State of Rhode Island and Providence Plantations
Department of Business Regulation
Division of Banking

Public Notice of Proposed Rule-Making
Banking Regulation 6
Surety Bond and Minimum Net Worth Pursuant to the Secure and Fair Enforcement Mortgage Licensing Act of 2009

Pursuant to the provisions of R.I. Gen. Laws §§ 19-14.10-14(a)(3), 42-14-17, and 42-35-1 *et seq.*, the Division of Banking of the Department of Business Regulation ("Department") hereby gives notice of its intent to adopt Banking Regulation 6 entitled *Surety Bond and Minimum Net Worth Pursuant to the Secure and Fair Enforcement Mortgage Licensing Act of 2009* ("BR 6").

The purpose of BR 6 is to set forth the requirements for surety bond coverage and the minimum net worth for mortgage loan originators to carry out the provisions of R.I. Gen. Laws § 19-14.10-14 entitled "Surety Bond Required." The Surety Bond requirement allows for the protection of consumers who are injured by acts or omissions of a mortgage loan originator related to licensed activities under R.I. Gen. Laws § 19-14.10-1 *et seq.* The minimum net worth requirement protects the consumer by helping to establish that the mortgage loan originator is financially stable.

BR 6 is available for public inspection at www.dbr.ri.gov or in person at the Department of Business Regulation, 1511 Pontiac Avenue, Building 68-1, Cranston, RI 02920 or requested by email to: Neena Sinha Savage at NSSVG1@dbr.ri.gov or by calling Neena Sinha Savage at (401) 462-9540.

In the development of the proposed adoption of BR 6 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 December 7, 2010 to Neena Sinha Savage, Department of Business Regulation, 1511 Pontiac Avenue, Building 68-1, Cranston, RI 02920, or by email to: NSSVG1@dbr.ri.gov. A public hearing to consider the proposed adoption shall be held on **December 7, 2010 at 9:30 a.m.** at 1511 Pontiac Avenue, Building 68-1, Cranston, RI 02920 at which time and place all persons interested therein will be heard. The room is accessible to the disabled and interpreter services for the hearing impaired will be provided if requested 48 hours prior to the hearing. Requests for this service can be made in writing or by calling (401) 462-9540 or TDD 711.

STATE OF RHODE ISLAND
DEPARTMENT OF BUSINESS REGULATION
DIVISION OF BANKING
1511 PONTIAC AVENUE
CRANSTON, RI 02920

BANKING REGULATION 6

SURETY BOND AND MINIMUM NET WORTH PURSUANT TO THE SECURE AND FAIR ENFORCEMENT MORTGAGE LICENSING ACT OF 2009

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Section 1. AUTHORITY

This Regulation ("Regulation") is promulgated pursuant to the authority granted to the Department of Business Regulation ("Department") by the Secure and Fair Enforcement Mortgage Licensing Act of 2009, R.I. Gen. Laws §§ 19-14.10-14(a)(3), 42-14-17, and 42-35-1 *et seq.*

Section 2. PURPOSE

The purpose of this Regulation is to set forth the requirements for Surety Bond coverage and the minimum Net Worth requirement for Mortgage Loan Originators to carry out the provisions of R.I. Gen. Laws § 19-14.10-14 entitled "Surety Bond Required." The Surety Bond requirement allows for the protection of consumers or the State of Rhode Island who are injured by acts or omissions of a Mortgage Loan Originator related to licensed activities under R.I. Gen. Laws § 19-14.10-1-1 *et seq.* The minimum Net Worth requirement in R.I. Gen. Laws § 19-14.10-14(e) protects the consumer by helping to establish that the Mortgage Loan Originator is financially stable.

Section 3. 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 4. DEFINITIONS

Unless otherwise provided by this Regulation or unless context clearly requires otherwise, terms used in this Regulation shall have the same meaning as the terms defined in R.I. Gen. Laws §§ 19-1-1 and 19-14-1 and 19-14.10-3. All terms defined in R.I. Gen. Laws §§ 19-1-1 and 19-14-1 and 19-14.10-3 are capitalized in this Regulation.

A. "Director" means the Director of the Department or his or her designee

B. "Net Worth" means the difference between total assets and total liabilities as calculated in accordance with Generally Accepted Accounting Principles ("GAAP").

C. "Statute" means the Secure and Fair Enforcement Mortgage Licensing Act of 2009, R.I. Gen. Laws 19-14.10

D. "Surety Bond" means a contract by which one party agrees to make good the default or debt of another. There are three parties involved: the principal, who has primary responsibility to perform the obligation; the surety, the individual with the secondary responsibility of performing the obligation if the principal fails to perform; and the obligee, to whom the right of performance is owed.

Section 5. SURETY BOND

A. All licensed Mortgage Loan Originators and applicants for an initial license under the Statute and this Regulation shall file with the Director an original corporate Surety Bond in a form satisfactory to the Director in accordance with the requirements of this section.

B. A Mortgage Loan Originator shall obtain his or her own Surety Bond coverage through a Surety Bond in the amount of at least $10,000 for Mortgage Loan Originators that originate between $1 dollar and $10 million dollars annually, or a Surety Bond in the amount of at least $15,000 for Mortgage Loan Originators that originate greater than $10 million dollars annually. The Surety Bond for a licensed Mortgage Loan Originator shall be in a minimum amount in accordance with the requirement herein based upon the volume of Rhode Island Mortgage Loans that that Mortgage Loan Originator originated for the year ending December 31 that precedes the effective year of the license. The amount of the Surety Bond shall be adjusted as of December 31 of each year to ensure that the minimum required amount is maintained.

C. The Director may require a larger Surety Bond based upon the particular circumstances of the applicant or Mortgage Loan Originator.

D. No Surety Bond shall be acceptable unless the following requirements are satisfied:

(i) The aggregate value of the Surety Bond shall be equal to, or greater than, the amount determined in accordance with § 5(B);

(ii) The term of the Surety Bond shall be continuous; and

(iii) The Surety Bond shall run to the State for the benefit of the Department of Business Regulation and for the benefit of all consumers injured by any wrongful act, omission, default, fraud, or misrepresentation by the Mortgage Loan Originator in the course of that individual's activity as such. Compensation under the Surety Bond shall be for amounts which represent actual losses and shall not be payable for claims made by business creditors, third-party service providers, agents, or persons otherwise in the employ of the mortgage loan originator. Surety claims shall be paid by the insurer to the Department of Business Regulation, if filed by the Department, or to the consumer, if filed by the consumer, not later than ninety (90) days after receipt of a claim. Claims paid after one hundred and eighty (180) days shall be subject to daily interest at the legal rate. The aggregate liability of the surety on the bond, exclusive of any interest which accrues for payments made after ninety (90) days, shall in no event exceed the amount of such Surety Bond.

E. If a Mortgage Loan Originator changes surety company or the Surety Bond is otherwise amended, the Mortgage Loan Originator shall immediately provide the Director with the amended original copy of the Surety Bond. No cancellation of an existing Surety Bond by a surety shall be effective unless written notice of its intention to cancel is filed with the Director at least thirty (30) days before the date upon which cancellation shall take effect. A surety company which cancels a Surety Bond on a date other than December 31 shall incur a twenty five ($25) dollar cancellation fee to be paid to the Department.

F. The Director may require potential claimants to provide such documentation and affirmations as the Director may determine to be necessary and appropriate. In the event the Director determines that multiple consumers have been injured by a Mortgage Loan Originator, the Director may cause a notice to be published for the purpose of identifying all relevant claims.

G. When a surety company receives a claim against the Surety Bond of a Mortgage Loan Originator from a consumer, it shall provide the

Department with electronic notice within thirty (30) days of the receipt of the claim.

H. The Director shall have a period of time as provided by R.I. Gen. Laws § 9-1-17, as amended, after the effective date of cancellation or termination of the Surety Bond by the insurer to submit claims to the insurer.

I. When an action is commenced on a Mortgage Loan Originator's Surety Bond the Director may require the filing of a new Surety Bond.

J. In the event that the Mortgage Loan Originator is an employee of a lender or loan broker licensed under R.I. Gen. Laws §§ 19-14-1 *et seq.*, the Surety Bond of such lender or loan broker as required in accordance with the provisions of such chapter and adjusted by the amounts required by this section can be used in lieu of the mortgage loan originator's Surety Bond requirement. The licensed Loan Broker and/or Lender must ensure that the Surety Bond coverage for the volume of loans attributable to each Mortgage Loan Originator, individually, as well as the total volume for the licensed Lender and/or Loan Broker is consistent with the amounts required under this Regulation. Each individual Mortgage Loan Originator must have Surety Bond coverage consistent with that individual Mortgage Loan Originator's loan origination volume as required in Section 5(B) herein.

Section 6. MINIMUM NET WORTH

The Minimum Net Worth of an applicant for a new license shall be: (i) $10,000 for annual volume of Rhode Island loans originated in an amount up to $10 million dollars or (ii) $25,000 for annual volume of Rhode Island loans originated in an amount greater than $10 million dollars and is based upon the volume of Rhode Island Mortgage Loans the Mortgage Loan Originator originated for the year ending December 31. Said Minimum Net Worth shall be continuously maintained at all times in accordance with the requirements herein. The Director of the Department or his or her designee may waive or modify the Minimum Net Worth requirement upon presentation of written evidence supporting such waiver or modification.

Section 7. EFFECTIVE DATE

This Regulation is proposed to be effective on January 18, 2011.