

**State of Rhode Island and Providence Plantations  
DEPARTMENT OF BUSINESS REGULATION**

*Division of Banking*

**1511 Pontiac Avenue, Bldg. 69-2  
Cranston, Rhode Island 02920**

**Public Notice of Proposed Rule-Making**

Pursuant to the provisions of R.I. Gen. Laws §§ 27-14.5-1 *et seq* and in accordance with the Administrative Procedures Act Chapter 42-35 of the General Laws, the Department of Business Regulation hereby gives notice of its intent to amend Banking Regulation 6 – Lenders, Loan Brokers, Small Loan Lenders and Mortgage Loan Originators.

The purpose of this amendment is to consolidate regulations relating to Lenders, Loan Brokers and Small Loan Lenders and add provisions on net branching, insurance claim check agents, mortgage loan originators, financial responsibility and criminal background.

The proposed amended regulation and concise summary of non-technical amendments are available for public inspection at [www.dbr.ri.gov](http://www.dbr.ri.gov), in person at Department of Business Regulation, 1511 Pontiac Avenue, Cranston, Rhode Island 02920, or by email [elizabeth.dwyer@dbr.ri.gov](mailto:elizabeth.dwyer@dbr.ri.gov) or by calling Elizabeth Kelleher Dwyer at (401) 462 9520.

In the development of the proposed amendment consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

All interested parties are invited to submit written or oral comments concerning the proposed regulations by March 3, 2015 to Elizabeth Kelleher Dwyer, Department of Business Regulation, 1151 Pontiac Avenue, Cranston, Rhode Island 02920, [elizabeth.dwyer@dbr.ri.gov](mailto:elizabeth.dwyer@dbr.ri.gov). A public hearing to consider the proposed amendment shall be held on March 3, 2015 at 10:00 am at 1511 Pontiac Avenue, Cranston, Rhode Island 02920 at which time and place all persons interested therein will be heard.

All are welcome at the Rhode Island Department of Business Regulation ("DBR"). If any reasonable accommodation is needed to ensure equal access, service or participation, please contact DBR at 401-462-9551, RI Relay at 7-1-1, or email [dbr.directorofficeinquiry@dbr.ri.gov](mailto:dbr.directorofficeinquiry@dbr.ri.gov) at least three (3) business days prior to the hearing.

Paul McGreevy  
Director, Department of Business Regulation

Date posted: January 26 2015

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**Concise Summary of Proposed Non-technical Amendments**  
**to**  
**Banking Regulation Number 6**

In accordance with the Administrative Procedures Act, Section 42-35-3(a)(1) of the General Laws of Rhode Island, following is a concise summary of proposed non-technical amendments:

1. Section 4 is taken from former regulation 98-14.1 which is being repealed simultaneously with this adoption. No substantive changes are being made to the provisions of 98-14.1.
2. Section 5 (B), (I) and (J) are taken from former regulation 98-14 which is being repealed simultaneously with this adoption. No substantive changes are being made to the provisions.
3. Section 5(A) sets forth the requirement that application be made electronically through the National Mortgage Licensing Service (NMLS).
4. Section 5(C) and 6(F) set forth the requirements for bonds in R.I. Gen. Laws § 19-14-6 and R.I. Gen. Laws § 19-14.10-14. The provisions are proposed in place of the requirements of the formerly proposed Banking Regulation 6 which was proposed and a hearing held but no final regulation enacted.
5. Section 5(D) sets forth the requirements for Qualified Individuals and Branch Managers of Lenders, Loan Brokers and Small Loan Lenders.
6. Section 5(E) sets forth the Departments policy on net branching which was formerly contained in Banking Bulletin 2003-2 which will be repealed when this regulation become effective.
7. Section 5(H) sets for the requirement of R.I. Gen. Laws §§ 5-38-26 and 27-5-3.3 that lenders designate an agent that has the authority to endorse an insurance claim check. The section also provides an exception for lenders who certify that they will not be listed as a loss payee on any insurance policy.
8. Section 6 is added as the section addressing Mortgage Loan Originators (“MLO”). No prior regulation provided for MLO’s which were added as a new license type by the provisions of Dodd Frank. The section implements the provisions of R.I. Gen. Laws § 19-14.10.

9. Section 7 is added to provide direction for applicants on the criteria the Department will evaluate when implementing R.I. Gen. Laws §§ 19-14-7 and 19-14.10-6 requiring financial responsibility of applicants.
10. Section 8 is added to provide direction for applicants on the criteria the Department will evaluate when implementing R.I. Gen. Laws §§ 19-14-3, 19-14.10-6 and the federal SAFE Act with regard to the criminal backgrounds of applicants.
11. Section 9 is taken from former regulation 98-14 which is being repealed simultaneously with this adoption. No substantive changes are being made to the provisions.

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**BANKING REGULATION 6**

**LENDERS, LOAN BROKERS, SMALL LOAN LENDERS AND MORTGAGE  
LOAN ORIGINATORS**

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**Section 1**     *Authority*

This regulation is promulgated in accordance with R.I. Gen. Laws §§ 19-14, 19-14.1, 19-14.2, 19-14.10 and 42-14-17.

**Section 2**     *Scope*

This regulation applies to all person and entities licensed or required to be licensed as lenders, loan brokers, small loan lenders and mortgage loan originators pursuant to the provisions of R.I. Gen. Laws §§ 19-14.1, 19-14.2 and, 19-14.10.

**Section 3**     *Purpose*

The purpose of this Regulation is to set forth the standards to be followed by the licensees listed above.

**Section 4**     *Depository Institutions*

Financial institutions, credit unions, and other insured-deposit-taking institutions which are authorized to do business in Rhode Island including one authorized to do business by operation of an interstate banking statute which allowed its original entry, are

not considered lenders or loan brokers for purposes of R.I. Gen. Laws § 19-14.1. Subsidiaries and affiliates of financial institutions, credit unions, and other insured-deposit-taking institutions organized under the laws of the United States, which subsidiaries and affiliates are not financial institutions, credit unions, or otherwise exempt from licensure under R.I. Gen. Laws § 19-14 and 19-14.1. are lenders or loan brokers for purposes of R.I. Gen. Laws § 19-14.1.

**Section 5**      **Lenders, Loan Brokers and Small Loan Lender Requirements**

- A.    Application. All licensees shall make application for a license and all changes in National Mortgage Licensing System (NMLS). Any changes to the information provided must be reported to the Department, within thirty (30) days through an NMLS filing.
  
- B.    Capital. As provided in R.I. Gen. Laws § 19-14-5, each licensee which applied for and is granted a license after June 30, 1995 must maintain minimum net worth, as set forth in R.I. Gen. Laws § 19-14-5. Net worth shall be defined as the amount by which total assets exceed total liabilities, calculated in accordance with Generally Accepted Accounting Principles. All licensees must prepare and maintain a financial statement, prepared at a minimum on a quarterly basis, which evidences compliance to applicable statutory net worth requirements.
  
- C.    Bonds. In accordance with R.I. Gen. Laws § 19-14-6 each Lender, Loan Broker and Small Loan Lender must file bonds in the following amounts with its application and keep the bonds current throughout the period of licensure. The bond amounts for the initial license are:

Lenders – fifty thousand dollars (\$50,000)

Loan Brokers – twenty thousand dollars (\$20,000)

Small Loan Lenders – Ten thousand dollars (\$10,000)

- 1.    Licensees with three (3) or fewer approved branches do not need to post any additional amounts. Licensees with four (4) to seven (7) branches must increase the primary bond amount by ten thousand dollars (\$10,000) and licensees with eight (8) or more branches must post an additional bond sum of twenty five thousand (\$25,000) dollars.
  
- 2.    The escalation in bond amounts set forth above is in conformance with R.I. Gen. Laws § 19-14-6 and satisfies the Departments obligation to promulgate regulations pursuant to R.I. Gen. Laws § 19-14.10-14.

D. Qualified Individual or Branch Manager.

1. Mortgage Lenders or Brokers. Any licensee that lends, brokers or services any mortgage loan must appoint a person that holds a valid Rhode Island Mortgage Loan Originator (“MLO”) license as the Qualified Individual or Branch Manager designated to operate the licensed business.
2. Non-Mortgage Lenders. A lender whose filed business plan represents that it does not and will not engage in any mortgage lending, brokering or servicing may appoint Qualified Individual(s) and/or Branch Manager(s) that do not hold a Rhode Island MLO.
  - a. Those Qualified Individual(s) and/or Branch Manager(s) must have at least five (5) years’ experience in the type of business for which a license is being sought including, without limitation, employment, supervision, or independent work experience. Factors to be considered when assessing the quality of an individual's experience shall include the number complexity and types of transactions handled in relation to the type of license sought by the application.
  - b. The Department, will consider experience for a lesser period than five (5) years depending on individual circumstances. Factors which the Department shall consider for such a lesser experience period include but are not limited to the individual's educational experience, the complexity of transactions in relation to the type of license sought by the application and the supervision and oversight over the manager or person designated to operate the licensed business by a person having at least five (5) years of qualified experience.
3. Managerial Oversight
  - a. The Qualified Individual or Branch Manager is required to be physically present at the licensed location the majority of operating hours and to personally oversee the operations of the licensee at that location.
  - b. If the proposed Qualified Individual or Branch Manager does not reside within commuting distance of the licensee operation, the application should provide a complete explanation of how the managerial oversight criteria will be satisfied at the time of application.

- E. Net Branching. Net Branching is prohibited in Rhode Island.
1. A net branch arrangement is an arrangement in which a Rhode Island licensed person or entity enters into an agreement whereby its designated branch manager has the appearance of ownership of the licensee by, among other things, sharing in the profits and/or losses, establishing, leasing or renting the branch premises, entering into other contractual relationships with vendors such as telephones, utilities, and advertising, having control of a corporate checkbook, and/or exercising control of personnel through the power to hire or fire such individuals.
  2. An entity may be considered to be utilizing a net branch if the net branch agreement requires the branch manager to indemnify the licensee for damages from any apparent, express, or implied agency representation by or through the branch's actions or if the agreement requires the branch manager to issue a personal check to cover operating expenses whether or not funds are available from an operating account of the licensee.
  3. A branch manager's compensation that is based upon the net profit of the branch is an acceptable branch compensation arrangement if the employer collects the revenue from the branch, pays the branch expenses including the compensation of all employees of the employer main and branch offices, and then pays the branch manager the remaining revenues, if any, as a commission. The distinction between an acceptable and unacceptable branch compensation plan is whether the Licensee pays the expenses of the branch. If the Licensee pays the expenses, the arrangement is acceptable. If, however, the expenses are paid by the branch manager from a personal or nonentity account (or by some third party), the arrangement is prohibited.
- F. Financial Responsibility. A licensee must demonstrate the financial responsibility of its Officers, Directors, Owners and designated Managers pursuant to R.I. Gen. Laws § 19-14-7 under the criteria set forth in section 7 below.
- G. Criminal Background Checks. All officers, directors, owners of 10% or more, Qualified Individuals and Branch Managers that do not hold a current valid Rhode Island MLO license must submit the following information to the Division **by mail**
1. An Original and Completed Authorization for Background Check and Release form in the form provided on NMLS;
  2. A copy of the individual's valid photo ID, such as an unexpired driver's license or passport;
  3. Two (2) completed fingerprint cards (the Division does not provide cards);

4. An Original Certification of Fingerprinting by other agencies form in the form provided on NMLS; and
5. A check in the amount of \$35 per individual made payable to "BCI" for the cost of the background check

H. Insurance Claim Agent

1. R.I. Gen. Laws §§ 5-38-26 and 27-5-3.3 require that each lender designate an agent within Rhode Island whom the lender has agreed may endorse insurance checks on the lenders behalf. Each lender must provide a copy of such agreement including all contact information for the individual within Rhode Island at the time of application and must keep that information current during licensure.
2. A lender that has not and will not be included as a loss payee on any insurance policy may be exempted from the provisions of R.I. Gen. Laws §§ 5-38-26 and 27-5-3.3. An applicant that wishes to obtain an exemption must clearly state in its business plan that it is not a loss payee on any insurance policy and must upload a statement that it will not be designated as a loss payee on any insurance policy. A lender that obtains an exemption should expect that compliance will be evaluated on examination.

I. Change in Ownership. Any change in ownership of twenty-five percent (25%) or more of the voting stock or equity interests of a licensee requires notification to the Department fifteen (15) days after such a change in ownership. Notification shall be made in NMLS. With the notice of a change in ownership, the licensee shall submit information requested relating to the new owner(s) and new directors, officers and managers, including names, addresses and personal background information. If the new owner(s) and new directors, officers and managers have the financial responsibility, experience, character and general fitness as required of an applicant, the Department shall approve such change in control. The Department shall approve or deny such a change in control within thirty (30) days of receipt of all information the Department requires to be filed to make such a determination.

J. Advertising. Each licensee shall include in all advertisements disseminated primarily in Rhode Island words substantially similar to "Rhode Island Licensed Lender", "Rhode Island Licensed Loan Broker", Rhode Island Licensed Small Loan Lender" and/or "Rhode Island Licensed Mortgage Servicer " whichever is applicable.

**Section 6** *Mortgage Loan Originators*

A. Application. All Mortgage Loan Originators ("MLO") shall make application for a license and all changes in National Mortgage Licensing System (NMLS). Any

changes to the information provided must be reported to the Department, within thirty (30) days through an NMLS filing.

- B. Sponsorship. A MLO may not originate any loan in Rhode Island unless that MLO has an active sponsorship with a properly licensed lender or loan broker or an entity explicitly exempt from licensure under R.I. Gen. Laws §§ 19-14.
- C. Net Branching. An MLO may not participate in a net branching arrangement as described in section 5 above. Participation in such an arrangement may result in administrative action against the MLO including suspension or revocation and/or forfeiture of interest, fees and charges.
- D. Criminal Backgrounds. All applicants for an MLO must provide a criminal background authorization as provided for in NMLS. The background will be evaluated as indicated in Section 8 below.
- E. Financial Responsibility. An applicant for a MLO License must demonstrate financial responsibility pursuant to R.I. Gen. Laws § 19-14.10-6(3).
- F. Bonds. The responsibility of an MLO to be covered by a surety bond in accordance with R.I. Gen. Laws § 19-14.10-14 is satisfied if the MLO is an employee of a licensee that posts and maintains a bond in accordance with section 5(C) above and R.I. Gen. Laws § 19-14-6.

**Section 7      Financial Responsibility**

- A. The Division will evaluate the financial responsibility required by R.I. Gen. Laws §§ 19-14-7 and 19-14.10-6 under the following standards. A determination that an individual has not shown financial responsibility may include, but not be limited to:
  - 1. Current outstanding judgments, except judgments solely as a result of medical expenses;
  - 2. Current outstanding tax liens or other government liens and filings;
  - 3. Foreclosures within the past three years;
  - 4. A pattern of seriously delinquent accounts within the past three (3) years. Factors that will be considered in determining whether accounts are seriously delinquent include:
    - a. A pattern of delinquent child support payments
    - b. Outstanding collection accounts
    - c. Accounts that are ninety (90) days or more past due.

- B. An applicant who has any of the criteria listed above in his or her background should provide, at the time of initial application, a full description and supporting documentation of the underlying facts and circumstances and the actions taken to rectify the situation. The applicant should identify and explain any of the debts are related solely to medical debt. The following types of documents should be provided, if applicable:
1. Narrative explaining the circumstances which surround the adverse item reported.
  2. Satisfaction of judgment.
  3. Bankruptcy discharge order or dismissal.
  4. Bankruptcy schedules.
  5. Satisfaction of tax or other governmental lien.
  6. Letters or agreements establishing a repayment plan.
  7. Account statements, receipts, bank statements, cancelled checks or other documentation which establishes the balance due, and the date and the amount of payments
  8. Explanations concerning an ongoing settlement negotiation or dispute between the individual and creditor or creditor's assignee
- D. After review of these items, the Department will make a determination as to whether a person meets the financial responsibility requirement. To make this determination, the Department may consider the following factors:
1. Whether the individual has provided complete information as requested by the Department.
  2. The number of delinquent accounts, collection accounts, judgments, liens and charged off items.
  3. The amount of any delinquent accounts, collection accounts, judgments, liens and charged off items.
  4. The age of any delinquent accounts, collection accounts, judgments, liens and charged off items.
  5. Any viable repayment agreements with creditors or creditor's assignees concerning delinquent accounts, collection accounts, judgments, liens and charged off items.

6. Good faith negotiation and repayment plans concerning any past due tax liability or failure to make payments pursuant to a repayment plan negotiated with a creditor or governmental tax agency.
  7. With regard to Bankruptcies the Division will consider the circumstances which led to the bankruptcy, the length of time since a discharge in bankruptcy and whether the person has been using credit responsibly since receiving the discharge. For Chapter 7 discharges the Division will normally require a minimum of six months credit history after discharge. For Chapter 13 the Division will examination whether the individual is making the payments required by his or her Chapter 13 bankruptcy plan.
- E. If the Division denies an application on the basis that the applicant or an Officer, Director, Owner, Manager or Control Person of the applicant is not financially responsible, the applicant will be notified of the reason for the denial. The applicant may make written demand upon the department within thirty (30) days for a hearing to determine the reasonableness of the action. The hearing shall be conducted in accordance with the Administrative Procedures Act, R.I. Gen. Laws § 42-35-9.

## **Section 8**      **Criminal Backgrounds**

- A. Pursuant to R.I. Gen. Laws § 19-14.10-6 and the SAFE Act (the Secure and Fair Enforcement for Mortgage Licensing Act, comprising §§ 1501-1517 of the Housing and Economic Recovery Act of 2008, Public Laws 110-289), an applicant is not eligible for licensure if (s)he has been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court:
1. During the seven (7) year period preceding the date of the application for licensing and registration; or
  2. At any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering.
- B. For all other arrests and convictions which appear on an applicant's criminal background the applicant should provide a full explanation and all supporting documentation (including the charging documents and the documents evidencing the terms of a plea agreement or conviction after trial).
- C. Aggravating factors which may be considered in the denial of the application for license or renewal include, but are not limited to:
1. Prior disciplinary history;
  2. Number of violations;
  3. Pattern of similar violations;

4. Significant harm to victim or community;
  5. Refusal, delay, or inadequate explanation of facts and circumstances at issue;
  6. Evidence of willfulness or intentional commission of offense;
  7. Evidence of gross negligence;
  8. Refusal to acknowledge violation or take responsibility for offense;
  9. Lack of cooperation with investigation;
  10. Submission of false statements or evidence, or other deceptive practices;
  11. Intimidation of or threats to witnesses or others involved with the investigation.
- D. Mitigating factors which may be considered in the denial of the application for license or renewal include, but are not limited to:
1. Length of time since the date of violation;
  2. No prior disciplinary history;
  3. No other complaints, arrests, charges, or offenses currently pending against licensee/applicant;
  4. No pattern of similar offenses;
  5. No evidence that the arrest, charge, offense, or conviction was willful or intentional;
  6. No evidence that the arrest, charge, offense, or conviction was grossly negligent;
  7. Age, position, and/or license at time of arrest, charge, offense, or conviction;
  8. Evidence of rehabilitation since arrest, charge, offense, or conviction;
    - a. Cooperation with investigation;
    - b. Little or no harm to public;
    - c. Timely mitigation or restitution;

- d. Understanding, acknowledgment, and remorse for arrest, charge, offense, or conviction;
  - e. Reasonable explanation that is not contradicted by other witnesses or evidence;
  - f. Personal problems at time of arrest, charge, offense, or conviction that have been addressed;
  - g. Arrest, charge, offense, or conviction are not related to position or license sought.
- E. Pardon or expungment of a conviction shall not be a conviction for purposes of this regulation.
- F. Upon review and evaluation of all information, the Department may deny the application for license or renewal application, grant the application for license or renewal application without conditions, or grant the application for license or renewal application with conditions.
- G. If the Division denies an application on the basis of the applicant or an Officer, Director, Owner, Manager or Control Persons' criminal background, the applicant will be notified of the reason for the denial. The applicant may make written demand upon the department within thirty (30) days for a hearing to determine the reasonableness of the action. The hearing shall be conducted in accordance with the Administrative Procedures Act, R.I. Gen. Laws § 42-35-9.

**Section 9      Books Accounts and Records**

Each lender, loan broker and small loan lender must document and maintain a record of all actions taken, from the original point of contact (i.e. solicitation calls, application filing, etc.) to the final disposition of each financing request received, and shall maintain at a minimum, the following records:

- A. For each customer:
  - 1. The address of the office where the application was received for any licensee which maintains more than one (1) location.
  - 2. A copy of the following documents:
    - a. The loan application.
    - b. The loan note.

- c. Settlement sheet.
  - d. All required Regulation Z and Real Estate Settlement Procedures Act Disclosures.
  - e. Title waiver forms pursuant to R.I. Gen. Laws §§ 19-9-5 and 19-9-6.
  - f. Adverse action, where applicable.
  - g. Signed rate lock agreements, where applicable, with lender rate lock confirmation.
  - h. Copies of mortgage documents containing fee disclosures required by statute.
  - i. Date the application was considered complete for purposes of Federal Regulation B.
3. A loan log which contains, at a minimum, the name of the applicant, the date the application was received, the date the application was approved, withdrawn or denied, and the date the loan closed.
- B. The above documents must be kept on file for a minimum of three (3) years from the application date, for loan brokers, and a minimum of three (3) years from the date a loan is paid in full or sold, for lenders and small loan lenders.
- C. A complete list of all loans brokered, funded or serviced from the date of the later of the last Division of Banking examination or the date of licensing.

**Section 9      Severability**

If any provision of this regulation or the application thereof to any person or circumstance is held invalid or unconstitutional, the invalidity or unconstitutionality shall not affect other provisions or applications of this Regulation which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Regulation are severable.

**Section 10      Effective Date**

This regulation is effective as indicated below.

EFFECTIVE DATE:                      March \_\_\_\_, 2015