise Grimsley, Vice Chair
Senator Aaron Bean
Senator Dwight Bullard
Senator Nancy C. Detert
Senator Geraldine F. "Geri" Thompson
Representative Matt Hudson
Representative Lake Ray
Representative Hazelle P. "Hazel" Rogers
Representative Barbara Watson



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THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

August 13, 2015

Ms. Sheila Harley
Assistant General Counsel
Office of Financial Regulation
101 East Gaines Street
Tallahassee, Florida 32399-0379

**RE: Department of Financial Services, Office of Financial Regulation
Rules 69V-40.00112, .002, .003, .008, .011, .0312, .0313, .0321, .0322, .036, .0611, .0612, .066,
.111, .155, .156, .170, .175, .260, .265, and .270**

Dear Ms. Harley:

I have reviewed the above-referenced rules and offer the following comments for your consideration and response:

69V-40.002: Rulemaking Authority
It appears that section 494.0011(2)(b), Florida Statutes, (or a more general citation to section 494.011(2) to encompass the multiple citations), should be added as providing rulemaking authority for this rule. Additionally, it appears that the citation to section 494.00321(1) should be to section 494.00321(2).

69V-40.002(1)(a): Incorporated materials—NMLS Company Form, Individual Form (both versions), and Branch Form

The four incorporated NMLS forms lack a reference to an assigned form number and a citation to the rule in which they are incorporated as is required by rule 1-1.013(2)(a), Florida Administrative Code.

69V-40.002(1)(b)6.: Please review to determine the appropriateness for incorporation by reference of the disciplinary guidelines in this subparagraph as the disciplinary guidelines are incorporated by reference in rule 69V-40.111, which appears to be the appropriate rule location.

Reincorporation in this generic rule appears to be unnecessary and may present potential issues should one version be updated in the future. Please review and consider whether this addition is necessary.

69V-40.008:

Rulemaking Authority

Please explain how this rule implements the rulemaking authority found in section 494.0016(4), Florida Statutes. The citation to section 494.0038(2)(b) should be stricken as it no longer exists in statute.

In light of the above comments related to the cited rulemaking authority for this rule, what alternative rulemaking authority exists for the content of this rule? Please review and advise.

69V-40.008(3)(a):

It appears that the “In addition to stating the total loan origination fee,” language may no longer be necessary in light of the proposed deletion of that express requirement found in subsection (1) of this rule. Please review and advise.

69V-40.008(7):

Please explain how this subsection comports with the fee caps found in section 494.0042, Florida Statutes.

69V-40.011:

Law Implemented

Please explain how this rule implements section 120.695, Florida Statutes.

69V-40.0313(1)(a):

This paragraph requires a renewal applicant to submit “[a] completed renewal submission as required by the Registry submitted through the Registry.” Please set forth what form/submission is required for renewal. Pursuant to section 120.52(8)(d), Florida Statutes, a proposed rule is an invalid exercise of delegated legislative authority if the rule is vague, fails to establish standards for agency decisions, or vests unbridled discretion in the agency. Additionally, although section 494.0011(2)(b)1. grants the Office the authority to adopt and require the use of Registry forms, it does not appear that the statute authorizes the Office to delegate to the Registry the authority to set forth the requirements for applicants.

69V-40.0313(1)(b)3.:

It appears the citation in this subparagraph should be to section 494.00313(1)(b), Florida Statutes, as it pertains to the renewal of loan originator licenses.

69V-40.0321(1)(a):

Please correct the form number included in this paragraph.

69V-40.0322(1)(a):

Please see the comment above related to rule 69V-40.0313(1)(a).

69V-40.0612(1)(a): Please see the comment above related to rule 69V-40.0313(1)(a).

69V-40.111: Law Implemented
Please explain how sections 494.0024, 494.00312, 494.00611, and 494.0074, Florida Statutes, are implemented by this rule. It does not appear that these citations are included in the disciplinary guidelines incorporated by reference.

Please remove the citation to section 494.0062 as it was repealed.

It appears that section 494.0063 should be cited as a law implemented.

69V-40.155: Rulemaking Authority
It appears that the cited rulemaking authority for this rule, section 494.0069(6), Florida Statutes, gives the Office the authority to adopt a form for the required lock-in agreement disclosures. However, it is unclear whether this grant supports the addition of subsection (2) of the rule. Please review and advise how this rulemaking authority pertains to the entirety of the rule or revise to include the relevant additional rulemaking authority citation(s).

69V-40.155(1): This subsection refers to a statement that must be included in lock-in agreements, but it is unclear from the structure of the rule what that statement is. If the paragraphs that follow subsection (1) must be contained in a lock-in agreement please revise to indicate as such (e.g. ending subsection (1) with a colon to indicate a list). If there is an alternative interpretation of what is required, please revise as necessary to clarify.

69V-40.156: Law Implemented
Please explain how this rule implements section 120.695, Florida Statutes.

69V-40.170: Law Implemented
Please explain how this rule implements section 120.595, Florida Statutes.

69V-40.175: Law Implemented
Please explain how this rule implements sections 494.0038 and 494.0043, Florida Statutes.

Ms. Sheila Harley
August 13, 2015
Page 4

69V-40.260: Law Implemented

Please explain how this rule implements section 120.695, Florida Statutes.

69V-40.265: Law Implemented

Please explain how this rule implements section 120.695, Florida Statutes.

69V-40.270: Law Implemented

Please explain how this rule implements section 120.695, Florida Statutes.

If you have questions, please do not hesitate to contact me. Otherwise, I look forward to your written response.

Sincerely,



Jamie L. Jackson
Senior Attorney

JLJ:DF WORD/JACKSON/69V_40.00112LS081315_158627_158647



FLORIDA OFFICE OF FINANCIAL REGULATION

DREW J. BREAKSPEAR
COMMISSIONER

September 11, 2015

Via Hand Delivery

Jamie Jackson, Senior Attorney
Joint Administrative Procedures Committee
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400

RECEIVED
2015 SEP 11 PM 2:36
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE

Re: Office of Financial Regulation's Proposed Rules -Chapter 69V-40
69V-40.00112, 40.003, 40.011, 40.0312, 40.0321, 40.036, 40.0611, 40.066, 40.111,
40.156, 40.170, 40.175, 40.260, 40.265, and 40.270, F.A.C.

Dear Ms. Jackson:

I am writing to respond to your letter dated August 13, 2015.

69V-40.011 Law Implemented
Please explain how this rule implements section 120.695, Florida Statutes.

The reference to 120.695 in the law implemented section has been removed. This change will be reflected in the final version of the rule. A note will be included in the rule certification packet that a technical change was made to this subsection.

69V-40.0321(1)(a): Please correct the form number included in this paragraph.

The form number is correct. It was simply a coding issue. I recoded that section to specify that "MU1" is being added as the correct form number. This should clarify what is being added and what is being removed. This change will be reflected in the final version of the rule. A note will be included in the rule certification packet that a technical change was made to this subsection.

69V-40.111: Law Implemented
Please explain how sections 494.0024, 494.00312, 494.00611, and 494.0074, Florida Statutes, are implemented by this rule. It does not appear that these citations are included in the disciplinary guidelines incorporated by reference.

You are correct. Those sections have been removed. This change has been made and will be reflected in the final version of the rule. A note will be included in the rule certification packet that a technical change was made to this subsection.

Please remove the citation to section 494.0062 as it was repealed.

You are correct. That section has been removed. This change has been made and will be reflected in the final version of the rule. A note will be included in the rule certification packet that a technical change was made to this subsection.

It appears that section 494.0063 should be cited as a law implemented.

The Office did not add 494.0063, as it deals with audited financial statements, which doesn't seem to relate to rule 69V-40.111, F.A.C.

The word disciplinary was incorrectly spelled in 69V-40.111(1)(a). The spelling has been corrected. This change will be reflected in the final version of the rule. A note will be included in the rule certification packet that a technical change was made to this subsection.

69V-40.156: Law Implemented

Please explain how this rule implements section 120.695, Florida Statutes.

It doesn't. 120.695 has been removed. This change will be reflected in the final version of the rule. A note will be included in the rule certification packet that a technical change was made to this subsection

69V-40.170: Law Implemented

Please explain how this rule implements section 120.595, Florida Statutes.

It doesn't. 120.595 has been removed. This change will be reflected in the final version of the rule. A note will be included in the rule certification packet that a technical change was made to this subsection

69V-40.175: Law Implemented

Please explain how this rule implements sections 494.0038 and 494.0043, Florida Statutes.

Sections 494.0038 and 494.0043 have been removed. These changes will be reflected in the final version of the rule. A note will be included in the rule certification packet that a technical change was made to this subsection

69V-40.260: Law Implemented

Please explain how this rule implements section 120.695, Florida Statutes.

It doesn't. 120.695 has been removed. This change will be reflected in the final version of the rule. A note will be included in the rule certification packet that a technical change was made to this subsection

69V-40.265: Law Implemented

Please explain how this rule implements section 120.695, Florida Statutes.

It doesn't. 120.695 has been removed. This change will be reflected in the final version of the rule. A note will be included in the rule certification packet that a technical change was made to this subsection

69V-40.270: Law Implemented

Please explain how this rule implements section 120.695, Florida Statutes.

It doesn't. 120.695 has been removed. This change will be reflected in the final version of the rule. A note will be included in the rule certification packet that a technical change was made to this subsection

Jamie, I will address rules 69V-40.002, 40.008, 40.0313, 40.0322, 40.0612, and 40.155, F.A.C., in a separate letter.

If you have further questions or require additional information, please don't hesitate to contact me at Sheila.harley@flofr.com or 850/410-9716.

Thank you,



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Final Text of Rules

[Changes to the rule following JAPC comments appear in red]

[Technical changes to the rule appear in blue]

69V-40.00111 Determination of Common Terms Used Throughout Chapter 494, F.S., and Rule Chapter 69V-40, F.A.C.

(1) “Material Benefit” as used in s. 494.00296, FS, is a beneficial change in the current mortgage rates or terms where one or more of the following occurred:

(a) Reduction in Principal Amount of the loan by 10% or more;

(b) Permanent reduction in the annual interest rate of at least 1% on an annual basis; or

(c) Conversion of an Adjustable Interest Rate loan to a Fixed Rate loan and the annual interest rate is equal to or less than the current adjustable interest rate.

Rulemaking Authority 494.00296(1)(c) FS. Law ~~Implemented~~ ~~implimented~~ 494.00296(1)(c) FS. History–New

69V-40.011 Misleading Practice; Penalty.

The taking and recording of a mortgage is tantamount to a commitment, and when funds are not available for immediate disbursement to the mortgagor, such procedure will be considered a misleading and deceptive practice, and to warrant suspension or revocation of the license of the licensee ~~or registrant~~ who does so, unless, prior to such recording, the licensee ~~or registrant~~ informs the mortgagor in writing of a definite date by which payment will be made, and secures the mortgagor’s written permission for the delay thus entailed.

Rulemaking Authority 494.0011(2) FS. Law Implemented ~~120-695, 494.00255~~ ~~494.0041~~ FS. History–Revised 9-23-65, Renumbered from 3-3.11 to 3D-40.11 on 9-8-75, Formerly 3D-40.11, Amended 1-5-87, 7-25-96, Formerly 3D-40.011, _____.

69V-40.00112 Effect of Law Enforcement Records on Applications for Loan Originator, Mortgage Broker, and Mortgage Lender Licensure.

(1) General Procedure Regarding Law Enforcement Records. For the purposes of this rule each loan originator applicant and each control person of a mortgage broker and mortgage lender license applicant shall be referred to collectively as “relevant persons.” If the mortgage broker or mortgage lender license applicant is a natural person, he or she is a relevant person under this rule. As part of the application review process, the Office is required to consider a relevant person’s law enforcement record when deciding whether to approve an application for licensure as a loan originator, mortgage broker, or mortgage lender. When conducting this review, the Office reviews the relevant person’s Form ~~MU1~~, MU2 or MU4 (NMLS Individual Form) responses and criminal history information derived from the fingerprint check. In the event of a question regarding the relevant person’s criminal history, the Office will request additional information from the relevant person to determine the status of a criminal event, the specific facts and circumstances surrounding a criminal event, or to address other issues determined to be relevant to the review of the law enforcement record. The Office will notify the applicant of any specific documents that it requires in order to complete its review. The requested documents must be legible. Documentation that is typically requested includes:

(a) A copy of the police arrest affidavit, arrest report or similar document.

(b) A certified copy of the charges.

(c) A certified copy of the plea, judgment, and sentence where applicable.

(d) A certified copy of an order of entry into pre-trial intervention, and the order of termination of pre-trial intervention showing dismissal of charges where applicable.

(e) A certified copy of an order of termination of probation or supervised release, if applicable. If the requested documentation cannot be obtained, the relevant person shall submit evidence of that fact in order for the application to be deemed complete. Evidence that documentation cannot be obtained shall consist of a written statement on the letterhead of the agency that would be the custodian of the documents, signed by a representative of that agency, stating that they have no record of such matter, or that the record is lost or was damaged or destroyed, or otherwise stating why the document cannot be produced.

(2) Classification of Crimes.

(a) The Office makes a general classification of crimes into four classes: A, B, C and D as listed in subsections (13), (14), (15) and (16) of this rule.

(b) These classifications reflect the Office's evaluation of various crimes in terms of moral turpitude and the seriousness of the crime as such factors relate to the prospective threat to public welfare typically posed by a person who would commit such a crime.

(c) The names and descriptions of crimes, as set out in the classification of crimes, are intended to serve only as generic names or descriptions of crimes and shall not be read as legal titles of crimes, or as limiting the included crimes bearing the exact name or description stated.

(d) For purposes of this rule, "trigger date" means the date on which an applicant was found guilty, or pled guilty, or pled nolo contendere to a crime.

(e) A charge in the nature of attempt or intent to commit a crime, or conspiracy to commit a crime, is classified the same as the crime itself.

(3) Effect on Licensure of Commitment of Single Crime. The Office finds it necessary to implement the following standards for applications with a relevant person whose law enforcement record includes a single crime, subject to the mitigating factors set forth in this rule before licensure. All periods referenced in this rule run from the trigger date.

(a) Class A Crime. The applicant is not eligible for licensure.

(b) Class B Crime. The applicant will not be granted a license until 15 years have passed since the trigger date.

(c) Class C Crime. The applicant will not be granted a license until 7 years have passed since the trigger date.

(d) Class D Crime. The applicant will not be granted a license until 5 years have passed since the trigger date.

(4) Applicants With Multiple Crimes.

(a) The Office requires that applications with a relevant person whose law enforcement record includes multiple class "B", "C", or "D" crimes, or any combination thereof, wait longer than those whose law enforcement record includes only a single crime before becoming eligible for licensure in order to assure that such applicant's greater inability or unwillingness to abide by the law has been overcome. Therefore, the Office finds it necessary that a longer disqualifying period be utilized in such instances, before licensure can safely be granted. Accordingly, where the relevant person has been found guilty or pled guilty or pled nolo contendere to more than one crime, the Office shall add 5 years to the disqualifying period for each additional crime.

(b) The additional periods are added to the disqualifying period for the most serious class "B", "C", or "D" crime, and the combined total disqualifying period then runs from the trigger date of the most recent class "B", "C", or "D" crime.

(c) Classification as "Single Crime" versus "Multiple Crimes." For the purposes of this rule, two (2) or more offenses are considered a single crime if they are based on the same act or transaction or on two (2) or more connected acts or transactions.

(5) Mitigating Factors.

(a) The disqualifying period for a Class "B" crime shall be shortened upon proof of one or more of the following factors. When more than one factor is present the applicant is entitled to add together all of the applicable mitigation amounts and deduct that total from the usual disqualifying period, provided that an applicant shall not be permitted an aggregate mitigation of more than three (3) years for the following factors:

1. One year is deducted if the probation officer or prosecuting attorney in the most recent crime states in a signed writing that the probation officer or prosecuting attorney believes the relevant person would pose no significant threat to public welfare if the applicant is licensed as a loan originator, mortgage broker, or mortgage lender.

2. One year is deducted if restitution or settlement has been made for all crimes in which restitution or settlement was ordered by the court, and proof of such restitution or settlement is shown in official court documents or as verified in a signed writing by the prosecuting attorney or probation officer.

3. One year will be deducted if the relevant person was under age 21 when the crime was committed and there is only one crime in the relevant person's law enforcement record.

4. One year is deducted if the applicant furnishes proof that the relevant person was at the time of the crime addicted to drugs or suffering active alcoholism. The proof must be accompanied by a written letter from a properly licensed doctor, psychologist, or therapist licensed by a duly constituted state licensing body stating that the licensed person has examined or treated the applicant and that in his or her professional opinion the addiction or alcoholism is currently in remission and has been in remission for the previous 12 months. The professional opinion shall be dated within 45 days of the time of application.

5. Other Mitigating Factors. An applicant is permitted to submit any other evidence of facts that the applicant believes should decrease the disqualifying period before licensure is allowed and one additional year shall be deducted if the Office agrees the facts have a mitigating effect on the licensure decision.

(b) The burden is upon the applicant to establish these mitigating factors. Where the mitigating factor relates to or requires evidence of government agency or court action, it must be proved by a certified true copy of the agency or court document.

(6) Circumstances Not Constituting Mitigation. The Office finds that no mitigating weight exists, and none will be given, for the following factors:

(a) Type of Plea. The Office draws no distinction among types of plea, e.g., found guilty; pled guilty; pled nolo contendere.

(b) Collateral Attack on Criminal Proceedings. The Office will not allow or give any weight to an attempt to re-litigate, impeach, or collaterally attack judicial criminal proceedings or their results wherein the relevant person was found guilty or pled guilty or nolo contendere. Thus the Office will not hear or consider arguments such as: the criminal proceedings were unfair; the judge was biased; the witness or prosecutor lied or acted improperly; the defendant only pled guilty due to financial or mental stress; the defendant was temporarily insane at the time of the crime; or the defendant had ineffective counsel.

(c) Subjective Factors. The Office finds that subjective factors involving state of mind have no mitigating weight.

(7) Effect of Pending Appeal in Criminal Proceedings; Reversal on Appeal.

(a) The Office interprets the statutory grounds for denial of licensure as arising immediately upon a finding of guilt, or a plea of guilty or nolo contendere, regardless of whether an appeal is or is not allowed to be taken. The Office will not wait for the outcome of an appeal to deny licensure, unless a Florida court specifically stays the Office's adverse action.

(b) If on appeal the conviction is reversed, the Office shall immediately drop the said crime as grounds for denial of licensure.

(8) Pre-Trial Intervention. If at the time of application a relevant person is participating in a pre-trial intervention program based upon a charge of criminal conduct that would authorize denial of a license under Chapter 494, F.S., the Office will deny the application for license. The Office considers participation in a pre-trial intervention program to be a pending criminal prosecution under Chapter 494, F.S., and finds it necessary to the public welfare to wait until final disposition of all charges of criminal conduct that would authorize denial of a license under Chapter 494, F.S., before an application for licensure may be considered.

(9) Effect of Sealing or Expunging of Criminal Record.

(a) A relevant person is not required to disclose or acknowledge, and is permitted in fact to affirmatively deny, any arrest or criminal proceeding, the record of which has been legally and properly expunged or sealed by order of a court of competent jurisdiction prior to the time of application, and such denial or failure to disclose is not grounds for adverse action by the Office.

(b) Matters Sealed or Expunged Subsequent to Application. Occasionally a relevant person will have a matter sealed or expunged after an application has been filed, but before a licensing decision is made by the Office. In such situation the Office policy is as follows:

1. If the relevant person properly disclosed the matter on the application, and thereafter has the record sealed or expunged, the Office will not consider the matter in the application decision.

2. However, if the relevant person did not reveal the matter on the application and the matter had not been sealed or expunged at the time of making the application, the Office will construe the failure to disclose the matter on the application as a material misrepresentation or material misstatement, and the application shall be denied pursuant to Chapter 494, F.S.

(10) Effect of Varying Terminology.

(a) With regard to the following six subparagraphs, the Office treats each phrase in a particular subparagraph as having the same effect as the other phrases in that same subparagraph:

1. Adjudicated guilty; convicted.

2. Found guilty; entered a finding of guilt.

3. Pled guilty; entered a plea of guilty; admitted guilt; admitted the charges.

4. Nolo contendere; no contest; did not contest; did not deny; no denial.

5. Adjudication of guilt withheld; adjudication withheld; no adjudication entered; entry of findings withheld; no official record to be entered; judgment withheld; judgment not entered.

6. Nolle prosequi; nolle prosequi; charges withdrawn; charges dismissed; charges dropped.

(b) In all other instances the Office will look to the substantive meaning of the terminology used in the context in which it was used under the law of the jurisdiction where it was used.

(11) Imprisoned Persons and Community Supervision.

(a) Imprisonment. Notwithstanding any provision to the contrary in this rule, the Office shall not license any applicant under Chapter 494, F.S., while a relevant person is imprisoned, under arrest, or serving a sentence for any crime. Further, the Office shall not license any applicant when a relevant person has been released from imprisonment,

based upon a charge of criminal conduct that would authorize denial of licensure under Chapter 494, F.S., until the later of the period otherwise set out in the rules or five (5) years after the date of release. The Office finds it necessary that the person be released from imprisonment and thereafter demonstrate an ability to abide by the law by passage of at least five (5) years on good behavior, before licensure can be granted without undue risk to the public welfare. For the purposes of this section, the term "imprisonment" shall include confinement in a state or federal prison or county jail for a period of more than one year.

(b) Community Supervision. The Office shall not grant licensure when a relevant person who at the time of application or at any time during the pendency of the application is under supervision as the result of the commission or a criminal offense and released to the community under the jurisdiction of the courts, paroling authorities, correctional agencies, or other criminal justice agencies based upon a charge of criminal conduct that would authorize denial of a license under Chapter 494, F.S.

(12) Effect of Disqualifying Periods. The disqualifying periods established in this rule do not give an applicant a right to licensure after any set period of time. Regardless of the expiration of any disqualifying period imposed by these rules, the burden to prove entitlement to licensure remains on the applicant.

(13) Class "A" Crimes include all felonies involving an act of fraud, dishonesty, or a breach of trust, or money laundering, and the Office finds that such crimes constitute crimes of moral turpitude. The Office finds the following list of crimes are Class "A" crimes. This list is representative only and shall not be construed to constitute a complete or exclusive list of all crimes that are Class "A" crimes. No inference should be drawn from the absence of any crime from this list.

(a) Any type of fraud, including but not limited to Fraud, Postal Fraud, Wire Fraud, Securities Fraud, Welfare Fraud, Defrauding the Government, Credit Card Fraud, Defrauding an Innkeeper, Passing worthless check(s) with intent to defraud.

(b) Perjury.

(c) Armed robbery.

(d) Robbery.

(e) Extortion.

(f) Bribery.

(g) Embezzlement.

(h) Grand Theft.

(i) Larceny.

(j) Burglary.

(k) Breaking and entering.

(l) Identity theft.

(m) Any type of forgery or uttering a forged instrument.

(n) Misuse of public office.

(o) Racketeering.

(p) Buying, receiving, concealing, possessing or otherwise dealing in stolen property.

(q) Treason against the United States, or a state, district, or territory thereof.

(r) Altering public documents.

(s) Witness tampering.

(t) Tax evasion.

(u) Impersonating or attempting to impersonate a law enforcement officer.

(v) Money Laundering.

(14) Class "B" Crimes include the following list of felonies, or similar felonies, and the Office finds that such crimes constitute crimes of moral turpitude.

(a) Murder in all degrees.

(b) Arson.

(c) Sale, importation, or distribution of controlled substances (drugs); or possession for sale, importation or distribution.

(d) Aggravated Assault (e.g., as with a deadly weapon).

(e) Aggravated Battery (e.g., as with a deadly weapon).

(f) Rape.

(g) Sexually molesting any minor.

(h) Sexual battery.

(i) Battery of or threatening a law enforcement officer or public official in the performance of his/her duties.

(j) Kidnapping.

(k) Video Voyeurism.

(15) Class “C” Crimes include all felonies not Class “A” or Class “B” Crimes.

(16) Class “D” Crimes includes any misdemeanor that involves fraud, dishonesty, or any other act of moral turpitude.

(17) Foreign Law Enforcement Records. If a law enforcement record includes convictions, charges, or arrests outside the United States, the Office shall consider the following factors to reduce, eliminate, or apply a disqualifying period:

(a) Whether the crime in the criminal record would be a crime under the laws of the United States or any state within the United States;

(b) The degree of penalty associated with the same or similar crimes in the United States; and

(c) The extent to which the foreign justice system provided safeguards similar to those provided criminal defendants under the Constitution of the United States; for example, the right of a defendant to a public trial, the right against self-incrimination, the right of notice of the charges, the right to confront witnesses, the right to call witnesses, and the right to counsel.

(18) For purposes of this rule, “certified” means that there must be a certification or attestation by the issuer of the record that the document is a true copy of a record contained in the issuer’s office and the issuer’s seal, if any.

(19) ~~Forms MU2 or MU4 (NMLS Individual Form) Uniform Mortgage Lender/Mortgage Broker Form, MU1; MU2; and Uniform Individual Mortgage License/Registration & Consent Form, MU4~~ are incorporated by reference in Rule 69V-40.002, F.A.C.

Rulemaking Authority 494.0011(2)(c), 494.00312(2)(h), 494.00313(1)(e), 494.00321(2)(f), 494.00322(1)(e), 494.00611(2)(h), 494.00612(1)(f) FS. Law Implemented 494.0011(2)(c), 494.00312, 494.00313, 494.00321, 494.00322, 494.00611, 494.00612 FS. History–New 10-1-10,_____.

69V-40.003 Electronic Filing of Forms and Fees.

(1) All forms adopted under paragraph 69V-40.002(1)(a), F.A.C., must be electronically filed through the Registry.

(2) Unless otherwise specifically instructed in this Rule Chapter all fees required in conjunction with an initial application, amendment, and license renewal must be filed electronically through the Registry.

(3) Annual Financial Audit Reports required in Section 494.0063, F.S., must be filed electronically through the Registry.

Rulemaking Authority 494.0011(2)(a), 494.00611(2)(f), 494.0063 FS. Law Implemented 494.0011, 494.00611(2)(f), 494.0063 FS. History–New 10-21-08, Amended 10-1-10,_____.

69V-40.0312 Application Procedure for Loan Originator License.

(1) Each individual desiring to obtain licensure as a loan originator shall apply to the Office of Financial Regulation by submitting the following:

(a) A completed NMLS Individual Form (Form MU4), ~~Uniform Individual Mortgage License/Registration & Consent Form, MU4~~ filed through the Registry;

(b) The statutory nonrefundable application fee of \$195 filed through the Registry;

(c) The statutory nonrefundable mortgage guaranty fund assessment fee of \$20, if required by Section 494.00172, F.S., filed through the Registry;

(d) Evidence that the applicant has been awarded a high school diploma or the equivalent;

(e) Confirmation from the Registry that the applicant has satisfied the requirement to complete a 20-hour pre-license class approved by the Registry.

(f) Confirmation from the Registry that the applicant has satisfied the requirement to pass a test developed by the Registry and administered by a provider approved by the Registry. For the purposes of this rule, a test developed by the Registry and administered by a provider approved by the Registry includes both a national component and a state component.

(g) Submit fingerprints to the Registry for submission to the Federal Bureau of Investigation for a federal criminal background check;

(h) Submit fingerprints to a live scan vendor approved by the Florida Department of Law Enforcement and published on the Florida Department of Law Enforcement’s website (<http://www.fdle.state.fl.us/Content/getdoc/941d4e90-131a-45ef-8af3-3c9d4efefd8e/Livescan-Service-Providers-and-Device-Vendors.aspx> ~~<http://www.fdle.state.fl.us/Content/getdoc/04833e12-3fe6-4c03-9993-379244e0da50/livescan.aspx>~~) for submission to the Florida Department of Law Enforcement for a state criminal

background check. The cost of fingerprint processing shall be borne by the applicant and paid directly to the live scan vendor;

(i) Authorize the Registry to obtain and make available to the Office an independent credit report on the applicant.

(2) Request for Additional Information. Within 30 days of receipt the Office shall review each loan originator application and inform the applicant of any request for additional information required to complete its review. The additional information must be received by the Office within ~~45~~ ~~120~~ days from the date of the request. Failure by the applicant to respond within ~~45~~ ~~120~~ days from the date of the request shall be construed by the Office of Financial Regulation as grounds for denial for failure to ~~provide~~ ~~provide~~ the requested information.

(3) Amendments to Pending Applications. If the information contained in the NMLS Individual Form (Form MU4) ~~Form MU4~~ or any amendment thereto becomes inaccurate for any reason the applicant shall file an amendment through the Registry correcting such information within 15 days of the change. An amendment changing answers to question ~~6~~ ~~9~~ on the NMLS Individual Form (Form MU4) ~~Form MU4~~ shall be considered a material change to the application and grounds for denial of the application.

(4) Withdrawal of Application. An applicant may request withdrawal of an application prior to a determination of the application being made by the Office by filing such request through the Registry.

(5) Upon approval of an application, a loan originator license will be issued with an expiration date of December 31 for the year in which the license was issued. ~~Any license granted from October 1, 2010 to December 31, 2010 expires on December 31, 2011.~~

(6) NMLS Individual Form (Form MU4) ~~Uniform Individual Mortgage License Registration & Consent Form, MU4~~, is incorporated by reference in Rule 69V-40.002, F.A.C. *Rulemaking Authority 494.0011(2), 494.00312(2) FS. Law Implemented 494.0011(2), 494.00312 FS. History--New 10-1-10, _____.*

69V-40.0321 Application Procedure for a Mortgage Broker license.

(1) Each person desiring to obtain licensure as a mortgage broker shall apply to the Office of Financial Regulation by submitting the following:

(a) NMLS Company Form (Form MU1) ~~4~~ ~~A completed Uniform Mortgage Lender/Mortgage Broker Form, MU1~~, filed through the Registry;

(b) The statutory nonrefundable application fee of \$425 filed through the Registry;

(c) The statutory nonrefundable mortgage guaranty fund assessment fee of \$100, if required by Section 494.00172, F.S., filed through the Registry;

(d) Designate a qualified principal loan originator who meets the requirements of Section 494.0035, F.S.;

(e) For each of the applicant's control persons, submit fingerprints to a live scan vendor approved by the Florida Department of Law Enforcement and published on the Florida Department of Law Enforcement's website (<http://www.fdle.state.fl.us/Content/getdoc/941d4e90-131a-45ef-8af3-3c9d4efefd8e/Livescan-Service-Providers-and-Device-Vendors.aspx> ~~http://www.fdle.state.fl.us/Content/getdoc/04833e12-3fe6-4e03-9993-379244e0da50/livescan.aspx~~) for submission to the Florida Department of Law Enforcement and the Federal Bureau of Investigation for a state criminal background check and a Federal criminal background check. The cost of fingerprint processing shall be borne by the applicant and paid directly to the live scan vendor;

(f) For each of the applicant's control persons, authorize the Registry to obtain and make available to the Office an independent credit report;

(2) For the purposes of this rule, the requirements in paragraphs (1)(e) and (f) above are not required if the control person is currently licensed as a loan originator.

(3) Request for Additional Information. Within 30 days of receipt the Office shall review each mortgage broker application and inform the applicant of any request for additional information required to complete its review. The additional information must be received by the Office within 45 days from the date of the request. Failure by the applicant to respond within 45 days from the date of the request shall be construed by the Office of Financial Regulation as grounds for denial for failure to ~~provide~~ ~~provide~~ the requested information.

(4) Amendments to Pending Applications. If the information contained in the NMLS Company Form (Form MU1) or any amendment thereto becomes inaccurate for any reason, the applicant shall file an amendment through the Registry correcting such information within 15 days of the change. An amendment changing answers to question ~~14~~ ~~9~~ on the NMLS Company Form (Form MU1) or question 8 on the NMLS Individual Form ~~Uniform Mortgage Biographical Statement & Consent Form, (Form MU2)~~, shall be considered a material change to the application and grounds for denial of the application.

(5) Withdrawal of Application. An applicant may request withdrawal of an application prior to a determination of the application being made by the Office by filing such request through the Registry.

(6) Upon approval of an application, a mortgage broker license will be issued with an expiration date of December 31 for the year in which the license was issued. ~~Any license granted from October 1, 2010 to December 31, 2010 expires on December 31, 2011.~~

(7) ~~Uniform Mortgage Lender/Mortgage Broker~~ NMLS Company Form (Form MU1), MU1, and NMLS Individual Form Uniform Mortgage Biographical Statement & Consent (Form, MU2), are incorporated by reference in Rule 69V-40.002, F.A.C.

Rulemaking Authority 494.0011(2), 494.00321(1) FS. Law Implemented 494.0011(2), 494.00321 FS. History—New 10-1-10, _____.

69V-40.036 Application Procedure for a Mortgage Broker Branch Office License.

(1) Each mortgage broker desiring to obtain a mortgage broker branch office license shall apply to the Office of Financial Regulation by submitting the following:

(a) A completed NMLS Branch Form (Form MU3) is incorporated by reference in Rule 69V-40.002, F.A.C. ~~Uniform Mortgage Branch Office Form, MU3~~, filed through the registry; ~~and~~

(b) The statutory nonrefundable application fee of \$225 filed through the registry.;

(2) Request for additional information. The Office shall review each mortgage broker branch office application and inform the licensee of any request for additional information required to complete its review. The additional information must be received by the Office within 45 days from the date of the request. Failure by the licensee to respond within 45 days from the date of the request shall be ~~construed~~ ~~construed~~ by the Office as grounds for denial of the renewal request.

~~(3) Uniform Mortgage Branch Office Form, MU3 is incorporated by reference in Rule 69V-40.002, F.A.C.~~

Rulemaking Authority 494.0011(2), 494.0036(2) FS. Law Implemented 494.0011(2), 494.0036 FS. History—New 10-1-10, _____.

69V-40.0611 Application Procedure for a Mortgage Lender License.

(1) Each person desiring to obtain licensure as a mortgage lender shall apply to the Office by submitting the following:

(a) A completed NMLS Company Form (Form MU1) ~~Uniform Mortgage Lender/Mortgage Broker Form, MU1~~, filed through the Registry;

(b) The statutory nonrefundable application fee of \$500 filed through the Registry;

(c) The statutory nonrefundable mortgage guaranty fund assessment fee of \$100, if required by Section 494.00172, F.S., filed through the Registry;

(d) Designate a qualified principal loan originator who meets the requirements of Section 494.0035, F.S.;

(e) For each of the applicant's control persons, submit fingerprints to a live scan vendor approved by the Florida Department of Law Enforcement and published on the Florida Department of Law Enforcement's website (<http://www.fdle.state.fl.us/Content/getdoc/941d4e90-131a-45ef-8af3-3c9d4efefd8e/Livescan-Service-Providers-and-Device-Vendors.aspx> ~~http://www.fdle.state.fl.us/Content/getdoc/04833e12-3fc6-4e03-9993-379244e0da50/livescan.aspx~~) for submission to the Florida Department of Law Enforcement and the Federal Bureau of Investigation for a state criminal background check and a Federal criminal background check. The cost of fingerprint processing shall be borne by the applicant and paid directly to the live scan vendor;

(f) For each of the applicant's control persons, authorize the Registry to obtain and make available to the Office an independent credit report;

(g) Submit a copy of the applicant's financial audit report in compliance with Section 494.00611(2)(f), F.S.

(2) Request for Additional Information. Within 30 days of receipt the Office shall review each mortgage lender application and inform the application of any request for additional information required to complete its review. The additional information must be received by the Office within 45 days from the date of the request. Failure by the applicant to respond within 45 days from the date of the request shall be construed by the Office of Financial Regulation as grounds for denial for failure to ~~provide~~ ~~provide~~ the requested information.

(3) Amendments to Pending Applications. If the information contained in NMLS Company Form (Form MU1) or any amendment thereto becomes inaccurate for any reason the applicant shall file an amendment through the Registry correcting such information within 15 days of the change. An amendment changing answers to question ~~14~~ ~~9~~ on the NMLS Company Form (Form MU1) or question 8 on the NMLS Individual Form Uniform Mortgage Biographical Statement & Consent (Form, MU2), shall be considered a material change to the application and grounds for denial of the application.

(4) Withdrawal of Application. An applicant may request withdrawal of an application prior to a determination of the application being made by the Office by filing such request through the Registry.

(5) Upon approval of an application, a mortgage lender license will be issued with an expiration date of December 31 for the year in which the license was issued. ~~Any license granted from October 1, 2010 to December 31, 2010 expires on December 31, 2011.~~

(6) ~~Uniform Mortgage Lender/Mortgage Broker Form, MU1, NMLS Company Form (Form MU1) and NMLS Individual Form (Form MU2) Uniform Mortgage Biographical Statement & Consent Form, MU2,~~ are incorporated by reference in Rule 69V-40.002, F.A.C.

Rulemaking Authority 494.0011, 494.00611(2) FS. Law Implemented 494.0011(2), 494.00611 FS. History—New 10-1-10,_____.

69V-40.066 Application Procedure for a Mortgage Lender Branch Office License.

(1) Each mortgage lender desiring to obtain a mortgage lender branch office license shall apply to the Office of Financial Regulation by submitting the following:

(a) ~~A completed NMLS Branch Form (Form MU3) is incorporated by reference in Rule 69V-40.002, F.A.C. Uniform Mortgage Branch Office Form, MU3,~~ filed through the Registry; and

(b) The statutory nonrefundable application fee of \$225 filed through the Registry.;

(2) Request for additional information. The Office shall review each mortgage lender branch office application and inform the licensee of any request for additional information required to complete its review. The additional information must be received by the Office within 45 days from the date of the request. Failure by the licensee to respond within 45 days from the date of the request shall be ~~construed~~construed by the Office as grounds for denial of the renewal request.

(3) ~~Uniform Mortgage Branch Office Form, MU3, is incorporated by reference in Rule 69V-40.002, F.A.C.~~

Rulemaking Authority 494.0011(2), 494.0066 FS. Law Implemented 494.0011(2), 494.0066 FS. History—New 10-1-10,_____.

69V-40.111 Disciplinary Guidelines.

(1) Pursuant to Sections ~~494.00255 494.0041 and 494.0072, F.S.,~~ Disciplinary Guidelines for Mortgage Loan Originators and Mortgage Entities, Form OFR-494-14, effective MM-DD-YYYY, available on the Office's website at www.flofr.com and available at www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX, are applicable to each ground for disciplinary action that may be imposed by the Office against a listed below is a range of disciplinary guidelines from which disciplinary penalties will be imposed upon any person for a violation of guilty of violating Chapter 494, F.S. The disciplinary guidelines are based upon a single act violation of each provision listed. Multiple acts of the violated provisions or a combination of violations may result in a higher penalty than that for a single, isolated violation. For purposes of this rule, the order of penalties, ranging from lowest to highest is: notice of noncompliance, reprimand, fine, ~~probation,~~ suspension, and revocation. ~~Nothing in this rule shall preclude any discipline imposed upon a person pursuant to a stipulation or settlement agreement, nor shall the range of penalties set forth in this rule preclude the Office of Financial Regulation from issuing a letter of guidance when appropriate. In determining an appropriate penalty within the range of penalties prescribed in this rule for each citation as based upon the violation, the Office shall consider the circumstances set forth in subsection (3). The third column of the guidelines provides a summary of the statutory violations solely for the purpose of ease of reference. Persons subject to the rule should review the full text of the Florida Statute cited in the second column of the guidelines for the complete description of the violation. For purposes of this rule, the term "citation" means any final order docketed by the agency that specifies a violation of Chapter 494, F.S., or any rule promulgated under that chapter.~~

(2) In accordance with this rule:

(a) Depending on the severity and repetition of specific violations, the Office may impose an administrative fine, suspension of a person, or revocation of a person or any combination thereof;

(b) The Office may impose a cease and desist order, a suspension, or both in conjunction with and in addition to any of the designated sanctions set forth in this rule when appropriate under the circumstances; and

(c) The Office will consider the person's disciplinary history for the past 5 years in determining an appropriate penalty; and may impose a more severe penalty when the disciplinary history includes past violations.

(3) In accordance with Section 494.00255, F.S., the Office shall consider the following circumstances in determining an appropriate penalty within the range of penalties prescribed in this rule for each violation. The Office also shall consider these circumstances when determining whether a deviation from the range of sanctions prescribed in the disciplinary guidelines is warranted:

(a) The following circumstances are considered mitigating factors:

1. If the violation rate is less than 5% when compared to the overall sample size reviewed;
2. No prior administrative actions by the Office against the licensee or control person within the past 10 years;
3. If the licensee detected and voluntarily instituted corrective responses or measures to avoid the recurrence of a violation prior to detection and intervention by the Office;
4. If the violation is attributable to an single control person or employee, and if the licensee removed or otherwise disciplined the individual prior to detection or intervention by the Office;
5. If the licensee is responsive to the Office's requests or inquiries or made no attempt to impede or delay the Office in its examination or investigation of the underlying misconduct; or
6. Other control, case-specific circumstances.

(b) The following circumstances are considered aggravating factors:

1. If the violation rate is more than 95% when compared to the overall sample size reviewed (sample size must be equal to or greater than 25 transactions and cover a date range of at least 6 months);
2. The potential for harm to the customers or the public is significant;
3. Prior administrative action by the Office against the licensee or an affiliated party of the licensee within the past 5 years;
4. If the licensee's violation was the result of willful misconduct or recklessness;
5. The licensee attempted to conceal the violation or mislead or deceive the Office; or
6. Other control relevant, case-specific circumstances.

(4) The list of violations cited in this rule is intended to be comprehensive, but the omission of a violation from the list does not preclude the Office from taking any action authorized by Section 494.00255, F.S.

(5) The ranges for administrative fines imposed by this rule are \$1,000 to \$3,500 for an "A" level fine; \$3,500 to \$7,500 for a "B" level fine; and \$7,500 to \$10,000 for a "C" level fine.

(6) The ranges for suspensions imposed by this rule are 3 to 10 days for an "A" level suspension; 10 to 20 days for a "B" level suspension; 20 to 30 days for a "C" level suspension; and up to 90 days for a "D" level suspension. A "D" level suspension may be terminated early if licensee cures the violation.

~~(2) As provided in Sections 494.0041 and 494.0072, F.S., the Office of Financial Regulation may, in addition to other disciplinary penalties, place a licensee, registrant, or applicant on probation. The placement of the licensee, registrant, or applicant on probation shall be for such a period of time and subject to such conditions as the Office of Financial Regulation may specify.~~

~~(3) The maximum penalties are a fine of up to \$5,000.00 and/or as listed below for each count or separate offense:~~

- | | |
|-----------------------------------|-----------------------|
| (a) 494.0016(1) | Revocation |
| (b) 494.0016(2) | Probation |
| (c) 494.0016(3) | Revocation |
| (d) 494.0016(4) | Revocation |
| (e) 494.0023(1)(a)-(c) | Probation |
| (f) 494.0024 | Revocation |
| (g) 494.0025(1) | Revocation |
| (h) 494.0025(2) | Revocation |
| (i) 494.0025(3) | Revocation |
| (j) 494.0025(4)(a)-(c) | Revocation |
| (k) 494.0025(5) | Revocation |
| (l) 494.0025(6) | Revocation |
| (m) 494.0025(7) | Revocation |

(n) 494.0025(8)	Revocation
(o) 494.0025(9)	Revocation
(p) 494.0025(10)	Revocation
(q) 494.0025(11)	Revocation
(r) 494.0025(12)	Revocation
(s) 494.0026(1)	Revocation
(t) 494.0026(2)	Revocation
(u) 494.0026(3)	Revocation
(v) 494.0026(4)	Revocation
(w) 494.0028(2)	Probation
(x) 494.0028(3)	Probation
(y) 494.0033(1)	Revocation
(z) 494.00331	Probation
(aa) 494.0035(1)	Probation
(bb) 494.0035(2)	Probation
(cc) 494.0036(1)	Probation
(dd) 494.0037(1)	Revocation
(ee) 494.0037(2)	Probation
(ff) 494.0037(3)	Revocation
(gg) 494.0038(1)(a) (b)	Probation
(hh) 494.0038(2)(a) (c)	Probation
(ii) 494.0038(3)(a) (c)	Probation
(jj) 494.0038(4)	Revocation
(kk) 494.0038(5)	Revocation
(ll) 494.0038(6)	Revocation
(mm) 494.0039(1)(a)	Revocation
(nn) 494.0039(1)(b)	Probation
(oo) 494.0039(2)	Probation

(pp) 494.0039(3)	Reprimand
(qq) 494.004(1)	Revocation
(rr) 494.004(2)	Probation
(ss) 494.004(3)	Probation
(tt) 494.004(4)	Revocation
(uu) 494.0041(2)(a)-(q)	Revocation
(vv) 494.0042(2)	Revocation
(ww) 494.0042(3)	Revocation
(xx) 494.00421	Revocation
(yy) 494.0043(1)(a)-(d)	Revocation
(zz) 494.0043(2)	Revocation
(aaa) 494.0043(3)	Revocation
(bbb) 494.0043(4)	Revocation
(ccc) 494.0061(1)(e)	Revocation
(ddd) 494.0062(1)(e)	Revocation
(eee) 494.0063	Revocation
(fff) 494.0065(2)	Revocation
(ggg) 494.0067(1)	Probation
(hhh) 494.0067(2)	Probation
(iii) 494.0067(3)	Revocation
(jjj) 494.0067(4)	Probation
(kkk) 494.0067(5)	Revocation
(lll) 494.0067(6)	Probation
(mmm) 494.0067(7)	Reprimand
(nnn) 494.0067(8)	Probation
(ooo) 494.0067(9)	Probation
(ppp) 494.0068(1)(a)-(d)	Probation
(qqq) 494.0068(2)	Probation

(rrr) 494.0068(3)	Revocation
(sss) 494.0068(4)	Probation
(ttt) 494.0069(1)	Probation
(uuu) 494.0069(2)	Revocation
(vvv) 494.0069(3)	Revocation
(www) 494.0069(4)(a)-(e)	Revocation
(xxx) 494.007(1)	Probation
(yyy) 494.007(2)	Revocation
(zzz) 494.0071	Revocation
(aaaa) 494.0072(2)(a)-(q)	Revocation
(bbbb) 494.00721(1)	Revocation
(cccc) 494.00721(2)	Suspension
(dddd) 494.00721(3)	Revocation
(eeee) 494.0075(1)(a)-(d)	Revocation
(fff) 494.0075(2)	Revocation
(gggg) 494.0075(3)	Revocation
(hhhh) 494.0075(4)	Probation
(iiii) 494.0075(5)	Revocation
(jjjj) 494.0076(1)(a)-(e)	Revocation
(kkkk) 494.008(1)	Revocation
(lll) 494.008(2)	Revocation
(mmmm) 494.008(3)	Revocation
(nnnn) 494.008(4)	Revocation
(oooo) 494.008(5)	-Revocation
(pppp) 494.008(6)	-Revocation
(qqqq) 494.008(7)	-Revocation

~~(34)(a) In the presence of aggravating or mitigating circumstances which are supported by clear and convincing evidence, the Office of Financial Regulation shall be entitled to deviate from the above guidelines in imposing discipline upon any person.~~

~~(b) Aggravating or mitigating circumstances may include, but are not limited to, the following:~~

~~1. The severity of the violation.~~

2. The degree of harm to the consumer or public.
3. The number of times the violations previously have been committed by the person.
4. The disciplinary history of the person.
5. The status of the person at the time the violation was committed.

Rulemaking Authority 494.0011(2) FS. Law Implemented 494.0016, ~~494.0024~~, 494.0025, 494.00255, 494.0026, 494.0028, ~~494.00312~~, 494.00331, ~~494.0033~~, 494.0035, 494.0036, ~~494.0037~~, 494.0038, 494.0039, 494.004, ~~494.0041~~, 494.0042, 494.0043, ~~494.0061~~, ~~494.00611~~, ~~494.0062~~, 494.0065, 494.0067, ~~494.0068~~, 494.0069, 494.007, 494.0071, 494.0072, 494.00721, ~~494.0074~~, 494.0075, 494.0076, ~~494.008~~ FS. History—New 3-20-91, Amended 7-25-96, Formerly 3D-40.111, _____.

69V-40.156 Third-party Fee Accounts.

All third-party fees and refundable application fees received by a mortgage broker shall be recorded on Form OFR-494-09, Mortgage Brokerage Deposit Account Form, or on a format which is substantially similar to Form OFR-494-09. Failure to maintain a record of account activity in a current manner is a violation of this rule. Form OFR-494-09 is incorporated by reference in subsection 69V-40.002(1), F.A.C.

Rulemaking Authority 494.0016(4) FS. Law Implemented ~~120.695~~, 494.00255(1)(a), 494.0038, ~~494.0068~~ FS. History—New 12-3-91, Amended 7-25-96, 12-12-99, Formerly 3D-40.156, Amended 3-23-08, 10-1-10, _____.

69V-40.170 Books and Records.

(1) Books, accounts, and records that are required to be maintained at the principal place of business shall be made available to the Office of Financial Regulation for review, upon the Office of Financial Regulation’s request.

(2)(a) A licensee may maintain required books, accounts, and records at a location other than the principal place of business. Each licensed mortgage broker or mortgage lender which proposes to change the location of books, accounts, and records must file an amendment to NMLS Company Form (Form MU1) through the Registry not later than 30 days prior to the effective date of the change.

(b) The books, accounts, and records must be stored in a building of stationary construction wherein the books, accounts, and records will be kept in a secured location under conditions, which will not lead to the damage or destruction of the records.

(3) If the Office of Financial Regulation is notified by a licensee that it will maintain the books, accounts, and records at a location other than the principal place of business, such books, accounts, and records shall be made available to the Office of Financial Regulation for review within 3 business days from the date of a written request by the Office of Financial Regulation and at a reasonable and convenient location in this State designated by the Office of Financial Regulation.

(4) All books, accounts, and records must be maintained for 3 years from the date of “original entry”. For the purpose of this rule, “original entry” means the date the documentation was originated by the licensee or received by the licensee.

~~(5) The penalty for maintaining books, accounts, and records at a location other than the principal place of business, without written notification to the Office of Financial Regulation, shall be the issuance of a “notice of noncompliance” for a first offense. Any subsequent finding of a violation of this rule during an examination or investigation shall be a \$500 fine.~~

~~(5)(6) NMLS Company Form (Form MU1) is incorporated by reference in Rule 69V-40.002, F.A.C., Uniform Mortgage Lender/Mortgage Broker Form, MU1,~~

Rulemaking Authority 494.0011(2), 494.0016(4) FS. Law Implemented ~~120.595~~, 494.0016, 494.00255 FS. History—New 2-16-92, Amended 7-25-96, 12-12-99, 1-16-03, Formerly 3D-40.170, Amended 3-23-08, 10-1-10, _____.

69V-40.175 Mortgage Brokerage Files.

(1) Each mortgage broker shall maintain a file for each mortgage broker transaction. The files shall be maintained in a central location and in an alphabetical or numerical sequence.

(2) Each file shall contain at least the following:

~~(a) Mortgage broker agreement pursuant to Section 494.0038, F.S.; if issued;~~

~~(a)(b) Copy of signed closing statement or documentation of denial or cancellation of the mortgage loan application; and~~

~~(b)(e) A copy of the good faith estimate of costs, pursuant to Section 494.0038(3)(e), F.S.~~

(3) Supporting documentation shall be maintained for all expenses or fees paid by the licensee on behalf of the client indicating the amount and the date paid. A canceled check maintained in a separate file shall be considered proof of payment of fees and expenses.

(4) If the mortgage broker issues to the client a written commitment for the loan on behalf of the lender then the following must be maintained in the file:

- (a) A copy of the written commitment issued by the mortgage broker; and
- (b) A copy of the written commitment provided by the lender.

(5) If the mortgage broker issues to the client a written lock-in for the loan on behalf of the lender then the following must be maintained in the file:

- (a) A copy of the written lock-in issued by the mortgage broker; and
- (b) A copy of the written lock-in provided by the lender.

(6) If the mortgage broker receives a mortgage loan application, then the mortgage broker shall maintain a copy in the file.

(7) If the loan is funded by a noninstitutional investor then the file must also include the following:

(a)1. A copy of the appraisal or opinion of value of the mortgage property and a signed and dated acknowledgment by the noninstitutional investor of receipt of the appraisal or opinion of value, or

2. A copy of a waiver of the appraisal dated and executed by the noninstitutional investor.

(b)1. A receipt acknowledging that the noninstitutional investor has been furnished with title insurance or a legal opinion of title, or

2. A written waiver thereof.

(c) On a junior mortgage, documentation that the noninstitutional lender has been furnished with a statement showing the balance owed and status of the liens that will be superior to the lien being funded by the noninstitutional investor.

(d) A signed and dated acknowledgment by the noninstitutional investor of receipt of the recorded mortgage or other instrument securing a note or assignment.

(e) If applicable, documentation that said licensee has disclosed that it is acting (directly or indirectly) as a borrower or principal in that transaction.

(8) In addition to the foregoing specific documentation, all documentation originated, received, or related to the mortgage loan from the application through the final disposition must be maintained for three (3) years from the date of the original entry. "Original entry" means the date the documentation was originated by the mortgage broker or received by the mortgage broker. For each broker transaction, files and documentation shall be maintained and remain complete for three (3) years from the date of "original entry" of the last document in the file.

~~(9)(a) The penalty for failure to maintain files and required documentation (incidental and isolated clerical errors or omissions shall not be considered a violation) shall be:~~

~~1. If the licensee has numerous instances of incomplete files and missing documentation, the fine shall be \$300. For the purpose of this rule, "numerous" shall mean at least three (3), and a percentage equal or greater to 20% of the files examined.~~

~~2. If the licensee fails to maintain files and documentation such that an audit trail of all mortgage transactions is provided, the penalty shall be a fine of \$1,000 and a six-month suspension of the licensee.~~

~~(b)1. The failure to provide a good faith estimate of costs shall be a fine of \$250 per file.~~

~~2. Providing a commitment to a client without first obtaining a written commitment by the lender shall be a fine of \$250 per file.~~

~~3. Providing a lock in for a loan without first obtaining a written lock in by the lender shall be a fine of \$250 per file.~~

~~4. The total fine under paragraph (9)(b) shall not exceed \$2,500.00 per administrative complaint in addition to other penalties.~~

~~(c)1. The penalty for failure to provide a disclosure required in subsection (7) above shall be a fine of \$250 per file.~~

~~2. The penalty for gross negligence in maintaining documentation required in subsection (7) shall be revocation.~~

~~3. The penalty for failure to provide a noninstitutional investor with the documentation required in subsection (4) herein shall be a fine of \$250 per file up to an aggregate of \$2,500 per administrative complaint in addition to other penalties.~~

~~(10) For purposes of Section 120.695, F.S., a violation of the above rule, other than subsection (7) and subparagraph (9)(a)2. above shall be considered a minor violation. Any portion of this section that is deemed to be a minor violation for a first offense shall be a notice of noncompliance.~~

Rulemaking Authority 494.0016(4) FS. Law Implemented 494.0016, 494.00255, 494.0038, 494.0043 FS. History—New 2-16-92, Amended 7-25-96, 8-7-97, 1-16-03, Formerly 3D-40.175, Amended 10-1-10, _____.

69V-40.260 Mortgage Lender Files.

(1) Each mortgage lender shall maintain a file for each mortgage loan application received. The files shall be maintained in a central location and in an alphabetical or numerical sequence.

(2) Each file shall contain the following:

(a) A copy of the good faith estimate.

(b) The original mortgage loan application, or copy thereof, ~~containing the disclosures set forth in subsection 494.0068(1), F.S.~~

(c) Copy of the closing statement as required by subsection 494.0016(3), F.S., or documentation demonstrating that the mortgage loan application was cancelled or denied.

(d) Copy of any written lock-in agreement, if issued, containing the requirements set forth in Section 494.0069, F.S.

(e) Copy of any written commitment, if issued, containing the disclosures set forth in Section 494.007, F.S.

(f) Copy of written disclosures of any conflict of interest as required by Section 494.0023, F.S.

(3) Each mortgage lender shall maintain supporting documentation of all expenses or fees paid by the mortgage lender. The supporting documentation shall indicate the name and address of the person paid, the amount and date of the payment, and a description of the products or services purchased. Invoices from third parties involving multiple loans, maintained in a central file, need not be copied and placed in each individual loan file. A cancelled check maintained in a separate file shall be considered proof of payment of fees and expenses.

(4) If the mortgage lender sells a mortgage loan to a noninstitutional investor then each file must contain the following:

(a)1. A copy of the appraisal or opinion of value of the mortgage property and a signed and dated acknowledgement of receipt of same by the noninstitutional investor; or

2. A copy of a waiver of the appraisal or opinion of value dated and executed by the noninstitutional investor.

(b)1. A receipt acknowledging that the noninstitutional investor has been furnished with mortgagee's title insurance, or a legal opinion of title by an attorney licensed in Florida, pursuant to subsection 494.0075(1)(b), F.S.; or

2. A written waiver thereof with the wording required by subsection 494.0075(1)(b)3., F.S.

(c) On a junior mortgage, a copy of the statement furnished to the noninstitutional investor showing the balance owed and the status of the liens that will be superior to the liens being recorded in the favor of the noninstitutional investor in this loan transaction.

(d) A copy of the written disclosure to the noninstitutional investor if the mortgage lender is directly or indirectly acting as a borrower or principal in the transaction.

(e) A signed and dated acknowledgement by the noninstitutional investor of receipt of the recorded mortgage or other instrument securing a note or assignment, or a signed acknowledgement by the licensee attesting that the aforementioned documentation was delivered to the noninstitutional investor. However, the mortgage lender may hold such documents in its possession for the use and benefit of the noninstitutional investor if:

1. The noninstitutional investor shall request same in writing; and

2. Said written request acknowledges the right of the noninstitutional investor to the possession of the original documents at any time; and

3. Said written request confirms the right of the noninstitutional investor to at any time terminate the agreement with the mortgage lender and request that the mortgage lender deliver all such documents to the noninstitutional investor forthwith.

The written request, which includes subparagraphs 1. through 3. above, may be maintained in one location separate from the mortgage loan file.

(f) A copy of the original note evidencing proper endorsement of the note by the lender to the noninstitutional investor.

(g) A copy of the written servicing agreement if the loan is to be serviced by the mortgage lender.

(5) If the mortgage lender acts as a mortgage broker it must comply with the file requirement set forth in Rule 69V-40.175, F.A.C.

(6) A mortgage lender which services a mortgage loan for a noninstitutional investor shall enter into a written servicing agreement with the noninstitutional investor prior to servicing the mortgage loan. The mortgage lender may enter into a master servicing agreement with the noninstitutional investor, and such master agreement may be maintained in one central location. A master servicing agreement is not required to be copied and placed in each individual loan file.

(7) All documentation originated or received by a mortgage lender must be maintained for three years from the date of original entry. "Original entry" means the date the documentation was originated or received by the licensee. For each lending transaction, files and documentation shall be maintained and remain complete for three years from the original entry date of the last document.

~~(8)(a) The penalty for failure to maintain files and required documentation (incidental and isolated clerical errors or omissions shall not be considered a violation) shall be:~~

~~1. If the mortgage lender has numerous instances of incomplete files and missing documentation the fine shall be \$300 for a first offense. For the purpose of this rule "numerous" shall mean at least three incomplete files and a percentage equal or greater than 20% of the files examined.~~

~~2. If the mortgage lender fails to maintain an audit trail of all mortgage transactions, the penalty shall be a fine of \$1,000 and a six month suspension of the license of the mortgage lender.~~

~~(b) The penalty for failure to provide or maintain a copy of the good faith estimate of costs shall be a fine of \$250 per file up to an aggregate of \$2,500 per administrative complaint in addition to other penalties.~~

~~(c)1. The penalty for failure to provide a noninstitutional investor with the documentation required in subsection (4) herein shall be a fine of \$250 per file up to an aggregate of \$2,500 per administrative complaint in addition to other penalties.~~

~~2. The penalty for gross negligence in maintaining documentation required in subsection (4) shall be revocation of the license.~~

~~(d) Repeat violations of the requirements of this rule shall subject the licensee to the maximum penalties under Section 494.00255(2), F.S.~~

~~(9) For purposes of Section 120.695, F.S., a violation of the above rule, other than subsection (4) and subparagraph (8)(a)2. above, shall be considered a minor violation. Any portion of this section that is deemed to be a minor violation for a first offense shall be a notice of noncompliance.~~

~~Rulemaking Authority 494.0016(4) FS. Law Implemented ~~120.695~~, 494.0016, 494.00255, 494.0023, 494.0067(8), 494.0068, 494.0069, 494.007, 494.0075 FS. History—New 1-10-93, Amended 7-25-96, 8-7-97, Formerly 3D-40.260, Amended 10-1-10, _____.~~

69V-40.265 Mortgage Brokerage and Lending Transaction Journal.

(1) Each mortgage broker and mortgage lender shall maintain a Mortgage Brokerage and Lending Transaction Journal, which shall include, at least, the following information:

(a) Name of applicant;

(b) Date applicant applied for the mortgage loan;

(c) Disposition of the mortgage loan application. The journal shall indicate the result of the lending transaction. The disposition of the transaction shall be categorized as one of the following: loan funded, loan denied, or application withdrawn.

(d) Name of lender, if applicable.

(2) The journal shall be maintained on Form OFR-494-10, Mortgage Brokerage and Lending Transaction Journal, or a form substantially similar.

(3) In lieu of maintaining Form OFR-494-10, a mortgage lender or mortgage broker may maintain the Home Mortgage Disclosure Act loan/application register, Form FR HMDA-LAR, found at 12 C.F.R., part 203, Appendix A (2010) if all lending transactions are recorded on this form. The form is hereby incorporated by reference and may be accessed through the Government Printing Office website <http://www.gpoaccess.gov/cfr/>.

(4) The Mortgage Brokerage and Lending Transaction Journal shall be maintained in the principal office or in each branch office where the transactions are originated. The Mortgage Brokerage and Lending Journal shall be kept current. The failure to initiate an entry to the Mortgage Brokerage and Lending Transaction Journal within 7 business days from the date the transaction was entered into, shall be deemed to be a failure to keep the Mortgage Brokerage and Lending Transaction Journal current.

~~(5) The penalty for failure to maintain the Mortgage Brokerage and Lending Transaction Journal or to keep the same current (incidental or isolated clerical errors or omissions shall not be considered a violation) shall be the issuance of a "notice of noncompliance" for a first offense. Any subsequent finding of a violation of this rule during an examination or investigation shall be a fine of \$500. The penalty for intentional or continued violations of this rule shall be a fine of \$500 and suspension of the license.~~

~~(5)(6) Form OFR-494-10 is incorporated by reference in subsection 69V-40.002(1), F.A.C.~~

~~Rulemaking Authority 494.0016(4) FS. Law Implemented ~~120.695~~, 494.0016, 494.00255 FS. History—New 1-10-93, Amended 7-25-96, 12-12-99, Formerly 3D-40.265, Amended 3-23-08, 10-1-10, 7-30-12, _____.~~

69V-40.270 Financial Guaranty in Lieu of Uniform Single Audit.

(1) A mortgage lender which services an aggregate value of less than \$7.5 million dollars in outstanding mortgage

loans and elects to provide a fidelity bond, financial guaranty bond, fidelity insurance, or other financial guaranty providing protection against theft, loss or other illegal diversion of funds in lieu of the single line audit required shall have such financial guaranty in full force and effect by the lender's first fiscal year end. The financial guaranty shall designate the Office of Financial Regulation as the recipient of the amount of the financial guaranty.

(2) A mortgage lender electing to provide a financial guaranty in lieu of the single line audit shall document (monthly) the aggregate value of mortgage loans serviced on Form OFR-494-11, Calculation of Aggregate Value of Mortgage Loans Serviced. The lender shall maintain work-papers substantiating the aggregate value documented.

(3) The minimum amount of the financial guaranty for each fiscal year shall be determined by calculating the amount of payments (including payoffs) received monthly by the servicer for the previous twelve (12) month period, then averaging the three (3) highest months. A lender electing to provide a financial guaranty in lieu of the single line audit shall document (monthly) the amount serviced on Form OFR-494-11.

~~(4)(a) The penalty for failure to maintain adequate documentation as required in subsections (2) and (3), shall be a \$1,000 fine and a two (2) year probation with the condition that a single line audit be initiated within thirty (30) days.~~

~~(b) A lender that has elected to provide a financial guaranty in lieu of the single line audit and increases the aggregate value of mortgages serviced above the \$7,500,000 threshold shall immediately notify the Office of Financial Regulation and initiate a single line audit within sixty (60) days.~~

~~(c) A mortgage lender licensee which services loans without a single line audit or sufficient financial guaranty shall be fined \$1,000 and the license shall be revoked.~~

~~(5) For purposes of Section 120.695, F.S., a violation of the above rule shall not be considered a minor violation.~~

~~(4)(6) Form OFR-494-11 is incorporated by reference in subsection 69V-40.002(1), F.A.C.~~

Rulemaking Authority 494.0011(2), 494.0076(2)(b) FS. Law Implemented ~~120.695, 494.00255, 494.0072, 494.0076~~ FS. History—New 2-16-92, Amended 7-25-96, 12-12-99, Formerly 3D-40.270, Amended 3-23-08, _____.

Material Incorporated by Reference

[Begins on next page.]

**Office of Financial Regulation
Division of Consumer Finance
Disciplinary Guidelines for Mortgage Loan Originators and Mortgage Entities
Form OFR-494-14, Incorporated by Reference in Rule 69V-40.111, F.A.C., Effective: xx/xx/xxxx**

Violation #	Statute	Violation Description Summary	1st Citation	2nd Citation	3rd & Subsequent Citations
(1)	494.0016(1)	Failure to maintain, at the principal place of business, all books, accounts, records, and documents necessary to determine the licensee's compliance with ss. 494.001-494.0077.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(2)	494.0016(2)	Failure to produce and make books, accounts, and records at a reasonable and convenient location in this state as required.	Fine: A Suspension: D	Fine: B Suspension: D	Fine: C Suspension: D Revocation
(3)	494.0016(3)	All books, accounts, records, documents, and receipts for expenses paid by the licensee on behalf of the borrower, including each closing statement signed by a borrower, shall be preserved and kept available for examination by the Office for at least 3 years after the date of original entry.	Fine: A Suspension: D Revocation	Fine: B Suspension: D Revocation	Fine: C Suspension: D Revocation
(4)	494.00165(1)(a)	Advertise that an applicant shall have unqualified access to credit without disclosing the material limitations on the availability of such credit. Material limitations include, but are not limited to, the percentage of down payment required, that a higher rate or points could be required, or that restrictions on the maximum principal amount of the loan offered could apply.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(5)	494.00165(1)(b)	Advertise a mortgage loan at an expressed interest rate unless the advertisement specifically states that the expressed rate could change or not be available at commitment or closing.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(6)	494.00165(1)(c)	Advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on such loans, unless the person is able to make such mortgage loans available to a reasonable number of qualified applicants.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation

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Suspension A = 3 to 10 days; Suspension B = 10 to 20 days; Suspension C = 20 to 30 days; Suspension D = up to 90 days
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Violation #	Statute	Violation Description Summary	1st Citation	2nd Citation	3rd & Subsequent Citations
(7)	494.00165(1)(d)	Falsely advertise or misuse names indicating a federal agency pursuant to 18 U.S.C. s. 709.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(8)	494.00165(1)(e)	Engage in unfair, deceptive, or misleading advertising regarding mortgage loans, brokering services, or lending services.	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation	Fine: C Suspension: C Revocation
(9)	494.00165(2)	Each person required to be licensed under this chapter must maintain a record of samples of each of its advertisements, including commercial scripts of each radio or television broadcast, for examination by the Office for 2 years after the date of publication or broadcast.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(10)	494.0023(1)	Failure to disclose any conflicting interest.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(11)	494.0025(6)	To violate s. 655.922(2), subject to ss. 494.001-494.0077.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(12)	494.0025(7)	To pay a fee or commission in any mortgage loan transaction to any person or entity other than a licensed mortgage broker or mortgage lender, or a person exempt from licensure under this chapter.	Fine: B Suspension: B Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(13)	494.0025(8)	To record a mortgage broker agreement or any other document, not rendered by a court of competent jurisdiction, which purports to enforce the terms of the agreement.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation

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Division of Consumer Finance
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Violation #	Statute	Violation Description Summary	1st Citation	2nd Citation	3rd & Subsequent Citations
(14)	494.0025(9)	To use the name or logo of a financial institution, as defined in s. 655.005(1), or its affiliates or subsidiaries when marketing or soliciting existing or prospective customers if such marketing materials are used without the written consent of the financial institution and in a manner that would lead a reasonable person to believe that the material or solicitation originated from, was endorsed by, or is related to or the responsibility of the financial institution or its affiliates or subsidiaries.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(15)	494.0025(10)	To knowingly alter, withhold, conceal, or destroy any books, records, computer records, or other information relating to a person's activities which subject the person to the jurisdiction of this chapter.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(16)	494.00255(1)(a)	Failure to immediately place upon receipt, and maintain until authorized to disburse, any money entrusted to the licensee as a licensee in a segregated account of a federally insured financial institution in this state.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(17)	494.00255(1)(b)	Failure to account or deliver to any person any property that is not the licensee's, or that the licensee is not entitled to retain, under the circumstances and at the time that has been agreed upon or as required by law or, in the absence of a fixed time, upon demand of the person entitled to such accounting and delivery.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(18)	494.00255(1)(c)	Failure to disburse funds in accordance with agreements.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(19)	494.00255(1)(d)	Any misuse, misapplication, or misappropriation of personal property entrusted to the licensee's care to which the licensee had no current property right at the time of entrustment.	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation	Fine: C Suspension: C Revocation

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Division of Consumer Finance
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Violation #	Statute	Violation Description Summary	1st Citation	2nd Citation	3rd & Subsequent Citations
(20)	494.00255(1)(e)	Fraud, misrepresentation, deceit, negligence, or incompetence in any mortgage financing transaction.	Fine: C Revocation	Fine: C Revocation	Fine: C Revocation
(21)	494.00255(1)(f)	Requesting a specific valuation, orally or in writing, from an appraiser for a particular property, implying to an appraiser that a specific valuation is needed for a particular property, or in any manner conditioning the order for an appraisal on the appraisal meeting a specific valuation. The numeric value of the specific valuation sought need not be stated, but rather the mere statement that a specific valuation is sought violates this section.	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation	Fine: C Suspension: C Revocation
(22)	494.00255(1)(g)	Consistently and materially underestimating maximum closing costs.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(23)	494.00255(1)(h)	Disbursement, or an act which has caused or will cause disbursement, to any person in any amount from the Mortgage Guaranty Trust Fund, the Securities Guaranty Fund, or the Florida Real Estate Recovery Fund, regardless of any repayment or restitution to the disbursed fund by the licensee or any person acting on behalf of the licensee.	Revocation	Revocation	Revocation
(24)	494.00255(1)(i)	Commission of fraud, misrepresentation, concealment, or dishonest dealing by trick, scheme, or device; culpable negligence; breach of trust in any business transaction in any state, nation, or territory; or aiding, assisting, or conspiring with any other person engaged in any such misconduct and in furtherance thereof.	Fine: C Revocation	Fine: C Revocation	Fine: C Revocation
(25)	494.00255(1)(j)	Being convicted of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, any felony or any crime involving fraud, dishonesty, breach of trust, money laundering, or act of moral turpitude.	Revocation	Revocation	Revocation

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Violation #	Statute	Violation Description Summary	1st Citation	2nd Citation	3rd & Subsequent Citations
(26)	494.00255(1)(k)	Having a final judgment entered against the licensee in a civil action upon grounds of fraud, embezzlement, misrepresentation, or deceit.	Fine: C Revocation	Fine: C Revocation	Fine: C Revocation
(27)	494.00255(1)(l) 1.	Having been the subject of any decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order by any court, administrative law judge, state or federal agency, national securities exchange, national commodities exchange, national option exchange, national securities association, national commodities association, or national option association involving a violation of any federal or state securities or commodities law or rule or regulation adopted under such law or involving a violation of any rule or regulation of any national securities, commodities, or options exchange or association.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(28)	494.00255(1)(l) 2	Having been the subject of any injunction or adverse administrative order by a state or federal agency regulating banking, insurance, finance or small loan companies, real estate, mortgage brokers or lenders, money transmitters, or other related or similar industries.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(29)	494.00255(1)(m))	In any mortgage transaction, violating any provision of the federal Real Estate Settlement Procedures Act, as amended, 12 U.S.C. ss. 2601 et seq.; the federal Truth in Lending Act, as amended, 15 U.S.C. ss. 1601 et seq.; or any regulations adopted under such acts.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(30)	494.00255(1)(n)	Having a loan originator, mortgage broker, or mortgage lender license, or the equivalent of such license, revoked in any jurisdiction.	Fine: B Revocation	Fine: C Revocation	Fine: C Revocation

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Violation #	Statute	Violation Description Summary	1st Citation	2nd Citation	3rd & Subsequent Citations
(31)	494.00255(1)(o)	Having a license, or the equivalent of such license, to practice any profession or occupation revoked, suspended, or otherwise acted against, including the denial of licensure by a licensing authority of this state or another state, territory, or country.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(32)	494.00255(1)(p)	Acting as a loan originator, mortgage broker, or mortgage lender without a current license issued under part II or part III of this chapter.	Fine: \$1,000 per day up to \$25,000	Fine: \$1,000 per day up to \$25,000	Fine: \$1,000 per day up to \$25,000
(33)	494.00255(1)(q)	Operating a mortgage broker or mortgage lender branch office without a current license issued under part II or part III of this chapter.	Fine: \$1,000 per day up to \$25,000	Fine: \$1,000 per day up to \$25,000	Fine: \$1,000 per day up to \$25,000
(34)	494.00255(1)(r)	Conducting any mortgage brokering or mortgage lending activities in the absence of a properly designated principal loan originator or mortgage brokering or mortgage lending activities at any particular branch office without a properly designated branch manager.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(35)	494.00255(1)(s)	Made a material misstatement or omission of fact on an initial or renewal license application.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(36)	494.00255(1)(t)	Payment to the Office for a license or permit with a check or electronic transmission of funds which is dishonored by the applicant's or licensee's financial institution.	Fine: A Suspension: D Revocation	Fine: B Suspension: D Revocation	Fine: C Suspension: D Revocation
(37)	494.00255(1)(u)	Failure to comply with, or violations of, any provision of ss. 494.001-494.0077, or any rule or order made or issued under ss. 494.001-494.0077.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(38)	494.00255(1)(v)	Failure to maintain, preserve, and keep available for examination all books, accounts, or other documents required by ss. 494.001-494.0077 and the rules of the commission.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation

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Violation #	Statute	Violation Description Summary	1st Citation	2nd Citation	3rd & Subsequent Citations
(39)	494.00255(1)(w)	Refusal to permit an investigation or examination of books and records, or refusal to comply with an office subpoena or subpoena duces tecum.	Fine: B Suspension: B Revocation	Fine: C Revocation	Fine: C Revocation
(40)	494.00255(1)(x)	Failure to timely pay any fee, charge, or fine imposed or assessed pursuant to ss. 494.001-494.0077 or related rules.	Fine: A Suspension: D Revocation	Fine: B Suspension: D Revocation	Fine: C Suspension: D Revocation
(41)	494.00255(1)(y)	Pursuant to an investigation by the Mortgage Testing and Education Board acting on behalf of the registry, being found in violation of Nationwide Mortgage Licensing System and Registry Rules of Conduct.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(42)	494.0026(1)	Failure to promptly endorse a check, draft, or other negotiable instrument payable jointly to the mortgagee or assignee and the insured by the insurance company.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(43)	494.0026(2)	Failure to promptly deposited the insurance proceeds received by a mortgagee or assignee that relate to compensation for damage to property or contents insurance coverage in which the mortgagee or assignee has a security interest into a segregated account of a federally insured financial institution.	Fine: B Suspension: D Revocation	Fine: B Suspension: D Revocation	Revocation
(44)	494.0026(3)	Failure to promptly distribute to the insured insurance proceeds received by a mortgagee or assignee that relate to contents insurance coverage in which the mortgagee or assignee does not have a security interest in the contents.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(45)	494.0026(4)	Failure to promptly distribute to the insured insurance proceeds received by a mortgagee or assignee that relate to additional living expenses.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation

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Violation #	Statute	Violation Description Summary	1st Citation	2nd Citation	3rd & Subsequent Citations
(46)	494.00296(1)(a)	Engaged in or initiate loan modification services without first executing a written agreement for loan modification services with the borrower.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(47)	494.00296(1)(b)	Executed a loan modification without the consent of the borrower after the borrower is made aware of each modified term.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(48)	494.00296(1)(c)	Solicit, charge, receive, or attempt to collect or secure payment, directly or indirectly, for loan modification services before completing or performing all services included in the agreement for loan modification services.	Fine: B Suspension: B Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(49)	494.00296(2)(a)	The written agreement for loan modification services must be printed in at least 12-point uppercase type and signed by both parties. The agreement must include the name and address of the person providing loan modification services, the exact nature and specific detail of each service to be provided, the total amount and terms of charges to be paid by the borrower for the services, and the date of the agreement. The date of the agreement may not be earlier than the date the borrower signed the agreement. The mortgage broker or mortgage lender must give the borrower a copy of the agreement to review at least 1 business day before the borrower is to sign the agreement.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation

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Violation #	Statute	Violation Description Summary	1st Citation	2nd Citation	3rd & Subsequent Citations
(50)	494.00296(2)(b)	The borrower has the right to cancel the written agreement without any penalty or obligation if the borrower cancels the agreement within 3 business days after signing the agreement. The right to cancel may not be waived by the borrower or limited in any manner by the loan originator, mortgage broker, or mortgage lender. If the borrower cancels the agreement, any payments made must be returned to the borrower within 10 business days after receipt of the notice of cancellation.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(51)	494.00296(2)(c)	In an agreement for loan modification services, failure to contain, immediately above the signature line, a statement in at least 12-point uppercase type which substantially complies the statement provided in 494.00296(2)(c).	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(52)	494.00296(2)(e)	Failure to give the borrower a copy of the signed loan modification agreement within 3 hours after the borrower signs the agreement.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(53)	494.00331(1)	An individual may not act as a loan originator unless he or she is an employee of, or an independent contractor for, a mortgage broker or a mortgage lender, and may not be employed by or contract with more than one mortgage broker or mortgage lender, or either simultaneously.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(54)	494.00331(3)	An individual may not act as an in-house loan processor unless he or she is an employee of a mortgage broker or a mortgage lender and may not be employed by more than one mortgage broker or mortgage lender, or either, simultaneously. An in-house loan processor must work at the direction of and be subject to the supervision and instruction of a loan originator licensed under this part.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation

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Violation #	Statute	Violation Description Summary	1st Citation	2nd Citation	3rd & Subsequent Citations
(55)	494.0035(1)	Each mortgage broker must be operated by a principal loan originator who shall have full charge, control, and supervision of the mortgage broker. The principal loan originator must have been licensed as a loan originator for at least 1 year before being designated as the principal loan originator, or must demonstrate to the satisfaction of the office that he or she has been actively engaged in a mortgage-related business for at least 1 year before being designated as a principal loan originator. Each mortgage broker must keep the office informed of the person designated as the principal loan originator as prescribed by commission rule. If the designation is inaccurate, the mortgage broker shall be deemed to be operated under the full charge, control, and supervision of each officer, director, or ultimate equitable owner of a 10-percent or greater interest in the mortgage broker, or any other person in a similar capacity. A loan originator may not be a principal loan originator for more than one mortgage broker at any given time.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(56)	494.0035(2)	Each branch office of a mortgage broker must be operated by a branch manager who shall have full charge, control, and supervision of the branch office. The designated branch manager must be a licensed loan originator pursuant to s. 494.00312. Each branch office must keep the office informed of the person designated as the branch manager as prescribed by commission rule, which includes documentation of the individual's acceptance of such responsibility. If the designation is inaccurate, the branch office shall be deemed to be operated under the full charge, control, and supervision of each officer, director, or ultimate equitable owner of a 10-percent or greater interest in the mortgage broker, or any other person in a similar capacity.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation

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(57)	494.0038(1)	Any third-party fee entrusted to a mortgage broker must immediately, upon receipt, be placed into a segregated account with a financial institution located in the state the accounts of which are insured by the Federal Government. Such funds shall be held in trust for the payor and shall be kept in the account until disbursement. Such funds may be placed in one account if adequate accounting measures are taken to identify the source of the funds.	Fine: B Suspension: B Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(58)	494.0038(2)	A mortgage broker may not pay a commission to any person not licensed pursuant to this chapter.	Fine: B Suspension: B Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(59)	494.004(1)(a)	Each licensee under this part shall report to the Office in writing, any conviction of, or plea of nolo contendere to, regardless of adjudication, any felony or any crime or administrative violation that involves fraud, dishonesty, breach of trust, money laundering, or any other act of moral turpitude, in any jurisdiction, by the licensee or any control person within 30 days after the date of conviction, entry of a plea of nolo contendere, or final administrative action.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(60)	494.004(1)(b)	Failure to report to the Office in a form prescribed by rule of the commission, any conviction of, or plea of nolo contendere to, regardless of adjudication, any felony committed by the licensee or any control person within 30 days after the date of conviction or the date the plea of nolo contendere is entered.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(61)	494.004(1)(c)	Failure to report to the Office any action in bankruptcy, voluntary or involuntary, within 30 days after the action is instituted.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation

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**Office of Financial Regulation
Division of Consumer Finance
Disciplinary Guidelines for Mortgage Loan Originators and Mortgage Entities
Form OFR-494-14, Incorporated by Reference in Rule 69V-40.111, F.A.C., Effective: xx/xx/xxxx**

Violation #	Statute	Violation Description Summary	1st Citation	2nd Citation	3rd & Subsequent Citations
(62)	494.004(1)(d)	Failure to report to the Office on a form prescribed by rule of the commission, any change to the information contained in any initial application form or any amendment to the application within 30 days after the change is effective.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(63)	494.004(1)(e)	Failure to report to the Office any change in the principal loan originator, any addition or subtraction of a control person, or any change in the form of business organization, by written amendment in the form and at the time the commission specifies by rule.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(64)	494.004(1)(f)	Any addition of a control person who has not previously filed a Uniform Mortgage Biographical Statement & Consent Form, MU2, or has not previously complied with the fingerprinting and credit report requirements of ss. 494.00321 and 494.00322, is subject to the provisions of these sections. If, after the addition of a control person, the office finds that the licensee does not continue to meet licensure requirements, the office may bring an administrative action in accordance with s. 494.00255 to enforce the provisions of this chapter.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(65)	494.004(2)	Failure to submit to the registry reports of condition pursuant to the requirements of rule 69V-40.176.	Notice of Non-Compliance Fine: A	Fine: A Suspension: D	Fine: B Suspension: D Revocation
(66)	494.0042(2)	Charge or exact, directly or indirectly, from the borrower a fee or commission in excess of the maximum fee or commission specified in this section.	Fine: B Suspension: D Revocation	Fine: C Suspension: D Revocation	Fine: C Suspension: D Revocation

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**Office of Financial Regulation
Division of Consumer Finance
Disciplinary Guidelines for Mortgage Loan Originators and Mortgage Entities
Form OFR-494-14, Incorporated by Reference in Rule 69V-40.111, F.A.C., Effective: xx/xx/xxxx**

Violation #	Statute	Violation Description Summary	1st Citation	2nd Citation	3rd & Subsequent Citations
(67)	494.0042(3)	At the time of accepting a mortgage loan application, a mortgage broker may receive from the borrower a nonrefundable application fee. If the mortgage loan is funded, the nonrefundable application fee shall be credited against the amount owed as a result of the loan being funded. A person may not receive any form of compensation for acting as a loan originator other than a nonrefundable application fee or a fee based on the mortgage amount being funded.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(68)	494.0043(1)(a)	A loan originator, when arranging a mortgage loan for a noninstitutional investor, shall before any payment of money by the noninstitutional investor, provide an opinion of value from an appraiser stating the value of the security property unless the opinion is waived in writing. The opinion must state the value of the property as it exists on the date of the opinion. If any relationship exists between the loan originator or mortgage broker and the appraiser, that relationship shall be disclosed to the investor.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(69)	494.0043(1)(b)	A loan originator, when arranging a mortgage loan for a noninstitutional investor, shall provide to the noninstitutional investor a mortgagee's title insurance policy or an opinion of title by an attorney licensed to practice law in the state, or a copy thereof.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(70)	494.0043(1)(c)	A loan originator, when arranging a mortgage loan for a noninstitutional investor, shall provide, if the loan is other than a first mortgage, a statement showing the balance owed by the mortgagor on any existing mortgages prior to this investment and the status of such existing mortgages.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation

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**Office of Financial Regulation
Division of Consumer Finance
Disciplinary Guidelines for Mortgage Loan Originators and Mortgage Entities
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Violation #	Statute	Violation Description Summary	1st Citation	2nd Citation	3rd & Subsequent Citations
(71)	494.0043(1)(d)	A loan originator, when arranging a mortgage loan for a noninstitutional investor, shall provide a disclosure if the licensee is directly or indirectly acting as a borrower or principal in the transaction.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(72)	494.0043(2)	Each original or certified copy of the mortgage, or other instrument securing a note or assignment thereof, must be recorded before being delivered to the noninstitutional investor. A mortgage broker shall cause the properly endorsed original note to be delivered to the noninstitutional investor.	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation	Fine: C Revocation
(73)	494.0043(3)	Failure to record each mortgage and assignment as soon as practical, but no later than 30 business days after the date of closing.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(74)	494.0043(4)	Any money from a noninstitutional investor for disbursement at a mortgage loan closing must be deposited with and disbursed by an attorney duly licensed in this state or by a title company duly licensed in this state. A person acting as a loan originator may not have control of any money from a noninstitutional investor. This subsection does not prohibit a licensee under this part from receiving a loan origination fee upon the closing of the mortgage loan funded by the noninstitutional investor.	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation	Fine: C Revocation

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**Office of Financial Regulation
Division of Consumer Finance
Disciplinary Guidelines for Mortgage Loan Originators and Mortgage Entities
Form OFR-494-14, Incorporated by Reference in Rule 69V-40.111, F.A.C., Effective: xx/xx/xxxx**

Violation #	Statute	Violation Description Summary	1st Citation	2nd Citation	3rd & Subsequent Citations
(75)	494.0063	All audited financial statements required by ss. 494.001-494.0077 must be prepared by an independent licensed certified public accountant. A mortgage lender must obtain an annual financial audit report as of the date of the licensee's fiscal year end, as disclosed to the office on the application or a subsequent amendment to the application. The mortgage lender shall submit a copy of the report to the office within 120 days after the end of the licensee's fiscal year.	Fine: B Suspension: D Revocation	Fine: B Suspension: D Revocation	Fine: C Suspension: D Revocation
(76)	494.00665(1)	Each mortgage lender business must be operated by a principal loan originator who shall have full charge, control, and supervision of the mortgage lender business. The principal loan originator must be licensed as a loan originator pursuant to s. 494.00312. Each mortgage lender must keep the office informed of the person designated as the principal loan originator as prescribed by commission rule. If the designation is inaccurate, the business shall be deemed to be operated under the full charge, control, and supervision of each officer, director, or ultimate equitable owner of a 10-percent or greater interest in the mortgage lender business, or any other person in a similar capacity during that time.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation

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**Office of Financial Regulation
Division of Consumer Finance
Disciplinary Guidelines for Mortgage Loan Originators and Mortgage Entities
Form OFR-494-14, Incorporated by Reference in Rule 69V-40.111, F.A.C., Effective: xx/xx/xxxx**

Violation #	Statute	Violation Description Summary	1st Citation	2nd Citation	3rd & Subsequent Citations
(77)	494.00665(2)	Each branch office of a mortgage lender must be operated by a branch manager who shall have full charge, control, and supervision of the branch office. The designated branch manager must be a licensed loan originator pursuant to s. 494.00312. Each mortgage lender must keep the office informed of the person designated as the branch manager as prescribed by commission rule, which includes documentation of the individual's acceptance of such responsibility. If the designation is inaccurate, the branch office shall be deemed to be operated under the full charge, control, and supervision of each officer, director, or ultimate equitable owner of a 10-percent or greater interest in the mortgage lender business, or any other person in a similar capacity during that time.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(78)	494.0067(1)	A mortgage lender that makes mortgage loans on real estate in this state shall transact business from a principal place of business. Each principal place of business and each branch office shall be operated under the full charge, control, and supervision of the licensee pursuant to this part.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(79)	494.0067(3)	Failure to report, on a form prescribed by rule of the commission, any change in the information contained in any initial application form, or any amendment thereto, within 30 days after the change is effective.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation

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**Office of Financial Regulation
Division of Consumer Finance
Disciplinary Guidelines for Mortgage Loan Originators and Mortgage Entities
Form OFR-494-14, Incorporated by Reference in Rule 69V-40.111, F.A.C., Effective: xx/xx/xxxx**

Violation #	Statute	Violation Description Summary	1st Citation	2nd Citation	3rd & Subsequent Citations
(80)	494.0067(4)	Failure to report any changes in the principal loan originator, any addition or subtraction of a control person, or any change in the form of business organization by written amendment in such form and at such time that the commission specifies by rule. Any addition of a control person who has not previously filed a Uniform Mortgage Biographical Statement & Consent Form, MU2, or has not previously complied with the fingerprinting and credit report requirements of s. 494.00611 is subject to the provisions of this section. If, after the addition of a control person, the Office determines that the licensee does not continue to meet licensure requirements, the Office may bring administrative action in accordance with s. 494.00255 to enforce this section.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(81)	494.0067(5)	Failure to report in a form prescribed by rule of the commission any indictment, information, charge, conviction, or plea of guilty or nolo contendere, regardless of adjudication, to any felony or any crime or administrative violation that involves fraud, dishonesty, breach of trust, money laundering, or any other act of moral turpitude, in any jurisdiction, by the licensee or any principal officer, director, or ultimate equitable owner of 10 percent or more of the licensed corporation, within 30 business days after the indictment, information, charge, conviction, or final administrative action.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(82)	494.0067(6)	Failure to report any action in bankruptcy, voluntary or involuntary, to the Office, within 30 business days after the action is instituted.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation

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**Office of Financial Regulation
Division of Consumer Finance
Disciplinary Guidelines for Mortgage Loan Originators and Mortgage Entities
Form OFR-494-14, Incorporated by Reference in Rule 69V-40.111, F.A.C., Effective: xx/xx/xxxx**

Violation #	Statute	Violation Description Summary	1st Citation	2nd Citation	3rd & Subsequent Citations
(83)	494.0067(7)	Failure to designate a registered agent in this state for service of process.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(84)	494.0067(8)	A mortgage lender may close loans in its own name but may not service the loan for more than 6 months unless the lender has a servicing endorsement.	Fine: \$1,000 per day up to \$25,000	Fine: \$1,000 per day up to \$25,000	Fine: \$1,000 per day up to \$25,000
(85)	494.0067(9)	Failure to report to the Office the failure to meet the applicable net worth requirements of s. 494.00611 within 2 days after the mortgage lender's knowledge of such failure or after the mortgage lender should have known of such failure.	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation	Fine: C Revocation
(86)	494.0067(10)	Failure to submit to the registry reports of condition which are in a form and which contain such information as the registry may require. The commission may adopt rules prescribing the time by which a mortgage lender must file a report of condition. For purposes of this section, the report of condition is synonymous with the registry's Mortgage Call Report.	Notice of Non-Compliance Suspension: D	Fine: A Suspension: D	Fine: B Suspension: D Revocation
(87)	494.0069(1)	Each lock-in agreement must be in writing and must contain the following, if any: expiration date of the lock-in, interest rate locked in, the discount points locked in, the commitment fee locked in, the lock-in fee, and a statement advising of the provisions of this part regarding lock-in agreements.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(88)	494.0069(2)	Failure of a mortgage lender to make a good faith effort to process the mortgage loan application and stand ready to fulfill the terms of its commitment before the expiration date of the lock-in agreement or any extension thereof.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation

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**Office of Financial Regulation
Division of Consumer Finance
Disciplinary Guidelines for Mortgage Loan Originators and Mortgage Entities
Form OFR-494-14, Incorporated by Reference in Rule 69V-40.111, F.A.C., Effective: xx/xx/xxxx**

Violation #	Statute	Violation Description Summary	1st Citation	2nd Citation	3rd & Subsequent Citations
(89)	494.0069(3)	Any lock-in agreement received by a mortgage lender by mail or through a mortgage broker must be signed by the mortgage lender in order to become effective. The borrower may rescind any lock-in agreement until a written confirmation of the agreement has been signed by the lender and mailed to the borrower or to the mortgage broker pursuant to its contractual relationship with the borrower. If a borrower elects to so rescind, the mortgage lender shall promptly refund any lock-in fee paid.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(90)	494.0069(4)	Before issuing a mortgage loan rate lock-in agreement, a mortgage lender must have the ability to timely advance funds on all mortgage loans for which rate lock-in agreements have been issued. As used in this section, "ability to timely advance funds" means having sufficient liquid assets or a line of credit necessary to cover all rate lock-in agreements issued with respect to which a lock-in fee is collected.	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation	Fine: C Revocation
(91)	494.007(2)	The provisions of a commitment cannot be changed prior to expiration of the specified period within which the borrower must accept it. If any information necessary for an accurate disclosure required by subsection (1) is unknown to the mortgage lender at the time disclosure is required, the lender shall make the disclosure based upon the best information reasonably available to it and shall state that the disclosure is an estimate.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation

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Violation #	Statute	Violation Description Summary	1st Citation	2nd Citation	3rd & Subsequent Citations
(92)	494.0071	If a lock-in agreement has been executed and the loan does not close before the expiration date of the lock-in agreement or any commitment issued consistent therewith through no substantial fault of the borrower, the borrower may withdraw the application or reject or terminate any commitment, whereupon the mortgage lender shall promptly refund to the borrower any lock-in fee and any commitment fee paid by the borrower.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(93)	494.00721(1)	Failure to continually maintain the net worth requirements in s. 494.00611 as a condition of licensure.	Fine: B Suspension: D Revocation	Fine: B Suspension: D Revocation	Fine: C Suspension: D Revocation
(94)	494.00721(2)	If a mortgage lender fails to satisfy the net worth requirements, failure of the mortgage lender to immediately cease taking any new mortgage loan applications.	Fine: B Suspension: D Revocation	Fine: B Suspension: D Revocation	Fine: C Suspension: D Revocation
(95)	494.0075(2)	Failure of each mortgage, or other instrument securing a note or assignment thereof recorded before being delivered to the noninstitutional investor.	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation	Fine: C Suspension: C Revocation
(96)	494.0075(3)	Failure to record each mortgage and assignment as soon as practical, but within 30 business days after the date of purchase.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(97)	494.0075(4)	If the loan is to be serviced by a licensee under this part for a noninstitutional investor, failure to complete a written servicing agreement.	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation	Fine: C Suspension: C Revocation

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Division of Consumer Finance
Disciplinary Guidelines for Mortgage Loan Originators and Mortgage Entities
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(98)	494.0075(5)	Failure of the mortgage lender cause the original note to be properly endorsed showing the assignment of the note to the noninstitutional investor.	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation	Fine: C Suspension: C Revocation
(99)	494.0076(1)(a)	Failure of each licensee under this part who services mortgage loans to maintain a segregated set of records for accounts that are serviced by the licensee and have a separate, segregated depository account for all receipts relating to servicing.	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation	Fine: C Suspension: C Revocation
(100)	494.0076(1)(b)	For fiscal years ending after January 1, 1992, such records and receipts shall be audited annually pursuant to the Uniform Single Audit Program for Mortgage Bankers as approved by the Mortgage Bankers Association of America with the cooperation of the American Institute of Certified Public Accountants.	Fine: B Suspension: D Revocation	Fine: C Suspension: D Revocation	Fine: C Revocation
(101)	494.0076(1)(c)	The audited statement shall be maintained at the licensee's place of business.	Fine: A Suspension: A Revocation	Fine: B Suspension: B Revocation	Fine: C Suspension: C Revocation
(102)	494.0076(2)(a)	In lieu of the audit referred to in subsection (1), a person who services an aggregate value of less than \$7.5 million in outstanding mortgage loans, excluding mortgage loans serviced under contract as an agent for federal, state, or municipal agencies, may obtain a fidelity bond, financial guaranty bond, fidelity insurance, or other financial guaranty providing protection against theft, loss, or other illegal diversion of funds for any amounts normally held by such person.	Fine: B Suspension: D Revocation	Fine: C Suspension: D Revocation	Fine: C Revocation

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