



NEW YORK MORTGAGE BANKER GUIDEBOOK
September 2015

NEW YORK MORTGAGE BANKER GUIDEBOOK

TABLE OF CONTENTS

SECTION I: INTRODUCTION -----	PAGE 3
WHAT IS A MORTGAGE BANKER? -----	PAGE 3
WHO IS REQUIRED TO BE LICENSED?-----	PAGE 3
WHO IS NOT REQUIRED TO BE LICENSED? -----	PAGE 3
WHAT ARE THE PRE-REQUISITES FOR LICENSED? -----	PAGE 4
SECTION II: APPLICATION PROCESS -----	PAGE 5
HOW TO APPLY FOR A MORTGAGE BANKER LICENSE -----	PAGE 5
ACCESS TO NMLS -----	PAGE 5
FEES -----	PAGE 6
WHAT HAPPENS AFTER I SUBMIT MY APPLICATION? -----	PAGE 6
SECTION III: MAINTAINING YOUR LICENSE -----	PAGE 8
SURETY BOND -----	PAGE 8
REGULATORY REPORTS OVERVIEW -----	PAGE 8
GENERAL ASSESSMENT -----	PAGE 10
FAILURE TO PAY GENERAL ASSESSMENT -----	PAGE 10
BOOKS AND RECORDS-----	PAGE 11
DISPLAY OF LICENSE -----	PAGE 11
ADDITIONAL BRANCH LOCATIONS-----	PAGE 11
UPDATING LICENSING INFORMATION -----	PAGE 12
MORTGAGE LOAN ORIGINATORS (“MLO”)-----	PAGE 13
INTERNET -----	PAGE 14
SECTION IV: SUPERVISORY OVERSIGHT -----	PAGE 15
EXAMINATION FORMAT -----	PAGE 16
NOTIFICATION OF EXAMINATIONS -----	PAGE 17
RESCHEDULING EXAMINATIONS -----	PAGE 18
RATINGS -----	PAGE 18
EVALUATIONS OF RATING COMPONENTS -----	PAGE 19
SECTION V: ANTI-MONEY LAUNDERING PROGRAM -----	PAGE 22
ESTABLISHING A WRITTEN ANTI-MONEY LAUNDERING PROGRAM -----	PAGE 22
POLICIES, PROCEDURES AND INTERNAL CONTROLS -----	PAGE 22
COMPLIANCE OFFICER -----	PAGE 22
TRAINING-----	PAGE 23
INDEPENDENT TESTING-----	PAGE 23
REQUIRED REPORTS -----	PAGE 23
EXAMINATIONS FOR COMPLIANCE -----	PAGE 24
SECTION VI: PROHIBITED ACTIVITIES -----	PAGE 24
SECTION VII: ENFORCEMENT ACTIONS-----	PAGE 26
PENALTY FOR VIOLATIONS-----	PAGE 26
PENALTY FOR FAILURE TO MAKE REPORTS -----	PAGE 26
APPENDIX I: CONTACT LIST -----	PAGE 28
APPENDIX II: LAWS AND REGULATIONS TO BE FAMILIAR WITH -----	PAGE 29

NEW YORK MORTGAGE BANKER GUIDEBOOK

SECTION I: INTRODUCTION

What is a Mortgage Banker?

A mortgage banker is an individual or entity engaged in the business of originating and selling mortgage loans directly to a borrower. Mortgage bankers lend their own money (i.e., “direct lending”) or borrow money from banks to fund the loans and then repay the money once the loans are sold. Generally, mortgage loans made by mortgage bankers are sold soon after closing to investors in the secondary market or to government agencies, such as Fannie Mae and Freddie Mac.

To conduct business in New York State, mortgage bankers must be licensed by the New York State Department of Financial Services (the “Department”). Licensed mortgage bankers are required to comply with federal disclosure and fair lending laws, in addition to New York-specific statutes and regulations.

Mortgage bankers licensed by the Department also have the authority to function as mortgage loan servicers. Although mortgage bankers are exempt from the registration requirements of mortgage loan servicers, mortgage bankers that service loans must comply with financial responsibility and business conduct rules specified in Parts 418 and 419 of the Superintendent’s Regulations.

Who is Required to be Licensed?

An individual or entity that engages in the business of making three or more mortgage loans in a calendar year or five loans in a two-year period on 1-4 family owner-occupied residential property located in New York State. **Note:** An individual or entity must be licensed if any of the mortgage loans originated by such individual or entity was solicited, placed, processed or negotiated by a mortgage broker, mortgage banker, banking organization or insurance company.

A license is required regardless of the mortgage banker’s physical location. Individuals and entities located in other states are required to obtain a license regardless of laws in their home state.

Who is Not Required to be Licensed?

Article 12-D of the New York Banking Law (the “Banking Law”) exempts the following individuals and entities from the mortgage banker licensing requirements:

- Employees of mortgage brokers or mortgage bankers registered or licensed in New York State do not need to obtain a mortgage banker license as long as they engage in mortgage loan origination on behalf of their employer and are acting within the scope of the entity’s charter, license or registration. However, these individuals must obtain a mortgage loan originator license pursuant to Article 12-E of the Banking Law. See “Mortgage Loan Originators” in section III of this guidebook for further details.
- Organizations, including insurance companies, banking organizations, foreign banking corporations licensed by the Superintendent or the Comptroller of the Currency to transact

NEW YORK MORTGAGE BANKER GUIDEBOOK

business in New York State, national banks, federal savings banks, federal savings and loan associations, federal credit unions, or any banks, trust companies, savings banks, savings and loan associations, or credit unions organized under the laws of any other state, or any instrumentality created by the United States or any state with the power to make mortgage loans, are considered exempt and do not require a license from the Department.

- Individuals employed by an exempt organization as detailed above, as long as such individuals are acting within the scope of the exempt entity's charter, license or registration. However, these individuals must comply with the federal registration requirements under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the "SAFE Act") and Article 12-E of the Banking Law.
- Any individual employed by an exempt organization who assists in the performance of the business activities of a mortgage banker that is controlled by, or affiliated with, the exempt organization through common ownership or control.
- Any individual, partnership, association, corporation or other entity which makes not more than three mortgage loans in a calendar year, or more than five mortgage loans in a two-year period, provided that no such mortgage loans were solicited, processed, placed or negotiated by a mortgage banker, exempt organization or mortgage broker.
- Non-profit organizations, with the prior approval of the Department.
- Individuals or entities making chattel loans for manufactured homes, where such homes are not permanently affixed to a foundation, but only if first approved by the Department.

Note: Individuals or entities engaged in chattel lending are not exempt from the Mortgage Loan Originator license requirements of Article 12-E of the Banking Law.

What are the Pre-Requisites for Licensing?

The following are some – but not all – of the requirements for licensing as mortgage banker in New York State:

Net Worth: \$250,000 minimum.

Surety Bond Amount: \$50,000 - \$500,000, depending on the number of loan applications (See Part 410.14 of the Superintendent's Regulations).

Line of Credit: \$1,000,000 minimum.

Background Check: Both New York State and FBI criminal background check.

Credit Check: A credit report with score, and explanatory documents for any negative information contained in the credit report. For delinquent debts, such documents must demonstrate that the

NEW YORK MORTGAGE BANKER GUIDEBOOK

applicant is repaying the debt pursuant to an agreed-upon payment plan, or that the debt is being actively contested.

Note: Each control person must submit a credit report, including directors, the three most senior executive officers, and any qualifiers (if other than directors and three most senior executive officers). A qualifier is an individual who has a minimum of five years verifiable experience in making residential mortgage loans or similar lending or credit evaluation experience.

Experience: Each applicant must have, or employ, a qualifier.

Note: The Department must be able to independently verify the work experience, as evidenced by a letter from an employer describing the actual responsibilities of the applicant or employee. Employment verification is not sufficient verification of work experience.

The complete mortgage banker application checklist is on the Nationwide Mortgage Licensing System at <http://mortgage.nationwidelicencingsystem.org/slr/PublishedStateDocuments/NY-Mortgage-Banker-New-Application-Checklist.pdf>

SECTION II: APPLICATION PROCESS

How to Apply for a Mortgage Banker License

The Department accepts mortgage broker applications electronically through the Nationwide Mortgage Licensing System (NMLS). All new applications must be submitted electronically through the online application process.

How to Access NMLS

To gain access to NMLS, you must submit a “Company Account Request Form” requesting an NMLS account. The “Company Account Request Form” is accessible on the NMLS website at www.nationwidelicencingsystem.org. Select “Company” under the heading “Getting Started,” and follow the instructions provided in Step 1 – “Request an Account.”

Note: If your company already has NMLS access, you do not need to submit this form. Prior to submitting an application, we strongly urge you to familiarize yourself with the tutorials and guides located on the NMLS website under Step 2 – “Get Prepared.” Further, we encourage you to familiarize yourself with the jurisdiction-specific information relating to New York State by selecting the “State Licensing Requirements” link under Step 3 – “What Does My State Require?”

NEW YORK MORTGAGE BANKER GUIDEBOOK

Fees:

Applicants for a mortgage banker license are required to pay the following non-refundable fees:

- **Investigation Fee:** \$3,000
- **Fingerprint Processing Fee:** \$102.25
- **Branch Office Fee:** \$500 for each additional branch requested
- **Credit Report Fee:** \$15 (for each control person, and dated not more than 30 days prior to the filing of the application through NMLS)
- **NMLS Processing Fee:** \$100

The Department uses MorphoTrust USA to provide fingerprint processing services. Under this arrangement, all individuals required to submit fingerprints for a criminal background check will be able to utilize Live Scan technology sites physically located in New York State to have their fingerprints taken electronically. For individuals that cannot access a New York MorphoTrust site, a hard copy fingerprint card must be submitted to the Department.

Refer to the Department's fingerprint procedure, available on the Department's website at <http://www.dfs.ny.gov/banking/iafpplmbb.htm>, for complete details on the fingerprinting process.

What Happens After I Submit My Application?

1. *Initial Screening*

Department staff screens your application to ensure that all required documents have been submitted. If your application is deemed complete, it will be accepted for processing. Applications deemed complete are published online in the Department's Weekly Bulletin every Friday. Additionally, the NMLS application file will be updated to reflect a "Pending - Review" status.

If your application is determined to be incomplete, you will receive a written notice identifying the items and matters that must be addressed for the Department to continue the application review process. Incomplete applications are generally held for 30 days following notification of deficiencies to applicants. If an applicant fails to submit the required items or request an extension of time to submit required information, the application will be deemed withdrawn and the application fee forfeited. Application packages will be returned upon applicants request and at their expense.

Note: Any applicant seeking a license following withdrawal must submit a new application that must include all required information, documents, and fees.

NEW YORK MORTGAGE BANKER GUIDEBOOK

2. *Processing*

Once your application is assigned, a Department examiner will conduct third-party verifications of other state licenses, employment history, and civil litigation, if any. Fingerprint cards will also be forwarded to MorphoTrust USA for processing.

Section 592-a of the Banking Law requires applicants to demonstrate sufficient financial responsibility and general fitness. As such, the Department reviews the credit history of applicants to determine whether such applicants demonstrate financial responsibility and general fitness for licensing. Poor credit score or negative credit history is not an automatic bar to licensing. However, applicants must provide the Department with explanatory documents addressing how negative information is or will be remedied.

3. *Application Approval or Denial*

After the application has been processed, the Department will notify you in writing whether the application was approved or denied. If approved, the letter will inform you about the next scheduled licensing conferral meeting, and detail any outstanding documents and requirements that must be addressed by the date of the conferral meeting (e.g., submission of original copy of surety bond; evidence of a line of credit, etc.).

Note: Applicants are not authorized to engage in any mortgage origination activities until the license certificate is issued at the conferral meeting.

4. *Conferral Meetings*

Conferral meetings are conducted every other month, and are generally scheduled on the second Tuesday of the month. Meetings start at 1:00 pm and last approximately three hours. During these meetings, the Department provides applicants with an overview of banking laws and regulations, license maintenance, regulatory requirements and supervisory oversight, including available penalties, assessment fees and enforcement actions. Additionally, the Department may address topical issues affecting the mortgage industry, including, but not limited to, the trends and patterns identified in recent examinations and complaints received by the Department. Applicants are required to bring a valid driver's license or passport as proof of identification.

Note: Participants may attend conferral meetings in person or via video conference, depending on the applicant's ability to connect to the Department's video conferencing system.

Note: Individuals who arrive more than 30 minutes late will not be admitted to the conferral meeting. Individuals who leave the meeting prior to 3:30 pm will be required to attend the next conferral meeting to receive the license certificate.

If you submitted all outstanding items detailed in your approval letter, a license certificate will be issued to you at the end of the conferral meeting.

NEW YORK MORTGAGE BANKER GUIDEBOOK

SECTION III: MAINTAINING YOUR LICENSE

Mortgage bankers can originate mortgage loans according to the provisions of federal and state statutes and regulations governing mortgage origination and real estate settlement activities. Mortgage bankers are reminded of their responsibility to ensure that origination activities are conducted honestly, fairly and free from deceptive and anti-competitive practices, and in compliance with applicable laws and regulations.

Surety Bond

All mortgage bankers licensed by the Department must maintain a corporate surety bond with the Department during the period the license is active. The principal amount of such bond is based on the volume of business conducted as reported on the annual Volume of Operations Report (VOOR) each calendar year. Mortgage banker surety bonds range from \$50,000 to \$500,000. See chart below for required bond based on business conducted.

<u>Aggregate dollar amount of NY loans closed</u>	<u>Required amount of surety bond</u>
\$0 - \$9,999,999	\$50,000
\$10,000,000 - \$29,999,999	\$100,000
\$30,000,000 - \$99,999,999	\$150,000
\$100,000,000 - \$199,999,999	\$250,000
\$200,000,000 - \$299,999,999	\$350,000
\$300,000,000+	\$500,000

If the Superintendent determines, in his or her sole discretion, that a licensee has engaged in a pattern of conduct resulting in bona fide consumer complaints of misconduct, the Superintendent may require such licensee to post a surety bond, or keep on deposit, twice the amount of such bond or deposit as is required.

The surety bond is for the exclusive use of the Superintendent for: the reimbursement of consumer fees or other charges determined by the Superintendent to be improperly charged or collected; past-due Department examination costs and assessments charged to the licensee; unpaid penalties, or other obligations of the principal in the event of the insolvency, liquidation or bankruptcy of the licensee, or possession by the Superintendent of such licensee, or the surrender, expiration or revocation of such license.

Refer to Parts 410.8 and 410.9 of the Superintendent's Regulations for more details on surety bond requirements and procedures.

Regulatory Reports Overview

The Department requires licensees to submit regulatory reports. You should establish proper internal controls over the preparation and filing of these regulatory reports. Management must ensure that any documentation supporting the information contained on the report is maintained in an orderly manner and available for review. Licensees must clearly identify the source documents

NEW YORK MORTGAGE BANKER GUIDEBOOK

and the sections of the report associated with each document. Internal procedures should require verification of raw data used to complete regulatory reports, as well as independent review of such reports by a manager or officer of the licensee.

The submission of inaccurate or misleading regulatory reports could result in a monetary penalty or an enforcement action. Additionally, licensees that file reports late may be penalized for failing to submit reports within the established timeframe.

1. *Mortgage Call Report*

Section 599-h of the Banking Law requires all “originating entities” in New York State, including any licensed mortgage banker, to complete and submit a mortgage call report (“MCR”).

The standard MCR contains two components:

- Residential Mortgage Loan Activity (“RMLA”), which collects application, closed loan, individual mortgage loan originator, line of credit and repurchase information by state; and
- Financial Condition (“FC”), which collects financial information at the company level; it does not have to be completed by state.

The RMLA is due quarterly, within 45 days of the end of the calendar quarter. The FC is due annually, within 90 days of your company’s fiscal year end.

Failure to submit the MCR may result in a deficiency being placed on your license status in the NMLS. Failure to timely cure the deficiency may result in disciplinary action by the Department.

Instructions for the MCR can be accessed online from the NMLS Resource Center at <http://mortgage.nationwidelicensingsystem.org/slr/common/mcr/Pages/default.aspx>.

2. *Annual Volume of Operations Report (VOOR)*

Each licensee is required to file an annual VOOR detailing the licensee’s volume of mortgage origination activity for the prior calendar year.

Note: Even if you have not closed loans or taken applications on New York property, you are required to file the annual VOOR.

An owner or authorized officer of the licensee must sign the VOOR. The Department utilizes the information collected on the annual VOOR to assess the level of resources needed in its overall regulation and oversight of mortgage-related entities.

Certain components of the VOOR consist of information pre-populated from the Department’s records. As such, it is important that licensees promptly notify the Department of any changes. Refer to “Updating License Information” in section III of this guidebook for details on how to notify the Department. Generally, the Department collects information including, but not limited

NEW YORK MORTGAGE BANKER GUIDEBOOK

to, litigation, bankruptcy and regulatory actions, closed loans, applications taken, loans serviced, and gross revenues.

Detailed VOOR instructions for mortgage bankers are available on the Department's website at <http://www.dfs.ny.gov/banking/voorbanker.pdf>.

3. *Other Regulatory Reports*

Licensees must submit certain other regulatory reports, including, but not limited to, the quarterly mortgage loan originator certification of origination volume, and the immediate notification to the Department of any felons employed by the entity.

Additionally, on a quarterly basis, licensees must notify the Department of the termination or new employment of any mortgage loan originator employed or affiliated with the licensee.

General Assessment

The general assessment process is used to bill regulated entities for the Department's operating funds. The statutory authority for the general assessment is found in Section 206 of the Banking Law.

General assessment charges for mortgage bankers are calculated based on gross revenue information collected on the most recent annual VOOR. The general assessment fees are collected in four equal quarterly installments during the fiscal year, which begins April 1 and ends March 31 of the following year. See <http://www.dfs.ny.gov/banking/billassess.htm> for additional details on billing cycle and general assessment calculations.

A final general assessment bill is sent to each licensee in August of the following calendar year to close out the previous fiscal year. This bill is calculated based on the actual expenses of the Department for the respective fiscal year. Once the final assessment is calculated, any overpayment will be applied to the next estimated quarterly assessment.

Note: Refunds are issued to licensees only if there is an excess amount of funds remaining after the next quarterly fees are satisfied.

Failure to Pay General Assessment

Licensees that fail to pay the assessment bill by the due date will be assessed a late fee of \$100 plus an additional interest penalty. Further, failure to pay a quarterly assessment within 90 days after the due date will result in suspension of your license and scheduling of a hearing to revoke such license.

Note: Mortgage bankers are prohibited from accepting applications and soliciting loans during any period when the license is suspended.

NEW YORK MORTGAGE BANKER GUIDEBOOK

Books and Records

Part 410.7 of the Superintendent's Regulations require licensees to maintain books and records for a minimum period of three years. However, under federal laws and regulations certain documents relating to credit transactions must be maintained for up to five years. Additionally, Article 12-E of the Banking Law requires sponsoring entities to maintain evidence of any mortgage loan originator employee's compliance with continuing education requirements for a period of six years.

Management must maintain evidence of policies and procedures used in their decision-making process, and financial records to support the receipt and disbursement of funds, including, but not limited to, cancelled checks and bank statements. Tax returns and financial statements filed with government agencies and regulators must also be maintained as part of the licensee's books and records.

All regulated mortgage bankers are required to maintain comprehensive mortgage loan origination documentations supporting proper disclosure under state and federal laws, loan pricing, including impact of loan discount fee, settlement records, and proof of pay-off for pre-existing liens or third party debts, if any, included in the distribution of mortgage proceeds.

Display of License

As required by section 593 of the Banking Law, all mortgage bankers must prominently display a copy of the license certificate at each business office.

Additional Branch Locations

Mortgage bankers are prohibited from conducting business at locations that have not been approved by the Department.

For information on how to license an additional branch office, see the Department's website at <http://www.dfs.ny.gov/banking/iambabr.htm>.

Applications for branch offices are published in the Department's Weekly Bulletin. If the application is not denied within 30 days of publication, the mortgage banker can begin operating the branch office.

Please be advised that filing an application on the NMLS is not considered acceptance by the Department. Applications are not published in the Weekly Bulletin until the Department deems such applications complete. See "Application Approval or Denial" in section II of this guidebook for details on the application process.

NEW YORK MORTGAGE BANKER GUIDEBOOK

Updating Licensing Information

1. *Change of Address*

Pursuant to section 593 of the Banking Law, mortgage bankers must notify the Department of changes in the address of authorized locations. Upon approval, the Department will issue a new license certificate with the address of the authorized location.

For details on how to apply for a change of address of authorized locations, refer to the Department's website at <http://www.dfs.ny.gov/banking/iambcmoa.htm>

2. *Change in Executive Officers and Directors*

Any changes in executive officers and directors must be communicated to the Department within ten days of such change. See Part 410.6(b) of the Superintendent's Regulations.

New executive officers and directors must submit fingerprints for a criminal background check and credit report, and must provide all items listed in our application checklist for a new executive officer, director or qualifying individual, which is available on the Department's website at <http://www.dfs.ny.gov/banking/iambnewdir.htm>.

3. *Change of Qualifier*

Any change in qualifier must be communicated to the Department within ten days of such change, and the Department must approve the new qualifier. See Part 410.6(b) of the Superintendent's Regulations.

A qualifier must have five years verifiable experience in making residential mortgage loans or similar lending or credit evaluation and be actively engaged in the operations of the mortgage banker. At the Superintendent's sole discretion, other relevant educational or business experience may be substituted for certain lending and credit evaluation experience.

Verification of employment does not constitute sufficient verification of experience. Professional references can be provided from entities engaged in mortgage loan origination activities, servicing, or warehouse providers. Such references must specifically address the qualifier's experience and number of years such individual engaged in underwriting or credit analysis. The individual signing such reference must have personal knowledge of the qualifier's experience and cannot rely on a review of loans originated. A minimum of two professional references must be submitted.

Detailed instructions for notifying the Department of changes in qualifier are available on the Department's website at <http://www.dfs.ny.gov/banking/iambnewdir.htm>.

NEW YORK MORTGAGE BANKER GUIDEBOOK

4. *Change in Control*

It is unlawful for anyone to acquire or assume control of a licensed mortgage banker without the prior approval of the Superintendent.

A control person is defined as any individual or entity that directly or indirectly has the power to direct or cause the direction of the management and policies of the licensee, whether through the ownership of voting stock or equivalent interest of the licensee, the ownership of voting stock or equivalent interest of any person that possesses such power, or otherwise.

Detailed instructions for notifying the Department of changes in control are available on the Department's website at <http://www.dfs.ny.gov/banking/iambcca.htm>.

Mortgage Loan Originators ("MLOs")

Article 12-E of the Banking Law requires individuals engaging in mortgage loan origination activity to obtain an MLO license. Mortgage bankers are also required to ensure that MLOs do not operate from unauthorized locations.

Detailed instructions for licensing MLOs are available on the Department's website at <http://www.dfs.ny.gov/mortgagecomp.htm>.

Licensees are required to verify the license status of all MLO employees, regardless of whether the individual functions as a W-2 employee or 1099 independent contractor. Additionally, licensees must ensure that employed or affiliated MLOs have satisfied annual renewal requirements, such as taking the requisite amount of continuing education courses.

Each originating entity shall promptly notify the Department of any change in the status of a MLO associated with such entity. Additionally, on a quarterly basis, originating entities must notify the Department of the termination or new employment of any MLO employed or affiliated with the originating entity. The Department must also be informed of the dismissal for cause of any employed or affiliated MLO.

Mortgage bankers are prohibited from using unlicensed mortgage loan originators to engage in origination activities on 1-4 family owner-occupied residential property in New York. Mortgage bankers are required to ensure that MLOs are covered by a surety bond as required under Part 420.15 of the Superintendent's Regulations.

For additional information on MLO surety bond requirements, refer to the Department's website at <http://www.dfs.ny.gov/banking/mbmlosb.htm>.

NEW YORK MORTGAGE BANKER GUIDEBOOK

Internet

1. *Overview*

An increasing number of mortgage bankers are using the internet to solicit potential borrowers and accept loan applications. While the internet offers mortgage bankers the opportunity to market products and services more broadly than traditional means, it also presents significant risks. Management and owners of mortgage bankers should implement appropriate controls to mitigate the additional risk associated with internet-based activity.

Regardless of whether a mortgage banker outsources website hosting and maintenance, management is ultimately responsible for protecting the mortgage banker's technology systems and data. Mortgage bankers are also reminded of their responsibility to ensure that weblink relationships accessed through their websites do not result in noncompliant activity or additional legal risks.

Note: Weblink is a word or image in a computer document that contains coding that the users can click on in order to access a different part of the website or a completely different website.

Legal and compliance risks increase when the linked third party engages in activity that results in violations of federal and state laws and regulations, irrespective of whether such laws and regulations govern mortgage loan origination activity.

For additional information on privacy and security issues, refer to the Federal Trade Commission's website at <http://www.business.ftc.gov/privacy-and-security>.

2. *Website Authorization*

Mortgage bankers are required to obtain the prior approval of the Department to use a website to conduct mortgage origination activities.

Detailed instructions for authorizing your website is available on the Department's website at http://www.dfs.ny.gov/banking/mortgage_web_auth_instruct.htm.

3. *Subsites*

Mortgage bankers who wish to maintain subsites for individual MLOs must ensure that such subsites are accessible only through the mortgage banker's main website previously authorized by the Department. Additionally, the subsite cannot contain information that may result in direct solicitation from such subsite.

MLO webpages must clearly indicate that the individual engages in mortgage loan origination activities on behalf of the mortgage banker and does not function independently as a mortgage banker in New York State.

NEW YORK MORTGAGE BANKER GUIDEBOOK

While the Department does not object to the inclusion of testimonials, content on the subsites should be limited to a summary of the MLO's experience in the industry and education regarding the loan origination process or mortgage industry.

Note: The use of an unauthorized website is equivalent to operating an unlicensed or unauthorized location.

4. *Prohibited Websites*

MLOs are prohibited from establishing websites and advertising on such sites in a manner that implies that the MLO is a registered mortgage broker or licensed mortgage banker.

The Department will not authorize the use of a website that is owned by an individual other than the mortgage banker. The Department also does not authorize the use of domain names that contain the names of individual MLOs or websites containing the following words: "National," "Federal," "FHA," "HUD," or "SONYMA."

5. *Social Media*

The Department does not prohibit mortgage bankers or their employees from utilizing social media sites. However, direct solicitation and advertisements from such sites may violate federal and state laws and regulations.

Mortgage bankers must establish policies and procedures governing the use of social media sites by employees. At a minimum, such policies should provide direction on the information that may be posted, examples of postings that could trigger violations, and penalties or disciplinary actions for failure to comply with the mortgage banker's social media policy. Mortgage bankers are responsible for monitoring the solicitation, origination and advertising activities of its sponsored MLOs to ensure compliance.

For additional information, refer to "Social Media: Consumer Compliance Risk Management Guidance," available on the Consumer Financial Protection Bureau's website at http://files.consumerfinance.gov/f/201309_cfpb_social_media_guidance.pdf.

SECTION IV: SUPERVISORY OVERSIGHT

The Department continually monitors licensees for compliance with licensing requirements and applicable laws and regulations. As part of its overall supervisory process, the Department conducts periodic onsite and offsite examinations of licensed bankers.

Examinations are scheduled based on several factors, including the overall rating assigned to the licensee at the prior examination. In general, licensees rated fair, marginal, or unsatisfactory are examined semi-annually or annually. Satisfactory-rated licensees are examined once every two years, and those rated strong are examined once every three years. Additionally, licensees assigned a less than fair rating in management, internal controls, or legal and regulatory compliance will be subjected to a follow-up review at the Department's discretion. Such reviews are generally

NEW YORK MORTGAGE BANKER GUIDEBOOK

conducted within nine months of the Department's transmittal of the examination findings (i.e., the examination report).

With the exception of offsite reviews, examinations are conducted onsite at the principal offices of the mortgage banker, regardless of whether the office is a commercial or residential location. The duration of the onsite examination could be anywhere from three days to four weeks depending on the volume of applications taken, loans closed and lending volume and the operating infrastructure of the mortgage banker. Examinations also include branch visitations and employee interviews, including, but not limited to, MLOs and loan processors.

Note: The Superintendent reserves the right to conduct unannounced examinations in his or her sole discretion.

Examination Format

The primary objective of an examination is to determine whether the mortgage banker is operating fairly, honestly and efficiently, and free from deceptive and anti-competitive practices. Examinations also assist the Department in determining whether licensees conduct business in a safe and sound manner, and comply with applicable laws and regulations. The Department utilizes four examination formats in evaluating licensed mortgage bankers: (1) safety and soundness; (2) compliance; (3) special targeted reviews; and (4) fair lending.

1. *Safety and Soundness*

Safety and soundness examinations are the most comprehensive type of examination. During a safety and soundness examination, Department staff analyze the soundness of the licensee's financial condition and operating environment, compliance with internal policies and procedures, compliance with applicable laws, regulations, and regulatory guidelines, the integrity of management information systems and information technology, as well as management's ability to effectively identify, monitor, and control legal, credit, financial, and reputational risk associated with the licensee's origination activity.

2. *Compliance Reviews*

Compliance reviews focus on the licensee's overall compliance structure. Examiners assess the banker's compliance with New York-specific licensing laws and regulations, federal and other state consumer disclosure requirements, and guidelines addressing loan origination activities. These reviews also include an assessment of the licensee's compliance with regulatory enforcement actions and their ability to safeguard confidential information. Further, examiners evaluate the licensee's compliance training program, including frequency of origination staff training and whether such training adequately covers state-specific and federal mortgage origination requirements.

Licensees cannot substitute MLO continuing education requirements to fulfill the mortgage banker's obligation to ensure its MLOs, loan processors or managers are knowledgeable about changes in law and regulations governing mortgage origination activities.

NEW YORK MORTGAGE BANKER GUIDEBOOK

Examiners also analyze the licensee's quality control and internal review process to determine the level of independent oversight in the loan processing function and whether such reviews are sufficiently comprehensive to facilitate the detection of violations, operating deficiencies and fraud prior to any loan closing.

3. *Special Targeted Reviews*

Generally, the Department conducts special targeted reviews in response to consumer complaints, reports of malfeasance or whistleblower notification of potential fraudulent activities. The scope of these reviews is normally focused on identifying the specific behavior considered harmful to consumers and the overall mortgage industry. If warranted, information derived from such targeted reviews could lead to an expanded safety and soundness examination or an additional investigation.

4. *Fair Lending*

A fair lending examination assesses compliance with section 296-a of the New York State Executive Law and federal fair lending laws and regulations to ensure that the licensee does not practice any unlawful discrimination in relation to its credit practices.

In addition to a review of the licensee's established fair lending plan, examiners assess the effectiveness of its fair lending compliance program, including, but not limited to, training of personnel, second level review of denied applications, product selection, third-party agreements, audit and compliance monitoring, complaint processing, and marketing. This assessment considers the independence, frequency, scope, and adequacy of the fair lending compliance program relative to the size and risk profile of the licensee.

Evaluation of the licensee's fee structure and pricing are conducted to determine the existence of disparate treatment. Licensees must clearly demonstrate that monitoring mechanisms are in place to assess pricing disparity by MLO, branch office, or lending channel.

The licensee's fair lending risk level is assessed and an overall assessment is made whether the procedures used to identify, monitor, and control fair lending risks are adequate.

For detailed information on fair lending requirements, refer to the Department's industry letters from July 19, 1999 and September 13, 2006. The letters are available on the Department's website at http://www.dfs.ny.gov/legal/industry_circular/banking/mb060913.htm and http://www.dfs.ny.gov/legal/industry_circular/banking/il990719.htm, respectively.

Notification of Examinations

Generally, the Department notifies licensees at least three weeks prior to the proposed start date of the examination by sending a First Day Letter ("FDL"). The FDL specifies the onsite start date, the length of the examination period, and the name of the examiner in charge of the examination.

NEW YORK MORTGAGE BANKER GUIDEBOOK

The FDL requires licensees to submit certain responses to the Department no less than one week prior to the onsite start date.

Although the Department takes considerable steps to notify licensees within the timeframe outlined above, there are certain circumstances where prior notification is not feasible. For example, the Department does not provide prior notification for special targets and compliance reviews. The Department also periodically conducts unannounced safety and soundness examinations.

Rescheduling Examinations

To effectively manage resources and ensure that periodic examinations are conducted in a timely manner, licensees must take appropriate steps to notify the Department of any situation that requires rescheduling of an examination.

The Department will reschedule the examination only once, based upon the inability of certain individuals to participate in the examination process, including, but not limited to, qualifiers, owners, and regulatory contacts. However, requests to reschedule must be provided at least five business days prior to the onsite start date. Failure to provide the requisite notice will result in a charge of the first day of the examination. Each request must provide a specific reason for rescheduling and the projected date of availability.

Note: Requests to reschedule are not automatically granted. Requests to reschedule examination for a period exceeding three weeks require documentation of extenuating circumstances.

Ratings

The Department assigns all licensees an examination rating using the “FILMS” rating system. This system evaluates and rates licensees in the following categories: “Financial Conditions (F),” “Internal Controls and Auditing (I),” “Legal and Regulatory Compliance (L),” “Management (M),” and “Systems and Technology (S).”

Individual components are rated using a numerical scale, which ranges from 1-5, where “1” is the strongest rating and “5” is reflective of unsatisfactory operations. In addition to component ratings, licensees are assigned a composite rating utilizing the same 1-5 scale. Composite ratings generally represent an average of the individual component ratings rounded to the nearest whole number. For example, a FILMS ratings of 2, 3, 4, 3, 2, divided by 5, equals a 2.8 average, but the final composite rating for the licensee will be a 3.

Licensees rated less than satisfactory (i.e., 1 or 2) in Internal Controls and/or Legal and Regulatory Compliance will automatically receive a less than satisfactory composite rating (e.g., $1-3-3-3-1/5=2.2$ average).

Licensees rated less than satisfactory are subject to increased supervisory oversight, including enforcement actions, more frequent examinations, and monitoring of any corrective actions.

NEW YORK MORTGAGE BANKER GUIDEBOOK

Evaluations of Rating Components

1. *Financial Condition*

The Department evaluates the financial condition of mortgage bankers based on the licensee's ability to meet short and long-term obligations and contingent liabilities. Such obligations include, but are not limited to, the ability of the licensee to fund operating expenses associated with rental charges, salaries and commissions, payroll and franchise taxes, insurance premiums, general assessment fees and equipment leases. Additionally, licensees must demonstrate the existence of sufficient financial capacity to cover liens and judgments, potential repurchase claims, contingent liabilities associated with pending lawsuits, and consumer restitutions resulting from violations of laws and regulations. In addition to application logs, bankers are required to provide examiners with copies of bank statements, federal and state tax returns and accounting records including but not limited to balance sheets, income statements, and general ledgers.

2. *Internal Controls*

Strong internal controls are essential to a licensee's risk management. Policies and procedures are an integral part of a sound internal control environment. Licensed mortgage bankers should ensure that policies provide personnel with a consistent message regarding unauthorized activity, malfeasance, loan documentation standards and overall conduct with consumers. Furthermore, management should establish appropriate control systems and monitoring functions to ensure compliance with internal policies and procedures.

The internal control system should employ controls that are both preventative and detective. Preventative controls are designed to discourage noncompliant and fraudulent behavior, while detective controls facilitate the identification of noncompliant and fraudulent behavior after they have occurred.

Mortgage bankers should maintain a system of controls appropriate for the size, complexity and associated risk of its origination activities. Such internal controls should employ front-end policies and procedure to prevent unauthorized activity, fraud and financial loss, and back-end detective measures to identify errors, unauthorized activity and fraud. Such detective measures include, but are not limited to, quality control reviews, management information systems reports, internal or external audits and information technology reviews.

3. *Legal and Regulatory Compliance*

Licensees must have a strong compliance infrastructure capable of assessing the overall level of compliance with internal policies and applicable laws and regulations. A robust compliance program includes, but is not limited to, employee training, designation of an individual responsible for oversight of the compliance program, and mandatory periodic reviews.

A licensee's compliance program must include a written compliance manual that supports the mortgage banker's operations and provides guidance on licensing laws for each respective market in which the mortgage banker operates, as well as underwriting restrictions and disclosure

NEW YORK MORTGAGE BANKER GUIDEBOOK

requirements. The manual should also address staff training requirements and mechanisms employed by management to ensure compliance with applicable laws and regulations.

The licensee's compliance training program should provide MLOs, loan processors, and management with education related, but not limited to, unfair deceptive and abusive acts and practices, fraud detection and red flags, identify theft, fair and responsible lending, and New York-specific registration requirements. Such training should be in addition to any required MLO training and must include periodic updates to address any changes in applicable laws and regulations.

Licenses are required to demonstrate compliance with federal and state laws governing mortgage origination activities, and laws and regulations governing corporate enterprise, limited liability companies and partnerships. Furthermore, licenses must ensure that proper protocols are implemented to comply with regulatory enforcement actions, settlement agreements, and examination directives.

4. Management

Overall, management is responsible for ensuring that the licensee is financially sound, maintains the appropriate technology systems and has implemented a robust compliance structure. Therefore, management must demonstrate its ability to effectively monitor, detect and manage risk associated with the licensee's origination activities.

Additionally, management must demonstrate formal oversight of the licensee, including, but not limited to, periodic meetings, management information reports, and written business plans outlining loan origination objectives. Management must also document any actions employed to identify and deter fraud and noncompliant behavior.

5. Systems and Technology

Rapid changes in information technology ("IT"), use of electronic means to transmit personal confidential data and the general mobility of such data has increased risk. Licenses that employ internet-based applications and utilize websites must take proper precautions to safeguard confidential data moving through such portals. In addition, data transmitted via the internet should be encrypted and appropriate security access and firewall software should be installed on portable computers and desktops. Independent IT audits, including, but not limited to, periodic penetration testing, should be conducted to detect weaknesses in any IT platforms and operating software.

Access rights to the licensee's IT systems should be controlled to ensure that only authorized individuals can affect business records and retrieve confidential data. Furthermore, the level of system access should be limited to the minimum necessary for employees or users to perform their assigned tasks and satisfy job responsibilities. To ensure that access is adequately controlled, all users should have an alpha-numeric password that expires no more than 90 days from date of creation. The system should contain a time-out feature designed to log users out after a selected number of minutes of inactivity. Employees or system users should be educated on the importance

NEW YORK MORTGAGE BANKER GUIDEBOOK

of securing passwords to prevent unauthorized use. All servers and main frames should be stored in a locked room.

A. Data and Program Files

Data and program files should be backed-up in a secure offsite location to facilitate restoration of systems, applications, and associated data in the event normal processing is interrupted by a disaster or other disruptive event. All backups should be tested periodically to ensure that data is recoverable. Security protocols should address the transportation of backup data to the offsite location, and permissible access to such data at the offsite location.

If files are imaged, quality of the scanned documents is critical. Imaged files should be captured with the highest level of resolution that ensures clarity and provides reprinted documents equivalent to originals. In addition, imaged files should be indexed and allocated to specific storage capacity in the system. Further, the use of traditional formats such as “pdf,” “doc,” “jpeg” and “tiff” should ensure the retrieval of the image on a variety of systems. The licensee should provide ample oversight of the imaged documents to deter alteration or counterfeiting of images, and loss or compromise of confidential customer information. Controls should exist at the point of image capture to certify that the images are usable, retrievable and reflective of the paper document. In addition, certain devices (e.g. tape, disk, image, etc.) containing sensitive information should be disposed of properly to protect against reputational exposure and to ensure compliance with the Gramm-Leach-Bliley Act of 1999, which governs the safeguarding of customer information. Licensees are reminded that electronic record retention processes should comply with federal and state laws governing record retention.

B. Mobile Devices

Licensees should implement measures to establish control and security over mobile devices (e.g., laptops, tablets, portable hard drives, etc.) utilized remotely in conducting mortgage origination activities. Such measures include, but are not limited to, a system security utility program that facilitates user access control, including time-out and lock-out functionality. Application software installed on mobile devices should also have password security functions. Passwords should expire no more than 90 days from creation. Confidential data on external drives, including thumb drives, should be encrypted and the physical drive should be password protected. Licensees should establish written procedures to address the type of information maintained on mobile devices and the length of time such information is stored on the respective mobile device. Licensees should establish policies and procedures governing the placement of confidential customer information on employees’ personal mobile devices or home computers. Such procedures must address the level of security and access to data as outlined in this section.

The policies should also address what happens to customer confidential information if stored on an employee’s mobile device once the loan application is closed, denied or withdrawn, and when a licensee no longer employs the employee. Additionally, there should be a process in place to ensure that the established policies and procedures are being properly implemented.

NEW YORK MORTGAGE BANKER GUIDEBOOK

SECTION V: ANTI-MONEY LAUNDERING PROGRAM

On February 7, 2012, the Financial Crimes Enforcement Network (“FinCEN”) of the U.S. Department of Treasury finalized federal regulations that require non-bank residential mortgage lenders and originators to establish anti-money laundering (“AML”) programs and file suspicious activity reports (“SARs”). The mandatory deadline for compliance with the regulations was August 13, 2012.

The AML and SAR requirements apply to all licensed mortgage bankers, regardless of size.

Below is a partial summary of the FinCEN regulations. You should review the full text of the regulations, as well as the supplementary information, available on FinCEN’s website at www.fincen.gov or on the Electronic Code of Federal Regulations at http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title31/31cfr1010_main_02.tpl

Establishing a Written AML Program

Federal regulations require each covered entity, including mortgage bankers, to develop and implement a written AML program that is reasonably designed to prevent the entity from being used to facilitate money laundering or the financing of terrorist activities.

At a minimum, the AML program must:

- Incorporate risk-based policies, procedures, and internal controls;
- Designate a compliance officer;
- Provide for ongoing training of employees and others; and
- Provide for independent testing to monitor and maintain the program.

Policies, Procedures, and Internal Controls

Federal regulations require that policies, procedures, and internal controls must be based upon the mortgage banker’s assessment of the money laundering and terrorist financing risks associated with its products and services. In addition, such policies, procedures, and internal controls must include provisions for complying with applicable laws and regulations.

Policies, procedures, and internal controls are also required to contain provisions for integrating the mortgage banker’s staff into its AML program and for obtaining all relevant customer-related information necessary for an effective AML program. Additionally, each licensee is required to ensure that its agents and third-party bankers are integrated into its AML program.

Compliance Officer

The AML-designated compliance officer is responsible for ensuring that:

NEW YORK MORTGAGE BANKER GUIDEBOOK

- The AML program is implemented effectively and monitors compliance by the mortgage banker's employees, bankers, and agents with their obligations under the program;
- The AML program is updated as necessary; and
- Appropriate personnel participate in AML educational and training programs.

To facilitate independence and mitigate potential conflict of interest, mortgage bankers must ensure that the compliance officer is not involved in mortgage loan origination activities and does not manage any operational area. The compliance officer should also be assigned ongoing responsibility for ensuring compliance with the Bank Secrecy Act of 1970 and have the authority, budget, and training necessary to perform his or her compliance duties at a level commensurate to the level of risk for the licensee's business.

Training

Licensees are responsible for providing on-going training of appropriate persons concerning their responsibilities under the AML program. The licensee may satisfy this requirement with respect to its employees, agents, and co-bankers by directly training such persons or verifying that such persons have received training by a competent third party with respect to the products and services offered by the licensee.

The amount and type of training must be appropriate to the risk faced by the licensee and must be documented. Documentation should include the name of the company that conducted the training, the date of the training, the topics discussed, and a list of attendees.

Independent Testing

Each licensee must provide independent testing to monitor and maintain their AML program, including testing to determine compliance by the licensee's agents and co-bankers with their obligations under the program. The scope and frequency of testing must be commensurate with the risks posed by the licensee's products and services. Such testing may be conducted by a third party or by any qualified officer or employee of the licensee, other than the person designated as the compliance officer.

Required Reports

Section 1029 of Title 31 of the Code of Federal Regulations ("CFR") contains the rules setting forth the obligation of licensees to report suspicious transactions. The mortgage banker may also file a report with FinCEN regarding any suspicious transaction that it believes is relevant to the possible violation of any law or regulation, but the reporting of which is not required by the regulation.

NEW YORK MORTGAGE BANKER GUIDEBOOK

Pursuant to section 1029.320 of CFR Title 31, a mortgage banker must report a transaction if it is conducted or attempted by, at, or through the mortgage banker, it involves or aggregates funds or other assets of at least \$5,000, and the mortgage banker knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part) is suspicious. A transaction is considered suspicious if it:

- Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;
- Is designed, whether through structuring or other means, to evade any requirements under the Bank Secrecy Act;
- Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the entity knows of no reasonable explanation for the transaction after examining the available facts; or
- Involves the use of the licensee to facilitate criminal activity.

Examinations for Compliance

The AML program must be approved by the licensee's management and, if applicable, reviewed by its board of directors. Each licensee must make a copy of its AML program available to FinCEN or its designee upon request.

In addition to review by FinCEN, the Department will review compliance with the AML and SAR requirements during examinations. Failure to comply with the AML and SAR requirements may constitute a violation of the Bank Secrecy Act, and may result in a revocation of your license.

SECTION VI: PROHIBITED ACTIVITIES

As noted above, mortgage bankers are required to comply with all applicable federal and state laws and regulations governing mortgage origination activities and business conduct. The following list sets out some – but not all – of the prohibitions contained in New York laws and regulations.

Prohibited Activities

Mortgage bankers cannot:

- Misrepresent or conceal material loan terms, or make false promises to induce an applicant to apply for a mortgage loan;
- Conduct business with an unregistered mortgage broker or an unlicensed mortgage banker;

NEW YORK MORTGAGE BANKER GUIDEBOOK

- Fail to make good faith efforts to issue commitments and effect closing in a timely manner;
- Disburse the mortgage loan proceeds in any form other than, as applicable, direct deposit to customer's account, wire, bank or certified check, or attorney's check drawn on a trust account.

Note: Any mortgage banker may apply to the Superintendent for a waiver demonstrating, in a letter application, that it has or shall adopt any other method of disbursement of loan proceeds which shall satisfy the purposes of this subparagraph.

- Fail to disburse funds in accordance with a commitment to make a mortgage loan which is accepted by the applicant;
- Fail to disclose additional settlement costs or items necessary to close a loan in a reasonable and timely manner;
- Accept attorney's fees at closing in excess of the fees that have been or will be remitted to its attorneys;
- Refuse to permit the borrower to be represented by the attorney of his choice;
- Unreasonably refuse to issue or unreasonably delay the issuance of a satisfaction of mortgage after the mortgage has been fully satisfied;
- Impose a charge on a borrower for establishing or maintaining an escrow account or for waiving the establishment or maintenance of an escrow account, provided however, that nothing herein shall prohibit a mortgage banker or exempt organization from imposing a one-time charge to pay the actual cost of an independent tax reporting service, provided such cost is disclosed prior to or at commitment;
- Fail to provide disclosures in the manner and at the times required by law or regulation;
- Accept any fees at closing that were not disclosed;
- Include any provision in the mortgage brokerage agreement that is intended to limit or prevent a consumer from submitting an application(s) to obtain a mortgage loan through another mortgage broker(s) or mortgage banker(s) or exempt organization(s), or impose a fee on the applicant should he or she do so;
- Accept a good faith deposit or any other deposit to induce the lender to process the loan, whether or not the deposit is refundable;
- Accept an application fee or processing fee when it knows that the lender charges and collects such fees; and
- Fail to refund excess third party fees collected by the mortgage broker.

NEW YORK MORTGAGE BANKER GUIDEBOOK

Refer to federal and state laws and regulations regarding prohibited conduct, including, but not limited to: section 590-b and 595-a of the Banking Law; section 38.7 of the General Regulations of the Superintendent; and Part 420.20 of the Superintendent's Regulations.

SECTION VII: ENFORCEMENT ACTIONS

Penalty for Violations

According to section 44 of the Banking Law, the Superintendent may levy a penalty for violations of the Banking Law and applicable regulations. The penalty is \$2,500 per day for every day such violation continues.

In addition, the Superintendent may increase the penalty amount to \$15,000 per day for every day such violation continues if the Superintendent determines that such violation(s) or practice(s) are part of a pattern of misconduct, results or is likely to result in more than minimal loss to such licensee, or results in pecuniary gain or other benefit to such licensee.

Furthermore, if the Superintendent determines that a licensee has knowingly and willfully committed any violation or has knowingly and willfully engaged in any unsafe and unsound practice, has knowingly committed any violation that substantially undermines public confidence in such licensee, or that such licensee has knowingly or recklessly incurred so substantial a loss as a result of such violation or practice as to threaten its safety and soundness of such licensee, the penalty can be increased to up to \$75,000 for each day the violation continues.

Note: The Superintendent, in determining the amount of any penalty, shall take into consideration the net worth and annual business volume of the licensee.

Penalty for Failure to Make Reports

Pursuant to section 44-a of the Banking Law, the Superintendent may levy a penalty against a licensee that inadvertently or unintentionally fails to make any report required by the Superintendent, fails to include within such report any prescribed matter, or submits false or misleading information as part of such report.

The penalty is a maximum of up to \$2,000 for each day during which such report or omitted matter is delayed or withheld, or such false or misleading information is not corrected. Furthermore, where the Department determines that such failure was not inadvertent or unintentional, the penalty can increase to a maximum of \$250,000 per day. When assessing penalties, the Superintendent will take into account factors, including, without limitation:

- Net worth and annual business volume of the licensee;
- The extent, if any, to which senior management or board directors or trustees participated;

NEW YORK MORTGAGE BANKER GUIDEBOOK

- The extent to which the mortgage banker has cooperated with the Superintendent in the investigation of such conduct;
- Any sanction imposed by any other regulatory agency;
- The financial resources and good faith of the mortgage banker;
- The gravity of the violation;
- Any history of prior violations, and
- Any other matters as justice and the public interest may require.

NEW YORK MORTGAGE BANKER GUIDEBOOK

APPENDIX I: CONTACT LIST

Broker Applications	Mortgage.Broker@dfs.ny.gov
Banker Applications	Mortgage.Banker@dfs.ny.gov
Mortgage Loan Originators	MLO@dfs.ny.gov
Mortgage Loan Servicers	MLS@dfs.ny.gov
Exempt Organizations	Mortgage.Exempt@dfs.ny.gov

NEW YORK MORTGAGE BANKER GUIDEBOOK

APPENDIX II: LAWS AND REGULATIONS TO BE FAMILIAR WITH WHEN ENGAGING IN MORTGAGE BANKER OPERATIONS

Note: The complete text of New York laws are available on the New York State Legislature's website at <http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO>; and the complete text of New York regulations and supervisory procedures are available on Westlaw's website at [https://govt.westlaw.com/nycrr/index?_lrguid=i74b1082498c2442983721dde2062dc86&transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/nycrr/index?_lrguid=i74b1082498c2442983721dde2062dc86&transitionType=Default&contextData=(sc.Default))

Legend

G.R.S. - General Regulations of the Superintendent
S.R. - Superintendent's Regulations
S.P.G - Supervisory Procedures General
S.P.MB – Supervisory Procedures Mortgage Banking

New York Codes Rules and Regulations (NYCRR) Title 3: Banking Department

G.R.S. Part 38	Mortgage Banking/Broking
G.R.S. Part 39	Exempt Organizations, Subsidiaries, and Products
G.R.S. Part 41	Restrictions and Limitations on High Cost Home Loans
G.R.S. Part 42	Subprime Home Loans – Thresholds
G.R.S. Part 43	Subprime Home Loans – Meaning of Terms
G.R.S. Part 79	Reverse Mortgage Loans
G.R.S. Part 80	Investment in Junior Lien Mortgage Loans
G.R.S. Part 82	Alternative Mortgage Instruments
S.R. Part 300	Reporting of Crimes
S.R. Part 334	Indices used in connection with variable rate products
S.R. Part 408	Extension of Credit on Non-Discriminatory Basis
S.R. Part 410	Mortgage Bankers and Brokers: Licensing/Registration Requirements; Branch Applications; Notification Provisions; Books and Records; Annual Reports; Surety Bonds; Consultants
S.R. Part 420	Mortgage Loan Originators. Licensing; Education Requirements

NEW YORK MORTGAGE BANKER GUIDEBOOK

S.P. G 101	Automated Data Right to Examine
S.P. G 111	Administration Adjudication Policy and Plan; Procedural Requirements
S.P. MB 102	Application for Registration as a Mortgage Broker
S.P. MB 104	Application for a Change in Control of a Mortgage Broker
S.P. MB 105	Application by a Mortgage Broker for Inactive Status
S.P. MB 107	Application for Initial Authorization as a Mortgage Loan Originator; Request for Renewal of Authorization

Laws of New York State

Banking Law

Section 6-E	Graduated payment mortgages authorized
Section 6-H	Reverse mortgage loans authorized
Section 6-I	Mortgage loans
Section 6-J	Proof of insurance
Section 6-K	Real property insurance escrow accounts
Section 6-L	High-cost home loans
Section 6-M	Subprime home loans
Section 9-S	Preauthorized electronic fund transfers
Section 18-A	Application fees
Section 22	Fingerprints
Section 36	Examinations; right of inspection; penalties for refusing to permit examination
Section 37	Reports to Superintendent
Section 38	Power of subpoena

NEW YORK MORTGAGE BANKER GUIDEBOOK

Section 39	Orders of Superintendent
Section 44	Violations; penalties
Section 44-A Article 12-D	Violations and penalties; failure to make reports Licensed Mortgage Bankers and Registered Mortgage Brokers
Article 12-E	Licensed Mortgage Loan Originators
<u>Business Corporation Law</u>	
Section 202(a)(16), (b)	General Corporate Powers
Section 301(a)(5)(B)	Corporate name; general
Section 1005	Procedure after dissolution
<u>Executive Law</u>	
Section 296-a	Unlawful discriminatory practices
<u>Financial Services Law</u>	
Section 206	Assessment to defray operating expenses of the Department
<u>General Business Law</u>	
Section 130	Filing of certificates by persons conducting business under assumed name or as partners
Section 133	Use of name or address with intent to deceive
Section 143	False identification documents
Section 349	Deceptive Acts and Procedures
Section 350	False Advertising
Article 25	Fair Credit Reporting Act
<u>General Obligations Law</u>	
Title 3 5-328	Processing fee by holder of dishonored check
Title 5 5-501 – 5-531	Interest and usury; brokerage on loans

NEW YORK MORTGAGE BANKER GUIDEBOOK

Limited Liability Company Law

Section 202(q) General LLC Powers

Section 204(f) LLC name

Real Property Law

Section 254 Construction of clauses and covenants in mortgages and bonds or notes

Section 254-A Right of election of mortgagee in certain cases

Section 254-B Limitation on late charges

Section 254-C Right to a copy of real property appraisals and consumer reports in certain cases

Section 265 Fraudulent intent, question of fact

Section 265-A Home equity theft prevention

Section 265-B Distressed property consulting contracts

Section 274 Transfers and mortgages of interest in decedents' estates

Section 274-A Certificate of principal amount unpaid on mortgages of real property

Section 275 Certificate of discharge of mortgage required

Section 280 Reverse mortgage loans for persons sixty years of age or older

Section 280-A Reverse mortgage loans for persons seventy years of age or older

Section 281 Credit line mortgage

Real Property Tax

Title 3A Real Property Tax Escrow Accounts

Federal Laws & Regulations

NEW YORK MORTGAGE BANKER GUIDEBOOK

Regulation B	Equal Credit Opportunity Act (ECOA)
Regulation C	Home Mortgage Disclosure Act
Regulation X	Real Estate Settlement Procedures Act (RESPA)
Regulation Z	Truth in Lending Act
Gramm-Leach Bliley Act	Privacy Provisions
Federal Trade Commission	Safeguard Provisions
Regulation V	Fair Credit Reporting Act (Red Flag Rules)
18 U.S.C Section 709	False advertising or misuse of names
31 CFR Parts 1010 and 1029	Anti-Money Laundering Act
USA Patriot Act	