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ROBERT E. NYCE, EXECUTIVE DIRECTOR  
MARY S. WYATTE, CHIEF COUNSEL



PHONE: (717) 783-5417  
FAX: (717) 783-2664  
irrc@irrc.state.pa.us  
<http://www.irrc.state.pa.us>

**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

May 3, 2001

Honorable James B. Kaufman, Secretary  
Department of Banking  
1651 Harristown Building #2  
333 Market Street  
Harrisburg, PA 17101

Re: Regulation #3-40 (IRRC #2174)  
Department of Banking  
Mortgage Bankers and Brokers; Continuing Education

Dear Secretary Kaufman:

Enclosed are our Comments. They will soon be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us).

Our Comments list objections and suggestions for consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you would like to discuss these Comments, please contact my office at 783-5417.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Nyce".

Robert E. Nyce  
Executive Director  
wbg  
Enclosure

cc: Honorable George C. Hazy, Majority Chairman, House Commerce & Economic Development Committee  
Honorable Thomas R. Caltagirone, Democratic Chairman, House Commerce and Economic Development Committee  
Honorable Edwin G. Holl, Chairman, Senate Banking & Insurance Committee  
Honorable Jack Wagner, Minority Chairman, Senate Banking & Insurance Committee

# **Comments of the Independent Regulatory Review Commission**

**on**

## **Department of Banking Regulation No. 3-40**

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

**May 3, 2001**

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which have not been met. The Department of Banking must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by April 2, 2003, the regulation will be deemed withdrawn.

#### **1. Section 44.2. Requirements. – Statutory authority; Clarity.**

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 with 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.

#### **2. Section 44.3. Reporting, verification and recordkeeping. – Reasonableness; Clarity.**

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.

**3. Section 44.4. Review and approval. – Clarity.**

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.