

Part 420 Mortgage Loan Originators: Licensing; Education Requirements

(Statutory authority: Banking Law, Sections 39 and 44 and Article 12-D and Article 12-E)

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§ 420.1 Mortgage loan originator license and revocation.

(a) Section 599-c of the Banking Law provides that no individual, unless exempt, shall engage in mortgage loan originating without first obtaining and maintaining a license from the Superintendent of Financial Services (formerly the Superintendent of Banks) pursuant to Article 12-E of the Banking Law. This regulation implements the Superintendent's authority to license mortgage loan originators.

(b) Section 599-n of the Banking Law authorizes the Superintendent to revoke a license to engage in mortgage loan originating. In addition, Sections 599-i and 599-n set out the circumstances under which a license will be terminated by operation of law.

§ 420.2 Exemptions.

As provided in Section 599-c(3) of the Banking Law, the following individuals are exempt from the licensing requirements otherwise applicable under Article 12-E:

(a) *Registered mortgage loan originators.* A registered mortgage loan originator (i.e. an individual who performs the functions of an MLO, who is employed by a depository institution, certain subsidiaries of a depository institution or an institution regulated by the Farm Credit Administration, and who is registered with the NMLS).

(b) *Immediate family loans.* Any individual who offers or negotiates the terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.

(c) *Loans on an individual's residence.* Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling or residential real property that served as the individual's own residence.

(d) *Certain Attorneys.* A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator.

(e) *Servicer employees.* Any individual employed by a mortgage loan servicer registered under Article 12-D of the Banking Law, who negotiates any modification of an existing residential mortgage loan on behalf of such servicer, and does not otherwise act as a mortgage loan originator, unless licensing is required by a rule, regulation, guideline or interpretation issued by the U.S. Department of Housing and Urban Development under Public Law 110-289.

(f) *Manufactured home sellers.* Any individual involved in the sale of manufactured homes, if exempted from licensing by a rule, regulation, guideline or interpretation issued by the U.S. Department of Housing and Urban Development under Public Law 110-289.

(g) *Exemptions approved by the Superintendent.* The provisions contained in this Part shall not apply to such other individuals as the Superintendent may by order exempt for good cause.

§ 420.3 Definitions.

For purposes of this Part:

(a) "Annual Expiration Date" with respect to any MLO means December 31 of each year.

(b) "Hour" means a unit of time as defined by the NMLS.

(c) "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. The term includes stepparents, stepchildren, stepsiblings and adoptive relationships.

(d) "Individual" means a natural person.

(e) Loan processor or underwriter-

(1) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of, and subject to the supervision and instruction of, an individual licensed, or exempt from licensing, under this Part, provided that such individual does not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator.

(2) For purposes of this subdivision, "clerical or support duties" may include, subsequent to the receipt of an application:

(i) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; or

(ii) communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

(f) "Manufactured home" means any manufactured home as defined in Uniform Commercial Code § 9-102(53) or mobile home included in the definition of dwelling as defined in Section 1203(v) of the Truth in Lending Act.

(g) (1) Mortgage loan originator ("MLO") means an individual who for compensation or gain or in the expectation of compensation or gain:

(i) takes a residential mortgage loan application; or

(ii) offers or negotiates terms of a residential mortgage loan.

(2) MLO does not include:

(i) any individual engaged solely as a loan processor or underwriter except as otherwise provided in subdivision four of Section five hundred ninety-nine-c of Article 12-E;

(ii) an individual who performs only real estate brokerage activities and is licensed or registered in accordance with applicable New York law, unless the individual is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; and

(iii) an individual solely involved in extensions of credit relating to timeshare plans, as that term is defined in Section 101(53D) of title 11, United States Code.

(3) For purposes of this Part, "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(i) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

- (ii) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;
- (iii) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction);
- (iv) engaging in any activity for which an individual engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and
- (v) offering to engage in any activity, or act in any capacity, described in subparagraphs (i), (ii), (iii), or (iv) of this paragraph.

(h) "Nationwide Mortgage Licensing System and Registry" ("NMLS") means a mortgage licensing system and registry developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators.

(i) "Originating entity" means an individual or entity licensed or registered pursuant to Article 12-D, an individual or entity engaged in the origination of residential mortgage loans secured by manufactured homes licensed under Article IX or Article 11-B or such other employer of mortgage loan originators as the Superintendent may approve in writing.

(j) "Prior version" means Article 12-E as in effect from January 1, 2008 to July 10, 2009.

(k) "Residential mortgage loan" shall mean a loan to a natural person made primarily for personal, family or household use, secured by either a mortgage, deed of trust or other equivalent consensual security interest on a dwelling (as defined in Section 1203(v) of the Truth in Lending Act) or residential real property or any certificate of stock or other evidence of ownership in, and proprietary lease from, a corporation or partnership formed for the purpose of cooperative ownership of residential real property and shall include any refinance and, to the extent required by the Secretary of the U.S. Department of Housing and Urban Development, modification of any such existing loan.

(l) "Registered mortgage loan originator" means any individual who:

(1) Meets the definition of mortgage loan originator and is an employee of:

- (i) a depository institution;
- (ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or
- (iii) an institution regulated by the Farm Credit Administration; and

(2) Is registered with, and maintains a unique identifier through, the NMLS under regulations adopted by the federal banking regulators.

(3) For purposes of this definition, the term "Depository institution" shall have the same meaning as in Section three of the Federal Deposit Insurance Act, and includes any credit union.

(m) "Residential real property" shall mean real property located in this state improved by a one-to-four family residence or residential unit in a building used or occupied, or intended to be used or occupied, wholly or partly, as the home or residence of one or more persons, but shall not refer to unimproved real property upon which such residence is to be constructed.

(n) "Unique identifier" means a number or other identifier assigned by protocols established by the NMLS.

§ 420.4 Application procedure for initial license as an MLO.

(a) *Effective date.* Effective July 11, 2009, no individual, unless exempt or permitted in accordance with the rules in subdivision (c) and subdivision (d) below, shall engage in mortgage loan originating without first being licensed by the Superintendent as an MLO pursuant to Article 12-E of the Banking Law. In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace:

(1) Each individual required under Article 12-E to be licensed as an MLO, other than an individual described in paragraph (2) or (3) of this subdivision, shall be licensed pursuant to this Part not later than July 31, 2010, or such later date approved for mortgage loan originators in this state by the Secretary of the U.S. Department of Housing and Urban Development, pursuant to the authority granted under Public Law 110-289, Section 1508(a) and approved by the Superintendent;

(2) Each individual authorized as a mortgage loan originator under prior law not later than July 11, 2009, shall be licensed pursuant to this Part not later than January 1, 2011, or such later date approved for mortgage loan originators in this state by the Secretary of the U.S. Department of Housing and Urban Development, pursuant to the authority granted under Public Law 110-289, Section 1508(a) and approved by the Superintendent; and

(3) Notwithstanding paragraphs (1) and (2) of this subdivision, effective July 11, 2009, no individual shall act as a mortgage loan originator if such individual has been convicted of, or pled guilty or nolo contendere to, a felony of the types and during the time periods described in paragraph (b) of subdivision one of Section 599-e of Article 12-E.

(b) *Submission of application.* Each applicant to become a licensed mortgage loan originator shall file an application in such form as shall then be required by the Superintendent.

(c) *Transition Rules.* Each applicant described in this subdivision shall file an application as follows:

(1) An individual who was engaged in mortgage loan origination activities as of July 11, 2009, who filed an application pursuant to the prior version of Article 12-E prior to such date, and whose application had not been approved, denied or withdrawn by the Superintendent, shall file with the Superintendent by November 30, 2009 all such additional information as the Superintendent may reasonably require to comply with the

informational requirements of Article 12-E and shall satisfy the pre-licensing testing and educational requirements and bonding requirements of Article 12-E by May 31, 2010;

(2) An individual who was engaged in mortgage loan origination activities with respect to manufactured homes as of July 11, 2009 shall file with the Superintendent by December 31, 2009 an application to be licensed as an MLO under Article 12-E and shall satisfy the pre-licensing testing and educational requirements and bonding requirements of Article 12-E by May 31, 2010; and

(3) An individual authorized to act as an MLO as of July 11, 2009 shall file with the Superintendent by November 30, 2009 all such additional information as the Superintendent may reasonably require to comply with the informational requirements of Article 12-E and shall satisfy the pre-licensing testing and educational requirements and bonding requirements of Article 12-E by August 31, 2010.

Unless precluded by paragraph (3) of subdivision (a) of this section, all individuals covered by this subdivision may continue to engage in the activities of an MLO until the earlier of the date he or she receives notice that his or her license application under this Part has been denied or July 31, 2010 in the case of individuals covered by paragraphs (1) and (2) of this subdivision (c) or January 1, 2011 in the case of individuals covered by paragraph (3) of subdivision (c).

(d) *New Applications.* All individuals not covered by subdivision (c), but who are required to be licensed hereunder, shall file an application under this subdivision. Each applicant described in this subdivision shall file an application as follows:

(1) Any new applicant who was engaged in the business of a mortgage loan originator as of July 11, 2009 as an employee or independent contractor of a bank, trust company, private banker, bank holding company, savings bank, savings and loan association, thrift holding company or credit union organized under the laws of this state, another state or the United States, or a subsidiary or affiliate of such a bank, trust company, private banker, bank holding company, savings bank, savings and loan association, thrift holding company or credit union and was not required to be authorized under the prior version of Article 12-E, but who must be licensed under the new Article 12-E, shall file with the Superintendent by November 30, 2009 an application to be licensed as an MLO under Article 12-E and shall satisfy the pre-licensing testing and educational requirements and bonding requirements of Article 12-E by May 31, 2010;

(2) Any new applicant not covered by the paragraph (1) of this subdivision shall file with the Superintendent an application to be licensed as an MLO under Article 12-E at least 120 days prior to the date such person expects to engage in such activities and shall, if such application is filed before January 31, 2010, satisfy the pre-licensing testing and educational requirements and bonding requirements of Article 12-E by May 31, 2010; and

(3) All other applicants not covered by the paragraph (1) of this subdivision shall file with the Superintendent an application to be licensed as an MLO under Article 12-E at least 120 days prior to the date such person expects to engage in such activities, shall satisfy the pre-licensing testing and educational requirements and bonding requirements

of Article 12-E and shall be licensed hereunder prior to engaging in any MLO activities.

Any individual who applies prior to January 31, 2010, and unless precluded by paragraph (3) of subdivision (a) of this section, may engage in MLO activities when notified in writing by the Superintendent that his or her application was informationally complete and had been accepted for processing. All such individuals must complete the pre-licensing testing and educational requirements and bonding requirements of Article 12-E by the earlier of May 31, 2010 and be licensed by July 31, 2010.

(e) The application for initial license as an MLO under this Part shall be affirmed by the applicant and submitted electronically in such form and in such manner as may be prescribed by the Superintendent. Instructions for submission of applications shall be available on the Department of Financial Services' (formerly the Banking Department) website (www.dfs.ny.gov).

(f) *Fees.* Except for individuals covered by paragraphs (1) and (3) of subdivision (c) of this section, a completed application shall be accompanied by payment of the following fees: (i) an investigation and initial license fee, (ii) such fees as may be required for processing fingerprints, and (iii) a processing fee, all as described in Section 420.17 of this Part. No such fee will be refunded if the application is withdrawn or not approved. The schedule of fees shall be posted on the Department's website (www.dfs.ny.gov). For individuals covered by subdivision (c) of this section, if the NMLS develops the capacity to process fingerprints through the FBI, the Superintendent may require the applicant to submit a new set of fingerprints in the form required by the NMLS and to pay any processing fees required by the FBI and the NMLS.

(g) *Fingerprints and fingerprint certification.* An applicant shall provide two sets of fingerprints in such form as shall be acceptable to the New York State Division of Criminal Justice Services, together with a fingerprint certification in the form prescribed by the Superintendent. When required by the Superintendent, an applicant also shall submit his or her fingerprints through the NMLS, in which case the applicant shall provide the Superintendent with only one set of prints.

(h) *Information and documents required.* The application shall include the information and documents required by Supervisory Procedure MB 107 as well as such additional information and documents as the Superintendent deems necessary to determine whether the applicant satisfies the standards set forth in Section 599-e of the Banking Law. Nothing contained herein shall limit the Superintendent's authority to consider all relevant factors set forth in Article 12-E in determining whether to approve a license application under this Part.

(j) *In-person conferences.* In the absence of a showing of undue hardship, the Superintendent may also require that the applicant and any officers, directors and/or representatives of the originating entity with which the applicant is employed or an independent contactor of to appear at the Department to present information about the qualifications of the applicant.

§ 420.5 Originating entities permitted to engage or contract with certain mortgage loan originators on an interim basis.

(a) Notwithstanding Section 420.4(a) of this Part, with respect to an individual who was engaged in mortgage loan origination activities as of July 11, 2009 and whose application pursuant to the prior version of Article 12-E had not been approved, denied or withdrawn by the Superintendent prior to such date, an originating entity may permit such individual to engage in mortgage loan originating until the earlier of (i) July 31, 2010; or (ii) the date the originating entity receives notice that the Superintendent had denied such individual's license application or the license application under this Part has been withdrawn.

(b) Notwithstanding Section 420.4(a) of this Part, with respect to an individual who was engaged primarily in originating residential mortgage loans secured by manufactured homes as of July 11, 2009 and who has filed an application as required above, an originating entity originating residential mortgage loans secured by manufactured homes may permit such individual to engage in such mortgage loan originating activities until the earlier of (i) July 31, 2010; or (ii) the date the originating entity receives notice that the Superintendent had denied such individual's license application or the license application under this Part has been withdrawn.

(c) Notwithstanding Section 420.4(a), with respect to an individual authorized to act as an MLO before July 11, 2009, an originating entity may permit such individual to engage in mortgage loan originating until the earlier of (i) January 1, 2011; or (ii) the date the originating entity receives notice that the Superintendent had denied such individual's license application or the license application under this Part has been withdrawn.

§ 420.6 Notice of approval or denial of application; license; and internet listing.

(a) Upon licensing any applicant as an MLO, the Superintendent shall:

(1) Transmit notice of approval, in such form as the Superintendent deems appropriate, to the originating entity that currently employs the MLO, or for which the MLO is an independent contractor;

(2) Issue a license attesting to such approval;

(3) Transmit one copy of such license to the applicant; and

(4) File another copy of such license in his or her office.

(b) The Superintendent shall maintain upon the Department's website (www.dfs.ny.gov) a list of licensed MLOs. The list shall indicate the following:

(1) Name of the MLO;

(2) License number of the MLO; and

(3) The originating entity that currently employs the MLO, or for which the MLO is an independent contractor.

(c) A license issued pursuant to Article 12-E of the Banking Law is not transferable.

(d) The Superintendent must deny an application unless he or she finds that the applicant possesses the general character and fitness, the education qualifications, pre-license test results, bond requirements, absence of felony convictions, and other factors set forth in Section 599-e of the Banking Law. In making such determination the Superintendent may consider all relevant factors, including but not limited to, employment history; educational background; financial responsibility; history of complaints or consumer abuse relating to real estate transactions; regulatory fines and enforcement actions; revocation, suspension or denial of licenses, certifications, authorizations or registrations in this state or any other state.

(e) Upon denying an application for a license as an MLO, the Superintendent shall notify, in writing, the applicant and the originating entity with which the applicant is employed or affiliated that the application was denied and that the applicant may not engage in mortgage loan originating in this state.

§ 420.7 Inactive status

The license of an MLO is not effective during any period when the MLO is not employed by or affiliated with an originating entity. When an MLO ceases to be employed by or affiliated with an originating entity, the originating entity shall promptly notify the Superintendent of the termination date of such employment or affiliation. The license of such MLO shall be placed in inactive status until the Superintendent receives confirmation from an originating entity of the MLO's new employment or affiliation. An MLO shall continue to pay the annual license fee and to take required education courses while in inactive status.

§ 420.8 Suspension and termination of license.

(a) *Failure to pay annual license fee.*

(1) All MLO licenses shall terminate on the annual expiration date unless the annual license fee is paid prior to or upon the date the payment is due.

(2) In the event such fee is not paid by the due date, the Department shall notify the originating entity of the termination of the license.

(3) If such license expires because the annual fee has not been paid by the due date, the license may be reinstated if such fee is paid within sixty days after such due date.

(b) *Failure to timely complete education requirements.* Each licensed MLO shall complete and provide evidence to the Superintendent through the NMLS or otherwise as directed by the Superintendent of the completion of his or her annual education requirements by the annual expiration date of such MLO's license. Failure to timely complete and demonstrate such completion shall cause the MLO's license to be terminated on such annual expiration date, irrespective of whether the MLO has made satisfactory payment of the annual license fee. The license may be reinstated if the MLO: (i) demonstrates to the Superintendent's satisfaction that the applicable education requirements were completed within sixty days of the annual expiration date; or (ii)

satisfies any conditions provided by the Superintendent pursuant to Section 420.12(b) of this Part.

(c) *Failure to file reports or maintain bond.* The Superintendent may, without notice or a hearing, issue an order suspending any license: (i) thirty days after the date the mortgage loan originator fails to file any report required to be filed with the Superintendent pursuant to the authority provided in Article 12-E; or (ii) immediately upon termination of any required surety bond with respect to the licensee if the Superintendent has not received evidence of a satisfactory replacement bond. If the Superintendent has issued an order suspending a license pursuant to this authority, such license may be reinstated, if the Superintendent determines, in his or her sole discretion, that the licensee has cured all deficiencies set forth in such order by the close of business ninety days after the date of such suspension order. Otherwise, unless the Superintendent has, in his or her sole discretion, extended such suspension, the license of such mortgage loan originator shall be deemed to be automatically terminated by operation of law at the close of business on such ninetieth day.

(d) *Notification of suspension or termination.* Whenever a license shall have been suspended or terminated in accordance with this section, the Superintendent shall notify the MLO and the affected originating entity that the license has been suspended or terminated and that the MLO may not engage in mortgage loan originating in this state.

(e) *Civil and criminal liability.* A suspension or termination of a license in accordance with this section shall not affect such MLO's civil or criminal liability for acts committed prior to such suspension or termination or its obligations to the Superintendent for assessments, fees or administrative actions with respect to the periods before such suspension or termination.

(f) *Effect of suspension or termination.* No suspension or termination of an MLO license shall impair or affect the obligations under any preexisting lawful contract between any originating entity of such MLO and any person.

§ 420.9 Renewal of License.

(a) *Annual Expiration of license.* Each MLO license issued by the Superintendent under the provisions of Article 12-E of the Banking Law shall terminate annually on the annual expiration date, unless renewed.

(b) *Submission of annual request for renewal.* An annual request for renewal of a license as an MLO shall be affirmed by the MLO and submitted electronically in such form and in such manner as may be prescribed by the Superintendent. Instructions for annual renewal of a license shall be available on the Department's website (www.dfs.ny.gov).

(c) *Annual license fee.* A completed annual request for renewal shall be accompanied by an annual license fee, established by the Superintendent, pursuant to Article 12-E.

(d) *Information and documents required.* The annual request for renewal shall include the information and documents referred to in Supervisory Procedure MB 107 as well as such additional information and documents as the Superintendent deems necessary to

determine whether the MLO continues to satisfy the standards set forth in Section 599-e of the Banking Law.

§ 420.10 Surrender of license.

(a) *Who may surrender.* With the prior approval of the Superintendent, an MLO may surrender a MLO license by delivering to the Superintendent written notice that he or she intends to surrender such license. A MLO license may be surrendered only by the licensed individual named on the license. An originating entity that employs an MLO or with which an MLO is affiliated may not surrender the license of such MLO.

(b) *Form of surrender.* The instructions for surrender shall be posted on the Department's website (www.dfs.ny.gov).

(c) *Civil and criminal liability.* Surrender of an MLO license shall not affect the civil or criminal liability of the MLO or the MLO's originating entity for acts committed prior to such surrender or the obligations to the Superintendent of the MLO or the MLO's originating entity for assessments, fees or administrative actions with respect to the periods before such surrender.

(d) *Effect of Surrender.* No surrender of an MLO's license shall impair or affect the obligation of any preexisting lawful contract between any originating entity of such MLO and any person.

§ 420.11 Pre-licensing education requirement.

(a) *Condition to Licenses.* Each MLO shall, as a condition of initial licensing under Article 12-E:

- (1) Satisfactorily complete requirements as prescribed pursuant to Section 599-f of Article 12-E; and
- (2) Submit to the originating entity and the NMLS when directed by the Superintendent proof of completion of the required number of hours of education courses.

(b) *Required courses.* A person seeking a license under Article 12-E shall complete at least twenty hours of pre-license education courses, including courses satisfying the following minimum requirements:

- (1) Three hours of federal law and regulations;
- (2) Three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues;
- (3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace; and
- (4) Three hours of training on applicable New York State law and regulations as may have been approved by the Superintendent as pre-education courses.

(c) *Format of courses.*

(1) Inexperienced MLOs. An MLO with less than four years of experience as an MLO must take **only** pre-licensing education courses given in the following formats: (i) a traditional live classroom setting; (ii) fully interactive video or audio conferences, where there is an opportunity for students to ask questions; or (iii) a format where the student cannot advance to the next course without demonstrating his or her comprehension of previous subjects.

(2) Experienced MLOs. In the case of an MLO with four or more years of experience as an MLO half of the required credit hours shall be in given in the following formats: (i) a traditional live classroom setting; (ii) fully interactive video or audio conferences, where there is an opportunity for students to ask questions; or (iii) a format where the student cannot advance to the next course without demonstrating his or her comprehension of previous subjects. The remaining credit hours may be satisfied in any of the preceding formats or any of the following formats: (i) online programs; (ii) webcasts; (iii) audio and video recordings; (iv) video conferencing; (v) teleconferencing; (vi) computer based learning software; and (vii) live satellite broadcasts.

(d) *Proof that MLO has completed pre-licensing education requirements.* No originating entity shall permit any MLO who is required to have completed pre-licensing education requirements pursuant to Article 12-E of the Banking Law to engage in mortgage loan originating until it has received proof of completion of such requirements.

§ 420.12 Approved education providers and courses.

(a) *Approved education courses.* For purposes of Sections 420.11 and 420.14 of this Part and Banking Law Sections 500-f and 599-j, pre-licensing education courses and continuing educational courses and the course provider thereof shall have been approved by the NMLS. Pre-licensing and annual educational courses approved by the NMLS for any state shall be accepted towards completion of the educational requirements of New York State, provided that such course, at a minimum, satisfies the requirements of Section 420.11(b) (1), (2) and (3) for pre-licensing education courses, or Section 420.14(b)(1), (2) and (3) for continuing educational courses.

(b) *Variances and extensions.* Variances to, or extensions of, the pre-license or continuing education requirements prescribed pursuant to Article 12-E of the Banking Law may be granted by the Superintendent:

- (1) For reasons of health certified by an appropriate health care professional;
- (2) For extended active duty with the armed forces of the United States; or
- (3) For other good cause deemed acceptable by the Superintendent, in his or her sole discretion, which may prevent satisfactory or timely completion of such requirements.

(c) *Audit by Superintendent.* The Superintendent or his or her representative may audit at no cost each approved pre-license or continuing education course at any time. If the Superintendent finds that the course does not conform to the requirements of Article 12-E and Part 420.11 or Part 420.14 of this Part, the Superintendent shall notify the NMLS of the deficiencies. If the course provider does not rectify such deficiencies in a timely fashion, the Superintendent shall notify mortgage loan originators, via the Department's

website, of the unacceptability of the particular course or courses for compliance with continuing education.

§ 420.13 Pre-license testing requirements.

(a) *General requirements.* In order to meet the written test requirement referred to in Article 12-E, an individual shall pass, in accordance with the standards established under Section 599-g of the Banking Law, a qualified written test developed by the NMLS and administered by a test provider approved by the NMLS.

(b) *Qualified test.* A written test shall not be treated as a qualified written test for purposes of subdivision one of this section unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including the following:

- (1) Ethics;
- (2) Federal law and regulation pertaining to mortgage origination;
- (3) New York State law and regulation pertaining to mortgage origination; and
- (4) Federal and New York law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(c) *Testing location.* Nothing in this section shall prohibit a test provider approved by the NMLS from providing a test at the location of the originating entity of the MLO or the location of any subsidiary or affiliate of such entity, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(d) *Minimum competency.* The following conditions apply to individuals taking such competency tests:

- (1) An individual shall not be considered to have passed a qualified written test unless the individual shall have achieved a test score of not less than seventy-five percent correct answers to questions;
- (2) An individual may retake a test three consecutive times, with each consecutive taking occurring at least thirty days after the preceding test;
- (3) After failing three consecutive tests, an individual shall wait at least six months before taking the test again; and
- (4) A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer, not taking into account any time during which such individual is a registered mortgage loan originator, shall retake the test.

§ 420.14 Continuing educational requirements

(a) *Required courses.* In order to meet the annual continuing education requirements referred to in Article 12-E, a licensed mortgage loan originator shall:

- (1) Satisfactorily complete, beginning in the year after such individual is licensed, the educational requirements as prescribed pursuant to Section 599-j of the Banking Law; and

(2) Submit to the originating entity and the NMLS when directed by the Superintendent proof of completion of the required number of hours of education courses by providing certificates of course completion in the form required by the Superintendent.

(b) As a condition to renewing his or her license, an MLO interested shall on an annual basis complete at least 11 hours of continuing education courses, including courses satisfying the following minimum requirements:

- (1) Three hours of Federal law and regulations;
- (2) Two hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues;
- (3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace; and
- (4) Three hours of training on applicable New York State law and regulations as may have been approved by the Superintendent as pre-education courses.

(c) *Format of courses:*

(1) Inexperienced MLOs. An MLO with less than four years of experience as an MLO must take all continuing education courses given in the following formats: (i) a traditional live classroom setting; (ii) fully interactive video or audio conferences, where there is an opportunity for students to ask questions; or (iii) a format where the student cannot advance to the next course without demonstrating his or her comprehension of previous subjects.

(2) Experienced MLOs. In the case of an MLO with four or more years of experience as an MLO half of the required credit hours in continuing education courses shall be in given in the following formats: (i) a traditional live classroom setting; (ii) fully interactive video or audio conferences, where there is an opportunity for students to ask questions; or (iii) a format where the student cannot advance to the next course without demonstrating his or her comprehension of previous subjects. The remaining credit Hours may be satisfied in any of the preceding formats or any of the following formats: (i) online programs; (ii) webcasts; (iii) audio and video recordings; (iv) video conferencing; (v) teleconferencing; (vi) computer based learning software; and (vii) live satellite broadcasts.

(d) No repeat attendance. No credit shall be earned for repeating any education course for which a student has already earned credit, even if the education course is in a different format or a subsequent time period. This restriction shall not apply to a course that has new content, such as updates to reflect changes in the law or regulations or new court interpretations, or where a course is geared to a more in-depth or advanced treatment of a subject.

(e) No course carryover. Continuing education credit may only be earned in the year in which the course is taken. Pre-licensing education credit will not be counted towards continuing education credit.

(f) Instructor credits. An MLO who is also approved as an instructor of an approved continuing education course may receive credit toward the continuing education requirement at the rate of two hours of credit for every one hour taught.

(g) Proof that MLO has Completed Continuing Education Requirements. No originating entity shall permit any MLO who is required to have completed a continuing education requirement pursuant to Section 599-j of the Banking Law to engage in mortgage loan originating after his or her annual expiration date unless it has received acceptable proof of completion of such requirements.

§ 420.15 Surety bonds

(a) Each mortgage loan originator shall be covered by a surety bond in accordance with Section 599-k of the Banking Law. The surety bond of an originating entity may be used to satisfy the mortgage loan originator's surety bond requirement; provided that such surety bond contains coverage for each mortgage loan originator not otherwise covered by a qualifying surety bond in an amount prescribed in subdivision (b) of this section. The surety bond shall be in a form prescribed by the Superintendent.

(b) The penal amount of the required surety bond shall be maintained in an amount that reflects the dollar amount of loans originated by the mortgage loan originator as determined by the following requirements:

Required amount of bond	Aggregate \$ amount of NY loans originated
\$10,000	Less than \$1,000,000
\$15,000	\$1,000,000 to \$7,499,999
\$25,000	\$7,500,000 to \$14,999,999
\$50,000	\$15,000,000 to \$29,999,999
\$75,000	\$30,000,000 to \$49,999,999
\$100,000	\$50,000,000+

The amount of loans originated for this purpose shall be the volume of loans originated in the prior calendar year by the MLO. The MLO or originating entity shall provide proof of the existence of a bond in the requisite amount at the time of each annual renewal of an MLO's license and such other times as requested by the Superintendent. If an originating entity maintains a bond covering its MLOs, such bond shall be in an amount equal to the aggregate of the individual bonds required for all covered MLOs calculated as set forth above; provided, however, that any bond maintained by an originating entity to cover its MLOs is not required to be in excess of (i) \$100,000 if the originating entity has less than ten covered MLOs; (ii) \$150,000 if the originating entity has ten but no more than fifteen covered MLOs; \$250,000 if the originating entity has sixteen but no more than twenty-four covered MLOs; and \$500,000 if the originating entity has twenty-five or more covered MLOs. Each originating entity obtaining a bond covering its MLOs also shall deliver to the Department at such time a certification with respect to such bond in the form acceptable to the Superintendent.

(c) The Superintendent reserves the right to require the filing of a bond in a penal amount greater than set forth in Subdivision (b) above if the nature or business of an MLO or originating entity requires in the reasonable judgment of the Superintendent such additional protection for consumers.

(d) Immediately upon recovery on any claim or action on or under the bond, the mortgage loan originator or the originating entity as the case may be, shall file a new or supplemental bond restoring the face amount of the bond to the amount required by the Superintendent.

§ 420.16 Reports; permissive challenges by licensees.

(a) *Superintendent's reports.* As provided for in Section 599-l of the Banking Law, the Superintendent is required to report to the NMLS at least annually all violations of Article 12-E, as well as enforcement actions and other relevant information requested by the NMLS, subject to the provisions contained in the confidentiality provisions of Section 599-q of the Banking Law.

(b) *Permissible challenges.* MLOs may challenge in writing all information entered into the NMLS by the Superintendent. The Superintendent shall modify any such information if he or she in his or her sole discretion shall determine such information is incorrect.

(c) *Originating entity reports.* Originating entities employing or having as independent contractors one or more MLOs shall, when required by the NMLS, submit such reports of condition as may be required by the NMLS.

(d) *MLO reports.* Each MLO shall submit to the NMLS a report of condition in the format and within the time frame prescribed by the NMLS. An originating entity may file such report in aggregate form, if permitted by the NMLS, provided that such report contains information for all MLOs who originated loans for such entity during the reporting period.

§ 420.17 Calculation and collection of fees.

(a) Under Section 599-d of the Banking Law, each applicant for an initial license as an MLO shall pay the fees set forth in paragraphs 1-4 below and an applicant for a license renewal shall pay the fees set forth in paragraphs 4 and 5, all as determined by the Superintendent:

(1) An investigation fee determined in the reasonable estimate of the Superintendent to be the actual cost to the Department to investigate the applicant;

(2) An initial license fee as determined by the Superintendent;

(3) The fingerprint processing fee charged by the State Division of Criminal Justice Services and established pursuant to Article 35 of the Executive Law or such other fee or fees that may be imposed by any entity reviewing the fingerprint cards;

(4) A processing fee that may be charged and collected by the NMLS; and

(5) An annual licensing fee.

All fees, including fees payable to the Department by an applicant or licensee, may be collected by the NMLS.

(b) The Superintendent has established the following fees:

(1) An investigation fee equal to the Superintendent's reasonable estimate of the actual cost to the Department to undertake the investigation of an applicant.

(2) An initial license fee based on the annual license fee set forth in subsection (5) below.

(3) The fingerprint processing fee charged by the State Division of Criminal Justice Services and established pursuant to Article 35 of the Executive Law:

(4) Any processing fee that may be charged and collected by the NMLS; and

(5) An annual license fee representing a pro rata share of the Superintendent's reasonable estimate of the cost to the Department of administering this article.

(c) The schedule of fees in effect from time to time in accordance with Article 12-E shall be posted on the Department's website (www.dfs.ny.gov).

§ 420.18 Duties of originating entity.

(a) Each originating entity shall:

(1) By the end of each calendar quarter submit to the Superintendent in written or electronic form a report containing the following:

(i) the names and addresses of each MLO newly employed by, or affiliated as an independent contractor with, such originating entity during such quarter and the effective date of such employment or affiliation; and

(ii) each dismissal for cause of an MLO employed by, or affiliated as an independent contractor with, such originating entity during such quarter, which is due to or based upon an alleged violation of the Banking Law, this Part or any other violation of any applicable federal or state law, rule or regulation and the effective date of such dismissal;

(2) Determine that each individual who becomes employed by, or affiliated as an independent contractor with, such originating entity as an MLO has the character, fitness and education qualifications to warrant the belief that he or she will engage in mortgage loan originating honestly, fairly and efficiently. Each originating entity shall also obtain and maintain in its files such information about each such employee or affiliate upon which such determination was based;

3) Obtain documentation of the satisfactory completion of education courses, pursuant to Sections 599-f and 599-j of the Banking Law, for each MLO employed by or affiliated with such originating entity, which documentation shall be:

(i) in a form acceptable to the Superintendent;

(ii) retained by the originating entity for six years from the date of receipt of such documentation; and

(iii) provided to the Department or the NMLS when directed by the Superintendent;

(iv) ensure that any MLO employed by, or who is an independent contractor of, the originating entity has been duly licensed by the Superintendent to engage in mortgage loan originating activities and that such license has not been terminated or suspended or revoked; and

(v) assign MLOs to locations licensed or registered by the Superintendent, display the license for each MLO working at such location, and ensure that the unique identifier of each MLO performing mortgage loan origination services with respect to a mortgage application is recorded on such application.

(b) If an originating entity retains the original proof or record of completion of education courses by an MLO, the originating entity shall provide the original to the MLO, upon request, when the MLO terminates or has terminated his or her employment or affiliation with the originating entity.

§ 420.19 Duties of MLO

(a) Except as may be permitted by the Superintendent in writing, a MLO shall not be simultaneously employed or affiliated with more than one originating entity licensed, registered or exempt from licensing pursuant to the provisions of Article 12-D of the Banking Law.

(b) Each MLO shall engage in mortgage loan originating activities in a manner such as to command the confidence of the community and to warrant belief that his or her activities are conducted honestly, fairly and free from deceptive practices.

(c) Each MLO shall promptly notify the Department of the following:

(1) Change of primary residence address;

(2) Any felony conviction or pending felony charges; any charge of or conviction with respect to a misdemeanor involving financial services or a financial services related business; or any charge or conviction involving fraud, false statements or omissions, theft or wrongful taking of property, bribery, perjury; forgery; money laundering or extortion subsequent to initial licensure;

(3) Termination of and/or resignation from employment with an originating entity;

(4) The initiation, settlement or resolution of any complaint, action or proceeding brought against him or her by a state or federal governmental unit or self-regulatory organization in connection with a financial services-related activity or business or involving fraud, misrepresentation, consumer deception, larceny, money laundering or perjury; and

(5) The initiation, settlement or resolution of any other civil action or proceeding against him or her involving fraud, misrepresentation, larceny or perjury.

(d) Each MLO shall obtain course completion certificates evidencing satisfactory completion of the credit hour requirements for each annual renewal period and provide a copy thereof to his or her originating entity, or the NMLS when directed by the Superintendent.

§ 420.20 Prohibited conduct.

(a) No MLO shall:

(1) Engage in conduct prohibited under Part 38.7 of the General Regulations of the Banking Board, as applicable;

(2) Continue to engage in Mortgage Loan Originating after receiving notice of the denial of his or her application for a license or notice of the revocation, suspension or termination of his or her license;

(3) Misrepresent his or her license status, or persuade or induce a borrower to apply for a mortgage loan under the belief that such MLO is duly licensed as a mortgage banker or registered as a mortgage broker pursuant to Article 12-D of the Banking Law or an entity exempt from the licensing provisions of Article 12-D;

(4) Publish, advertise or display his or her MLO license in any manner which implies that the MLO is licensed or registered with the New York State Department of Financial Services to engage in mortgage loan originating activities as a mortgage banker or mortgage broker pursuant to Article 12-D of the Banking Law;

(5) Conduct business with any entity or individual which he or she knows or should know is an unlicensed mortgage banker or unregistered mortgage broker not otherwise exempt from the licensing, registration and license requirements of Articles 12-D and 12-E of the Banking Law;

(6) Engage in any transaction, practice, or course of business that is not in good faith or does not constitute fair dealing as required by the character and fitness requirements of Section 599-d of the Banking Law and Sections 592 and 592-a of the Banking Law;

(7) Download or remove borrowers' or mortgage loan applicants' loan files or other information from the premises or automated systems of an originating entity without permission of the originating entity;

(8) Publish or advertise its MLO license or unique identifier in any manner which implies that such license or unique identifier can be shared or used by multiple individuals to engage in mortgage loan originating activities in this State;

(9) Allow any individual or entity, regardless of whether such individual or entity is registered, or licensed pursuant to Article 12-D or 12-E of the Banking Law, to utilize the MLO's license or unique identifier to engage in mortgage loan originating activities; or

(10) Except as may be approved in writing by the Superintendent, simultaneously work for or be affiliated with more than one originating entity.

(b) No originating entity or exempt organization shall:

(1) Permit any MLO who is subject to any education requirement pursuant to Article 12-E of the Banking Law that is then required to have been completed to engage in mortgage loan originating until acceptable proof or record of completion has been obtained by such originating entity;

(2) Permit any MLO subject to the provisions of this Part and Article 12-E of the Banking Law to engage in mortgage loan originating activities when it knows or has reason to know that the MLO's license has been terminated or has been suspended or revoked;

(3) Pay compensation for mortgage loan originating activities to an individual who is then required to be licensed as an MLO but has not received such license, or, except as required by law or court order, pay the compensation of a MLO to a individual; other than the individual on the MLO license; or

(4) Use the unique identifier of a licensed MLO to process or submit an application taken by any unlicensed individual.

§ 420.21 Administrative action and penalties

(a) Revocation of License. Pursuant to Section 599-n of the Banking Law, the Superintendent, in addition to the authority provided by subdivision (b) of this section, may revoke any license as a mortgage loan originator if he or she finds that:

(1) The licensee has violated any provisions of Article 12-E, or any rule or regulation promulgated by the Banking Board, or any rule or regulation prescribed by the Superintendent under and within the authority of Articles 12-D or 12-E or of any other applicable law, rule or regulation of this state or the federal government pertaining to mortgage banking, brokering or loan originating; or

(2) Any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the Superintendent to refuse to issue such initial license.

(b) Good Cause Suspension

(1) The Superintendent may, for good cause, or where there is a substantial risk of public harm, without notice or a hearing, issue an order suspending the license of any mortgage loan originator for a period not to exceed ninety days for investigation. "Good cause", as used in this subdivision, shall exist only when the mortgage loan originator has engaged or engages in dishonest or inequitable practices or practices which demonstrate incompetent mortgage loan originating, which practices may cause substantial harm to the persons afforded the protection of Article 12-D or 12-E of the Banking Law, or the license of the mortgage loan originator was revoked in another state or jurisdiction participating in the NMLS.

(2) If the Superintendent has issued an order suspending a license pursuant to this subdivision, such license may be reinstated if the Superintendent determines, in his or her sole discretion after investigation, that good cause therefor did not exist or no longer exists.

(c) Disciplinary action requiring a hearing. Except as provided in subdivision (b) of this Section or Section 420.8, a license may be revoked or suspended only after notice and a hearing as provided in Supervisory Procedure G111.

(d) Notification of suspension or revocation. Whenever a license shall have been revoked or suspended in accordance with this section, the Superintendent shall notify the MLO and the affected originating entity that the license has been revoked and that the MLO may not engage in the business of mortgage loan originating in this state.

(e) Restitution. The Superintendent may order a mortgage loan originator or any other person to pay restitution for violations of Article 12-E or any rules of the Banking Board or the Superintendent promulgated hereunder.

(f) Civil and criminal liability. A revocation of a license in accordance with this Part shall not affect the civil or criminal liability of an MLO or his or her originating entity for acts committed prior to such suspension or termination or its obligations to the Superintendent for assessments, fees or administrative actions with respect to the periods before such suspension, revocation or termination.

(g) Fines. Pursuant to Section 44 of the Banking Law, the Superintendent may impose a fine against an MLO for any violation of the Banking Law, any regulation promulgated thereunder, any final or temporary order issued pursuant to Section 39 of the Banking Law, any condition imposed by the Superintendent in connection with the grant of any application or request or any written agreement entered into with the Superintendent.

(h) Grounds for disciplinary action. An MLO may be subject to such disciplinary action as may be determined appropriate by the Superintendent after notice and hearing, except as otherwise provided for in Article 12-E, subject but not limited to the following grounds:

(1) Fraud or bribery in securing a license;

(2) Making false statements in an application for license, which false statements would have been grounds for rejection of the application;

(3) Making of false statement on any form or document requested by the Superintendent for examination or review pursuant to Banking Law and regulations promulgated thereunder;

(4) A pattern of conduct indicating incompetence or untrustworthiness;

(5) Conviction of any crime which would have a bearing on the fitness or ability of an MLO to engage in mortgage loan originating activities; or

(6) Failure to perform his or her duties and responsibilities in an honest, fair and reasonable manner.

(i) *Administrative hearings.* Administrative hearings shall be conducted in accordance with Supervisory Procedure G111.

(j) *Examinations and Investigations.* For the purpose of discovering violations of Article 12-E or securing information lawfully required by him or her hereunder, the Superintendent may at any time, and as often as he or she may determine, investigate the business and examine the books, accounts, records, and files of every licensee under Article 12-E and any originating entity with which such individual is associated as an employee or independent contractor. For that purpose the Superintendent shall have free access to the offices and places of business, books, accounts, papers, records, files, safes and vaults of all such entities. The Superintendent shall have authority to require the attendance of and to examine under oath all persons whose testimony he or she may deem necessary or desirable relative to such business. The expenses incurred in making any examination pursuant to this section shall be assessed against and paid by the licensee so examined or his or her originating entity. Upon written notice by the Superintendent of the total amount of such assessment, the licensee shall become liable for and shall pay such assessment to the Superintendent.

420.22 Effective date.

This Part will be effective immediately upon adoption.