

		This space for use by IRRRC 2001 FEB -1 AM 11:35 REGULATORY REVIEW COMMISSION
		IRRRC Number: 2174
(1) Agency Pennsylvania Department of Banking		
(2) I.D. Number (Governor's Office Use) 3-40		
(3) Short Title Mortgage Bankers and Brokers Act Continuing Education		
(4) PA Code Cite 10 Pa. Code § 43.	(5) Agency Contacts & Telephone Numbers Primary Contact: Carter D. Frantz, Staff Counsel 717 787-1471 Secondary Contact: Reginald S. Evans, Chief Counsel 717 787-1471	
(6) Type of Rulemaking (check one) <input checked="" type="checkbox"/> Proposed Rulemaking <input type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted	(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language. The regulation implements a framework for the regulation of continuing education required for licensees under the Mortgage Bankers and Brokers Act pursuant to Section 4(e) of that Act, 63 P.S. § 456.04(e).		
(9) State the statutory authority for the regulation and any relevant state or federal court decisions. Sections 4(e) and 10(a) of the Mortgage Bankers and Brokers Act, 63 P.S. §§ 456.04(e), 456.10(a).		

## Regulatory Analysis

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

The regulation is mandated by Section 4(e) of the Mortgage Bankers and Brokers Act, 63 P.S. § 456.04(e). The regulation must be promulgated by February 19, 2002.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The regulation creates a regulatory framework for the education and professionalization of the first mortgage industry in the Commonwealth of Pennsylvania.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

Not applicable.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

All licensees under the Mortgage Bankers and Brokers Act, approximately 2,967, will benefit from the education that they receive during each annual renewal period. Continuing education providers will benefit from the fees they generate for licensees to attend their continuing education programs, the approximate monetary amount of which is unclear at this time.

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

Mortgage Bankers and Brokers Act licensees, approximately 2,967, will be required to pay tuition costs to continuing education providers, the approximate monetary amount of which is unclear at this time, in addition to travel and travel-related expenses associated with attending continuing education programs. Mortgage Bankers and Brokers Act licensees that fail to comply with the requirements of the regulation may be subject to a fine of up to \$2,000 for each offense and/or suspension, revocation or nonrenewal of their license.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

At least one (1) employee/owner at each location licensed under the Mortgage Bankers and Brokers Act is required to comply with the regulation. This includes first mortgage bankers, brokers, loan correspondents, limited mortgage brokers and wholesale table funders. As of December 28, 2000, there are 2,967 licensed locations.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

Pursuant to Executive Order 1996-1, the following individuals were provided a copy of the draft regulation (which has been amended into the form of the attached proposed regulation) for comment:

E. Robert Levy, Esq.- for the Executive Committee of the Pennsylvania Mortgage Bankers Association and the Pennsylvania Mortgage Brokers Association;

James Novinger- for the Government Affairs Committee of the Pennsylvania Financial Services Association;

Paul Scheiber, Esq.- for the Consumer Law Committee of the Banking and Business Law Section of the Pennsylvania Bar Association;

Christopher Zettlemoyer, Esq.- for the law firm of Reed, Smith, Shaw & McClay;

Deborah Martella and Daniel Malpezzi, Esq.- for the law firm of Buchanan Ingersoll, which represents Primerica Financial Services;

Robert Moss- of First United Mortgage Services, for the Central Pennsylvania Mortgage Bankers Association;

Sam Mannino- of Century Finance, at his request (active member of the Pennsylvania Financial Services Association);

Peter Krajsa- of AFC First Financial, at his request (active member of Pennsylvania and American Financial Services Associations and Pennsylvania Mortgage Brokers Association).

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

Mortgage Bankers and Brokers Act licensees, approximately 2,967, will be required to pay tuition costs to continuing education providers, the approximate monetary amount of which is unclear at this time, in addition to travel and travel-related expenses associated with attending continuing education programs. Mortgage Bankers and Brokers Act licensees that fail to comply with the requirements of the regulation may be subject to a fine of up to \$2,000 for each offense and/or suspension, revocation or nonrenewal of their license. There will be no savings to the regulated community associated with the implementation of this regulation.

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

Not applicable.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

There will be no savings for the Commonwealth associated with this regulation. Unless the Department charges a fee for the review and approval of continuing education programs, the Department's review and approval process for continuing education programs will be minimal. The Department will incur de minimis costs in reviewing information on renewal application forms that the Department will revise to require licensees to indicate whether and how they have complied with the continuing education requirement.

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>	None	(Same)	(Same)	(Same)	(Same)	(Same)
<b>Local Government</b>	None					
<b>State Government</b>	None					
<b>Total Savings</b>	None					
<b>COSTS:</b>						
<b>Regulated Community</b>	None*					
<b>Local Government</b>	None					
<b>State Government</b>	Negligible					
<b>Total Costs</b>	Undetermined					
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>	**					
<b>Local Government</b>	None					
<b>State Government</b>	Negligible					
<b>Total Revenue Losses</b>	Undetermined					

\* License fees will not be increased so no costs are incurred by the licensees from the Commonwealth; however, the continuing education providers will set the cost of the continuing education programs that licensees will be required to attend.

\*\* The Regulated Community will incur revenue losses based upon lost business hours while attending education courses.

(20a) Explain how the costs estimates listed above were derived.

Not applicable.

(20b) Provide the past three year expenditure history for programs affected by the regulation.

No history. New program.

Program	FY -3	FY -2	FY -1	Current FY

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

Not applicable.

(22) Describe the non-regulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Not applicable. The regulation is mandated by statute.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

Not applicable. This regulation appears to the Department to be the most feasible way to regulate the mandatory continuing education programs for Mortgage Bankers and Brokers Act licensees under the present statutory language.

REGULATORY ANALYSIS FORM

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

Not applicable.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

There are currently only three other states that have promulgated, or will promulgate shortly, similar programs. This regulation is loosely based upon the comparable Maryland regulation, which is expected to become effective in the near future. This regulation is similar in substance to the regulations in Texas and Washington. The Department does not feel that this regulation presents a competitive issue with other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

It is not anticipated that the Department will hold public hearings or meetings regarding this proposed regulation. The Department would plan to attend public hearings associated with the regulatory review process.

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

Passage of the regulation will change existing reporting, record keeping and other paperwork requirements for the industry as well as the Department. Section 4(e) of the Mortgage Bankers and Brokers Act, 63 P.S. § 456.04(e), requires licensees to demonstrate to the satisfaction of the Department that at least one person from each licensed office has attended a required minimum number of hours of continuing education annually. Licensees will need to maintain records indicating what continuing education programs have been attended, by whom, when and where. Demonstration of attendance will be submitted to the Department at the time of license renewal as a requirement of renewal. Licensees and employees will be required to maintain attendance records for three annual renewal periods which will assist licensees, employees and the Department in determining whether continuing education requirements have been met, especially in cases where employees have changed employers and/or employment status. It is noted that fulfillment of the continuing education requirements accompanies individuals, not licensees. The Department will retain the information provided by the industry to ensure on-going compliance with the regulation by licensees and their employees.

The Department may review and approve continuing education programs to satisfy the continuing education requirement. The Department will review information on renewal application forms that the Department will revise to require licensees to indicate whether and how they have complied with the continuing education requirement.

Forms and/or reports have not been developed at this time.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Not applicable.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The Department anticipates that the regulation will become effective in late 2001 or early 2002. Therefore, licensees will be able to begin compliance with the regulation starting on July 1, 2002, since that date will begin the first full annual renewal period after the anticipated promulgation of the regulation. All licensees will have to demonstrate compliance with the regulation by June 30, 2003.

(31) Provide the schedule for continual review of the regulation.

The regulation will be continually reviewed by Department staff.

**DEPARTMENT OF BANKING  
REGULATION TRANSMITTAL STATEMENT  
MORTGAGE BANKERS AND BROKERS ACT REGULATION**

I certify that I have reviewed this regulation for form and legality, that I discussed any legal and policy issues with the Administrative Officers responsible for the program, that I have made all appropriate revisions and that all information contained in the Preamble and Annex is correct and accurate.

1-11-01

Dated



Reginald S. Evans  
Chief Counsel



FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

RECEIVED  
2001 FEB -1 AM 11:36

LEGISLATIVE  
REVIEW COMMISSION

# 2174

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

BY: [Signature]  
(Deputy Attorney General)

JAN 25 2001

● Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

Department of Banking  
(Agency)

DOCUMENT/FISCAL NOTE NO. 3-40

DATE OF ADOPTION: \_\_\_\_\_

BY: [Signature]

TITLE: Acting Secretary of Banking  
(Exec. Officer, Chairman or Secretary)

Check if applicable.

Copy not approved. Objections attached.

Copy below is hereby approved as to form and legality. Executive or Independent Agencies:

BY: [Signature]

1/24/01

DATE OF APPROVAL

(Deputy General Counsel)  
(~~Chief Counsel, Independent Agency~~)  
(Strike inapplicable title)

Check if applicable. No Attorney General approval or objection within 30 days after submission.

PROPOSED RULEMAKING  
DEPARTMENT OF BANKING  
BUREAU OF CONSUMER CREDIT AGENCIES  
MORTGAGE BANKERS AND BROKERS ACT  
CONTINUING EDUCATION REGULATION  
[10 PA. CODE CH. 43]

## **PROPOSED RULEMAKING**

### **DEPARTMENT OF BANKING [10 PA. CODE Ch. 43]**

#### **Mortgage Bankers and Brokers Act Continuing Education**

The Department of Banking, under the authority contained in sections 4(e) and 10(a) of the Mortgage Bankers and Brokers Act (the "MBBA"), 63 P.S. §§ 456.04(e), 456.10(a), proposes to promulgate regulations under the MBBA to be codified at 10 Pa. Code Chapter 43.

#### Effective Date

The proposed regulation ("regulation") will be effective upon publication of the final-form regulation in the *Pennsylvania Bulletin*.

#### Statutory Authority

The regulation is expressly mandated by section 4(e) of the MBBA, 63 P.S. § 456.04(e), and is promulgated under that section and section 10(a) of the MBBA, 63 P.S. § 456.10(a).

#### Background and Purpose

The proposed regulation implements a regulatory framework for the oversight of continuing education for licensees under the MBBA, as mandated by the new section 4(e) of the MBBA, 63 P.S. § 456.04(e), which was contained in the Act of December 21, 1998 (P.L. 987, No. 131). The new section 4(e) of the MBBA was the result of the mortgage industry seeking continuing education for the first mortgage industry in Pennsylvania. The mortgage industry also sought to have continuing education regulated by the Department by requiring the Department to promulgate appropriate regulations to govern the continuing education programs.

#### Explanation of Regulatory Requirements

The regulation requires mortgage bankers, mortgage brokers, and loan correspondents, as those terms are defined in section 2 of the MBBA, 63 P.S. §§ 456.02, to complete six (6) hours of continuing education per annual renewal period, and requires limited mortgage brokers, as that term is defined in section 2 of the MBBA, 63 P.S. §§ 456.02, to complete two (2) hours of continuing education per annual renewal period. Licensees are required to submit proof of compliance with these requirements annually to the Department of Banking in order to renew a license.

#### Entities Affected

The regulation will affect all licensees under the MBBA, approximately 2,967.

1/24/01

### Fiscal Impact and Paperwork Requirements

It is expected that the approximately 2,967 licensees under the MBBA will be required to pay tuition costs to continuing education providers, the approximate monetary amount of which is unclear at this time, in addition to travel and travel-related expenses associated with attending continuing education programs. MBBA licensees that fail to comply with the requirements of the regulation may be subject to a fine of up to \$2,000 for each offense and/or suspension, revocation or nonrenewal of their license. There will be no savings to the regulated community associated with the implementation of this regulation.

Promulgation of the regulation will change existing reporting, record keeping and other paperwork requirements for the industry as well as the Department. Section 4(e) of the MBBA, 63 P.S. §§ 456.04(e), requires licensees to demonstrate to the satisfaction of the Department that at least one person from each licensed office has attended a required minimum number of hours of continuing education annually. Licensees will need to maintain records indicating what continuing education programs have been attended, by whom, when and where. Demonstration of attendance will be submitted to the Department at the time of license renewal as a requirement of renewal. Licensees and employees will be required to maintain attendance records for the three most recent annual renewal periods. This will assist licensees, their employees and the Department in determining whether continuing education requirements have been met, especially in cases where licensee employees have changed employers and/or employment status. It is noted that fulfillment of the education requirement causes the employees' current licensee employer to be in compliance with the regulation. The Department will retain the information provided by the industry long enough to ensure on-going compliance with the regulation by licensees and their employees.

The Department may review and approve continuing education programs to satisfy the continuing education requirement. The Department will review information on renewal application forms that the Department will revise to require licensees to indicate whether and how they have complied with the continuing education requirement.

Forms and/or reports have not been developed at this time.

### Sunset Date

The Department of Banking continuously monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

### Regulatory Review

Pursuant to section 5(a) of the Regulatory Review Act, the Act of June 30, 1989, (P.L. 73, No. 19) (71 P.S. § 745.5), the Department of Banking submitted a copy of this proposed regulation on 2/1/01 to the Independent Regulatory Review Commission and the Chairmen of the House Committee for Business and Economic Development and the Senate Committee on Banking and Insurance. In addition to submitting the regulation, the agency has provided the Commission and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with

Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If the Independent Regulatory Review Commission has any objections to any portion of the proposed regulation, it will notify the Department of Banking by \_\_\_\_\_. Such notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review and comments including objections to the proposed regulations by the Independent Regulatory Review Commission, the General Assembly and the Office of Attorney General, prior to final publication and approval of the proposed regulation.

Contact Person

Interested persons are invited to submit their written comments, if any, within thirty (30) days from the date of this publication, to Carter D. Frantz, Staff Counsel, Pennsylvania Department of Banking, 333 Market Street, 16th Floor, Harrisburg, PA 17101-2290, (717)787-1471.

JAMES B. KAUFFMAN, JR.  
*Acting Secretary*

ANNEX A

**Title 10. Banks and Banking**  
**Part IV. Bureau of Consumer Credit Agencies**  
**Chapter 434. Mortgage Bankers and Brokers AND CONSUMER EQUITY PROTECTION**  
**Act**

**CONTINUING EDUCATION**

- Sec.  
44.1 Definitions  
44.2 Requirements  
44.3 Reporting, Verification and Record Keeping  
44.4 Review and Approval  
44.5 ~~Penalties~~ ENFORCEMENT

RECEIVED  
2001 DEC -3 AM 11:17  
REGULATORY COMMISSION

**Authority**

The provisions of this Chapter 44 issued under sections 304(e) and 310(a) of the Mortgage Bankers and Brokers AND CONSUMER EQUITY PROTECTION Act (63 P.S. §§ 456.304(e), 456.310(a)), unless otherwise noted.

**§ 44.1 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

*Act*-- The Mortgage Bankers and Brokers AND CONSUMER EQUITY PROTECTION Act (63 P.S. §§ 456.101- 456.19 3101).

*Annual renewal date*-- July 1 of each calendar year.

*Annual renewal period*-- The licensing term commencing July 1 of one calendar year and ending on June 30 of the following calendar year.

*Continuing education program*--

(I) An educational program as required by section 304(e) of the act (~~63 P.S. § 456.304(e)~~) which contributes directly to the enhancement of the professional competence of a mortgage professional to engage in the first mortgage loan business.

(II) A continuing education program does not include programs which instruct in matters such as office or business management, personnel management, or similar subjects not directly related to the first mortgage loan business.

*Continuing education provider*-- A provider of a continuing education program that has

been approved by the Department.

*Credit hour--* ~~Sixty~~ 60 minutes of classroom instruction or the equivalent as determined by the Department.

~~*Department--* The Department of Banking of the Commonwealth.~~

*First mortgage loan business--* The first mortgage loan business as defined in section 302 of the act (~~63 P.S. § 456.302~~).

*Instructor--* An individual responsible for teaching a continuing education program THAT HAS BEEN APPROVED BY THE DEPARTMENT.

*Licensee--* A person licensed under the act.

*Limited mortgage broker--* A limited mortgage broker as defined in section 302 of the act.

*Loan correspondent--* A loan correspondent as defined in section 302 of the act.

*Mortgage banker--* A mortgage banker as defined in section 302 of the act.

*Mortgage broker--* A mortgage broker as defined in section 302 of the act.

*Mortgage professional--*

(i) A manager of each licensed office maintained by a licensee; any owner, director, officer or W-2 employee of a licensee who has the authority to underwrite or approve loans, either individually or in combination with other individuals as members of a committee; or any owner, director, officer or W-2 employee of a licensee who, as part of his or her official duties, directly contacts borrowers to present, negotiate or advise regarding loan terms.

(ii) A mortgage professional does not include any individual who engages solely in processing loan applications or other administrative or clerical functions, or both.

*Person--* A person as defined in section 302 of the act.

## § 44.2 Requirements

(a) Except as provided in subsection (b) ~~to renew a license~~ . IN ORDER TO RENEW A LICENSE. a licensee must demonstrate to the satisfaction of the Department that:

(1) In the case of a mortgage banker, mortgage broker or loan correspondent, the licensee maintains at least one separate mortgage professional at each licensed office who has successfully completed during the annual renewal period at least 6 SIX credit hours of

continuing education programs which shall include ~~± ONE~~ credit hour of Pennsylvania residential mortgage law, including the act and the Loan Interest and Protection Law (41 P.S. §§ 101-605), ~~± ONE~~ credit hour of business ethics and ~~4 FOUR~~ credit hours from among one or more of the following subject areas:

(i) Federal residential mortgage law, including the Real Estate Settlement Procedures Act (12 U.S.C. §§ 2601-2617), the Truth in Lending Act (15 U.S.C. §§ 1601-1667e) and the Equal Credit Opportunity Act (15 U.S.C. §§ 1691-1691f).

(ii) The first mortgage loan business.

(2) In the case of a limited mortgage broker, the licensed individual has successfully completed during the annual renewal period at least ~~± TWO~~ credit hours of continuing education programs which shall include ~~± ONE~~ credit hour of Pennsylvania residential mortgage law, including the act and the Loan Interest and Protection Law and ~~± ONE~~ credit hour from among one or more of the following subject areas:

(i) Business ethics.

(ii) Federal residential mortgage law, including the Real Estate Settlement Procedures Act, the Truth in Lending Act and the Equal Credit Opportunity Act.

(iii) The first mortgage loan business.

(b) The continuing education requirements imposed by this chapter shall apply to all renewals of licenses ~~by licensees~~ except where an initial licensee has been licensed by the Department for less than 6 months prior to its first annual renewal date, in which case the licensee must be in compliance with this chapter within 6 months after its first annual renewal date.

~~(e) The Department may require an applicant for a new license to meet the applicable continuing education requirement imposed by this chapter if it appears to the Department that the continuing education requirement is being improperly avoided through restructuring of the business or otherwise.~~

~~(d) (C)~~ A mortgage professional who acts as an instructor shall be credited with ~~± two~~ credit hours of continuing education for every ~~± ONE~~ credit hour taught per annual renewal period.

~~(e) (D)~~ Continuing education program credit hours earned in excess of the minimum requirement established by this section during any annual renewal period may not be carried over to a successive annual renewal period.

### § 44.3 Reporting, Verification and Record Keeping

(a) Except as provided in § 44.2(b) (relating to requirements), a licensee ~~, when applying~~

~~for a license renewal~~; shall include as part of its renewal application a statement that the requirements of this chapter have been ~~satisfactorily~~ completed by at least one separate mortgage professional at each licensed office, or in the case of a limited mortgage broker, by the licensed individual. The statement shall include a list of continuing education programs completed by the designated mortgage professional for each licensed office or the individual limited mortgage broker licensee. The list shall include:

- (1) The name of continuing education providers.
- (2) The name of continuing education programs.
- (3) The number of credit hours attended by the mortgage professional.
- (4) The locations and dates attended.

(b) The Department may verify satisfactory completion of the requirements of this chapter, ~~on a random or other basis~~, by methods including examination of the licensee.

(c) The Department may assess licensees examination costs for ~~such~~ examinations MADE UNDER SUBSECTION (B) consistent with section 308(a)(4) of the act (~~63 P.S. § 456.308(a)(4)~~).

(e) (D) A licensee shall retain all original documents relating to the completion of each continuing education program by each mortgage professional for a period of ~~at least~~ 3 annual renewal periods.

#### **§ 44.4 Review and Approval**

~~The Department may review and approve continuing education programs to satisfy the continuing education requirement:~~

(A) THE DEPARTMENT SHALL HAVE THE SOLE AUTHORITY TO APPROVE OR DENY CONTINUING EDUCATION PROGRAMS. THE DEPARTMENT DOES NOT APPROVE OR ENDORSE CONTINUING EDUCATION PROVIDERS.

(B) A PROSPECTIVE CONTINUING EDUCATION PROVIDER MAY APPLY FOR CONTINUING EDUCATION PROGRAM APPROVAL ON AN APPLICATION PROVIDED BY THE DEPARTMENT. THE APPLICATION SHALL BE SUBMITTED TO THE DEPARTMENT AT LEAST 90 DAYS PRIOR TO THE FIRST DATE THAT THE PROPOSED CONTINUING EDUCATION PROGRAM WILL BE OFFERED. THE APPLICANT SHALL ATTACH:

(1) AN OUTLINE OF THE PROPOSED CONTINUING EDUCATION PROGRAM, AND THE METHOD OF INSTRUCTION, EITHER IN-PERSON OR THROUGH INTERACTIVE TECHNOLOGY.



(2) A RESUME DETAILING EACH PROPOSED INSTRUCTOR'S QUALIFICATIONS.

(3) ANY OTHER INFORMATION THAT THE DEPARTMENT MAY REQUIRE.

(C) THE PROPOSED CONTINUING EDUCATION PROGRAM IS REQUIRED TO SATISFY ALL OF THE FOLLOWING CRITERIA IN ORDER TO BE CONSIDERED:

(1) IT SHALL BE A FORMAL PROGRAM OF LEARNING WHICH CONTRIBUTES DIRECTLY TO THE PROFESSIONAL COMPETENCE OF A MORTGAGE PROFESSIONAL TO ENGAGE IN THE FIRST MORTGAGE LOAN BUSINESS.

(2) IT SHALL BE AT LEAST ONE CREDIT HOUR.

(3) IT SHALL BE CONDUCTED BY ONE OR MORE INSTRUCTORS. THE FOLLOWING INDIVIDUALS ARE NOT QUALIFIED TO BE AN INSTRUCTOR, UNLESS THE DEPARTMENT DETERMINES OTHERWISE:

(I) AN INDIVIDUAL WHO HAS HAD HIS OR HER LICENSE SUSPENDED OR REVOKED BY THE DEPARTMENT.

(II) AN INDIVIDUAL WHO HAS BEEN THE OWNER, DIRECTOR OR OFFICER OF A LICENSEE THAT HAS HAD ITS LICENSE SUSPENDED OR REVOKED BY THE DEPARTMENT.

(III) AN INDIVIDUAL WHO HAS BEEN A PARTY TO A DEPARTMENT ORDER OR AGREEMENT PROHIBITING THE INDIVIDUAL FROM ENGAGING IN THE FIRST MORTGAGE LOAN BUSINESS IN THE COMMONWEALTH OF PENNSYLVANIA OR ACTING IN ANY OTHER CAPACITY RELATED TO ACTIVITIES REGULATED BY THE DEPARTMENT.

(D) THE DEPARTMENT SHALL HAVE 60 DAYS FROM RECEIPT OF A COMPLETED APPLICATION TO APPROVE OR DENY THE PROPOSED CONTINUING EDUCATION PROGRAM. AN APPLICATION SHALL BE DEEMED COMPLETED WHEN THE REQUIREMENTS OF SUBSECTIONS (B) AND (C) HAVE BEEN FULFILLED. IF THE DEPARTMENT FAILS TO APPROVE OR DENY AN APPLICATION SUBMITTED BY A PROSPECTIVE CONTINUING EDUCATION PROVIDER WITHIN 60 DAYS OF ITS RECEIPT, THE CONTINUING EDUCATION PROGRAM SHALL BE DEEMED APPROVED BY THE DEPARTMENT. THE DEPARTMENT MAY DENY AN APPLICATION SUBMITTED BY A PROSPECTIVE CONTINUING EDUCATION PROVIDER IF THE CONTINUING EDUCATION PROGRAM OR PROVIDER FAILS TO SATISFY ANY OF THE CONDITIONS OR REQUIREMENTS CONTAINED IN THIS CHAPTER OR THE ACT.

(E) APPROVAL OF A CONTINUING EDUCATION PROGRAM BY THE DEPARTMENT IS VALID FOR ONE ANNUAL RENEWAL PERIOD AND DOES NOT CONSTITUTE PERMANENT APPROVAL OF THE CONTINUING EDUCATION PROGRAM.

(F) CONTINUING EDUCATION PROVIDERS SHALL PROVIDE FREE ACCESS TO DEPARTMENT PERSONNEL TO MONITOR THEIR CONTINUING EDUCATION PROGRAMS.

(G) CONTINUING EDUCATION PROVIDERS SHALL RETAIN ORIGINAL RECORDS OF ATTENDANCE FOR EACH CONTINUING EDUCATION PROGRAM CONDUCTED BY THE CONTINUING EDUCATION PROVIDER FOR A PERIOD OF 3 ANNUAL RENEWAL PERIODS AND SHALL PROVIDE THE DEPARTMENT ACCESS TO SUCH RECORDS UPON REQUEST.

#### **§ 44.5 Penalties ENFORCEMENT**

(A) The Department may levy a fine of up to \$2,000 for each offense pursuant to UNDER section 314(c) of the act (~~63 P.S. § 456.314(c)~~) and/ or suspend, revoke or refuse to renew a license pursuant to section 313(a) of the act (~~63 P.S. § 456.313(a)~~), OR BOTH, if a licensee fails to comply with any requirement of this chapter.

(B) THE DEPARTMENT MAY REVOKE ITS APPROVAL OF A CONTINUING EDUCATION PROVIDER'S CONTINUING EDUCATION PROGRAM IF THE CONTINUING EDUCATION PROVIDER FAILS TO COMPLY WITH ANY REQUIREMENT OF THIS CHAPTER OR THE ACT.

## COMMENT AND RESPONSE DOCUMENT

### Department of Banking Response to Comments of the Independent Regulatory Review Commission on the Previously Submitted Proposed Mortgage Bankers and Brokers and Consumer Equity Protection Act Continuing Education Regulation

#### 1. Section 44.2. Requirements. - Statutory Authority; Clarity.

##### Commission Comments:

*Under Subsection (c), the Department “may require an applicant for a new license to meet the applicable continuing education requirement...if it appears to the Department that the continuing education requirement is being improperly avoided through restructuring of the business or otherwise.” We have two issues within this subsection.*

*First, the Mortgage Bankers and Brokers Act (63 P.S. § 456.04(e)) requires completion of the continuing education requirements to maintain a license. What is the statutory authority to require completion of continuing education requirements prior to granting a license?*

*Second, the requirement is vague. Phrases like “may require” and “if it appears” do not provide adequate notice of the circumstances under which the Department will require an applicant to meet continuing education requirements. Also, this subsection does not list the criteria the Department will use to determine whether the continuing education requirement is being avoided. Therefore, these phrases should be replaced with timelines and criteria in the final-form regulation.*

##### Department of Banking Response:

The Department has deleted Subsection (c) from the final-form regulation.

#### 2. Section 44.3. Reporting, verification, and record-keeping. - Reasonableness; Clarity.

##### Commission Comments:

*We have two issues within Subsection (b). The first sentence states “The Department may verify, on a random or other basis, by methods including examination of the licensee and satisfactory completion of the requirements of this chapter.” This sentence appears to be grammatically incorrect and should be re-written. As written, it does not state what will be verified.*

*The second sentence states “The Department may assess licensees examination costs for the examinations consistent with section 8(a)(4) of the act (63 P.S. § 456.8(a)(4)).” Because it addresses a different subject, this sentence should be separated into a new subsection within Section 44.3.*

##### Department of Banking Response:

(1) This sentence was drafted by the Department to read, and was submitted to IRRC, the Legislative Reference Bureau (“LRB”), and the appropriate General Assembly Committees (“Committees”) as, “[t]he Department may verify, on a random or other basis, by methods including, but not limited to, examination of the licensee, satisfactory completion of the requirements of this chapter.” As with other parts of the proposed regulation, this sentence was revised by the LRB without consultation with or input from the Department immediately prior to the publication of the proposed regulation in the Pennsylvania Bulletin. This has resulted in the sentence found in the current version of Subsection (b). This sentence has been corrected in the final-form regulation to read “[t]he Department may verify satisfactory completion of the requirements of this chapter by methods including examination of the licensee.”

(2) The Department has adopted IRRC’s recommendation and the corresponding change has been reflected in the final-form regulation.

### **3. Section 44.4. Review and approval. - Clarity.**

#### **Commission Comments:**

*This section states, “The Department may review and approve continuing education programs to satisfy the continuing education requirement.” Also included in this section is the term “continuing education program,” which is defined in Section 44.1 (relating to definitions). The definition for this term describes what a “continuing education program” entails. However, this section does not include a process for the review and approval of a continuing education program. How are continuing education programs approved?*

*The review and approval process for continuing education programs should be established through regulation. To allow the opportunity for public comment, the process should be proposed as a separate rulemaking.*

#### **Department of Banking Response:**

A review and approval scheme for programs and providers was originally included in the proposed regulation at Section 44.4, which was not objected to by the industry commentators that received the proposed regulation pursuant to Executive Order 1996-1. These commentators are listed in the Regulatory Analysis Form at Part 16. However, this review and approval scheme was objected to by the Office of Attorney General, which indicated that there was currently no statutory authority contained in Section 4(e) of the MBBA that would permit the review and approval of providers or the ability to charge a fee for such review.

Amendments to the MBBA, S.B. 377 of 2001, have been enacted as Act 55 of 2001, effective June 25, 2001, entitled the Mortgage Bankers and Brokers and Consumer Equity Protection Act, which include authority for the Department to review and approve providers in addition to programs and to charge a fee for such review. Specifically, Section 304(e) of Act 55 of 2001 states in pertinent part that “[t]he secretary may review and approve continuing education programs and providers to satisfy the continuing education requirement. The secretary may charge providers of continuing

education programs a fee, to be determined by the secretary, for department review of continuing education programs and providers.”

With the enactment of Act 55 of 2001, the Department is in a position to reinsert the review and approval scheme that was originally part of the proposed regulation.

## **Explanation of Changes Appearing in the Final-Form Regulation.**

### General

The Chapter number was changed from 43 to 44 consistent with LRB’s change in Chapter number contained in the Proposed Regulation published at 31 Pa.B 1236 (March 3, 2001).

Changes were made to the statutory citations and the statute title consistent with the amendments to the Mortgage Bankers and Brokers Act contained in Act 55 of 2001, the Mortgage Bankers and Brokers and Consumer Equity Protection Act (“MBBCEPA”), 63 P.S. § 456.101 *et seq.*

Numbers in text were changed consistent with Pennsylvania Code & Bulletin Style Manual (3rd ed. 1995) Rules 4.1 and 4.2.

Citations to specific sections of the act were deleted because the act is defined and a citation is provided in section 44.1 of the final-form regulation.

### Section 44.1

Definition of “Continuing education program”- the definition was split into two subparts consistent with LRB’s change to the definition of “Mortgage professional.”

Definition of “Department”- the definition was deleted pursuant to advice from the Office of General Counsel (“OGC”), which indicated that because “Department” is defined at 10 Pa.Code § 1.1, it does not need to be defined in any regulations appearing in Title 10 of the Pennsylvania Code.

Definition of “Instructor”- language was added which clarifies that the only person that qualifies as an instructor is someone who has been approved to be an instructor as part of the approval of a continuing education program.

### Section 44.2

Subsection (a)- language in first sentence was altered to read more clearly in response to LRB’s unilateral alteration of the language in the proposed regulation prior to publication in 31 Pa.B 1236 (March 3, 2001).

Subsection (c)- deleted in response to IRRC Comments. Former subsections (d) and (e) were relettered as (c) and (d), respectively, consistent with the deletion of former subsection (c).

### Section 44.3

Subsection (a)- language deleted in first sentence consistent with stylistic recommendations made by OGC.

Subsection (b)- language altered consistent with stylistic recommendations made by OGC and to read more clearly in response to LRB's unilateral alteration of the language in the proposed regulation prior to publication in 31 Pa.B 1236 (March 3, 2001).

Subsection (c)- language altered consistent with stylistic recommendations made by OGC.

Subsection (d)- added in response to IRRC Comments. Language in subsection (d) appeared in proposed regulation published at 31 Pa.B 1236 (March 3, 2001) in subsection (c). Department deleted "at least" consistent with OGC stylistic comments.

### Section 44.4

This section contains entirely new language than what appeared in the proposed regulation published at 31 Pa.B 1236 (March 3, 2001). The new language sets forth a review and approval scheme for continuing education programs, with stylistic alterations consistent with comments from OGC. The origins of the review and approval scheme are discussed under the IRRC Comments regarding Section 44.4, above.

The new section 44.4 asserts the Department's authority as the sole approver of continuing education programs and indicates that the Department does not approve continuing education providers. It sets forth a review and approval scheme, with requirements for courses to be approved and a timetable for the review to be completed. Included in the requirements are a list of criteria that can be used by the Department to exclude individuals who are of dubious character from being continuing education instructors to other mortgage industry professionals. Finally, certain duties are placed upon providers, including giving Department personnel free access to continuing education programs for monitoring purposes and maintaining attendance records for three annual renewal periods for Department review, if necessary.

### Section 44.5

Retitled "enforcement" for stylistic reasons.

Subsection (a)- language altered consistent with stylistic recommendations made by OGC.

Subsection (b)- added to provide Department with the ability to revoke approval of a provider's continuing education program(s) if the provider fails to comply with any provision of the regulation or the MBBCEPA.



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING  
333 MARKET STREET, 16TH FLOOR  
HARRISBURG, PENNSYLVANIA 17101-2290

FAX (717) 787-8773

(717) 787-1741

February 1, 2001

Mr. Robert Nyce  
Executive Director  
Independent Regulatory Review Commission  
14th Floor, 333 Market Street  
Harrisburg, PA 17126

Re: Department of Banking  
Mortgage Bankers and Brokers Act  
Continuing Education Regulations  
10 Pa. Code Chapter 43

Dear Mr. Nyce:

Enclosed for review by the Independent Regulatory Review Commission, pursuant to the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19)(71 P.S. §§ 745.1--745.14), is a copy of the Notice of Proposed Rulemaking for Mortgage Bankers and Brokers Act Continuing Education Regulations, 10 Pa. Code Chapter 43. This Notice of Proposed Rulemaking was sent today to the Legislative Reference Bureau for publication on which date the public comment period shall commence consistent with 71 P.S. § 745.5.

The Department of Banking will provide your Commission with any assistance you require to facilitate a thorough review of these regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "R. S. Evans".

Reginald S. Evans  
Chief Counsel

cc: Stephen F. Tuckey  
Deputy General Counsel

Enclosure

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT

RECEIVED

I.D. NUMBER: 3-40  
SUBJECT: Mortgage Bankers & Brokers Act - Continuing Education  
AGENCY: DEPARTMENT OF BANKING

2001 FEB -1 AM 11:35

INDEPENDENT REGULATORY  
REVIEW COMMISSION

TYPE OF REGULATION

- X Proposed Regulation  
Final Regulation  
Final Regulation with Notice of Proposed Rulemaking Omitted  
120-day Emergency Certification of the Attorney General  
120-day Emergency Certification of the Governor  
Delivery of Tolled Regulation  
a. With Revisions b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
1/1/01	<i>Valiant White</i>	HOUSE COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT
2/1/01	<i>Brenda Zablato</i>	
2/1/01	<i>Debbie Patton</i>	SENATE COMMITTEE ON BANKING & INSURANCE
2/1/01	<i>P. McDaniel</i>	
2/1/01	<i>J. Pagan</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
2/1/01	<i>C. Lee - Bran</i>	LEGISLATIVE REFERENCE BUREAU

January 30, 2001