

# Regulatory Analysis Form

(Completed by Promulgating Agency)



## SECTION I: PROFILE

(1) Agency: Department of Banking

(2) Agency Number: 3

Identification Number: 47

IRRC Number: 2828

(3) Short Title:

Repeal of Regulation in 10 Pa. Code Chapter 44

(4) PA Code Cite:

10 Pa. Code §§ 44.1 – 44.5.

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

**Primary Contact:** Lauren A. Sassani, Assistant Counsel, Department of Banking, 17 N. Second Street, Suite 1300, Harrisburg, PA 17101, (717) 787-1471, Email: pabankreg@state.pa.us.

**Secondary Contact:** Robert C. Lopez, Deputy Chief Counsel, Department of Banking, 17 N. Second Street, Suite 1300, Harrisburg, PA 17101, (717) 787-1471, Email: pabankreg@state.pa.us.

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation
- Emergency Certification Regulation;
- Certification by the Governor
- Certification by the Attorney General

(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

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## Regulatory Analysis Form

On November 5, 2008, Chapter 3 of the Mortgage Bankers and Brokers and Consumer Equity Protection Act was repealed by operation of law and replaced by 7 Pa. C.S. § 6101 *et seq.* On August 5, 2009, 7 Pa. C.S. § 6101 *et seq.* (now entitled the Mortgage Licensing Act) was amended to include, among other things, more stringent education requirements for all mortgage licensees. See 7 Pa. C.S. § 6131.1. The amendments were made, in part, to conform to the new federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, 12 U.S.C.S. § 5101 *et seq.*, which mandates minimum education requirements for all mortgage loan originators. Based on the new statutory requirements, the regulation at 10 Pa. Code §§ 44.1 – 44.5 has been superseded by statute and is thus obsolete.

**(9) Include a schedule for review of the regulation including:**

- |   |   |
|---|---|
| A. The date by which the agency must receive public comments:                               | <u>Not Applicable.</u>  |
| B. The date or dates on which public meetings or hearings will be held:                     | <u>Not Applicable.</u>  |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>1<sup>st</sup> Quarter 2010.</u>   |
| D. The expected effective date of the final-form regulation:                                | <u>Immediately upon publication of the final-form regulation in the <i>Pennsylvania Bulletin</i>.</u> |
| E. The date by which compliance with the final-form regulation will be required:            | <u>Not Applicable.</u>  |
| F. The date by which required permits, licenses or other approvals must be obtained:        | <u>Not Applicable.</u>  |

**(10) Provide the schedule for continual review of the regulation.**

There is no anticipated continual review of this regulation once it is repealed. The Department will continue to monitor the need for any future regulations for the mortgage industry in Pennsylvania.

**Regulatory Analysis Form**

**SECTION II: STATEMENT OF NEED**

**(11) State the statutory authority for the regulation. Include specific statutory citation.**

The regulation was promulgated pursuant to Section 304(e) of the Mortgage Bankers and Brokers and Consumer Equity Protection Act (63 P.S. § 456.304(e)). On November 5, 2008, the Mortgage Bankers and Brokers and Consumer Equity Protection Act was repealed by operation of law and replaced by 7 Pa. C.S. § 6101 *et seq.* The regulation is being repealed pursuant to the Department's authority in section 6138(a)(4) of the Mortgage Licensing Act (7 Pa. C.S. § 6138(a)(4)).

**(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.**

No.

**(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.**

Given the amendments to the Mortgage Licensing Act the regulation is in direct conflict with a prevailing statute. There are no compelling public interests that justify keeping the regulation.

**(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.**

Not applicable.

**(15) Describe who and how many will be adversely affected by the regulation. How are they affected?**

The Department can ascertain no person or persons who will be adversely affected by the repeal of the regulation.

**(16) List the persons, groups or entities that will be required to comply with the regulation.**

## Regulatory Analysis Form

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>	\$N/A	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
<b>Total Savings</b>						
<b>COSTS:</b>	N/A					
Regulated Community						
Local Government						
State Government						
<b>Total Costs</b>						
<b>REVENUE LOSSES:</b>	N/A					
Regulated Community						
Local Government						
State Government						
<b>Total Revenue Losses</b>						

There are no costs/savings associated with the repeal of this regulation.

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

Program	FY -3	FY -2	FY -1	Current FY
Not applicable.				

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

There are no costs associated with the repeal of this regulation.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

## Regulatory Analysis Form

None. The regulation is being submitted as a Final Omitted Regulation.

**(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.**

Not Applicable.

**(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 regulations.**

Not Applicable.

**(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?**

In enacting the Mortgage Licensing Act, Pennsylvania amended the education requirements for all mortgage licensees. All states had to adopt the continuing education requirements of the federal Secure and Fair Enforcement of Mortgage Licensing Act of 2008 (See 12 U.S.C.S. §§ 5104(c), 5105(b)) for mortgage originators or face Federal preemption of state mortgage licensing laws related to mortgage originators.

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

No.

**(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.**

Not Applicable.

**(28) 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.**

None.

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REVIEW COMMISSION

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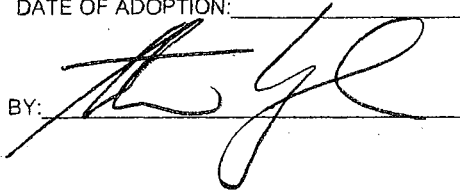
Y: \_\_\_\_\_  
(Deputy Attorney General)

Copy below is hereby certified to be a true  
and correct copy of a document issued,  
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\_\_\_\_\_ Department of Banking  
(Agency)

DOCUMENT/FISCAL NOTE NO. 3-47

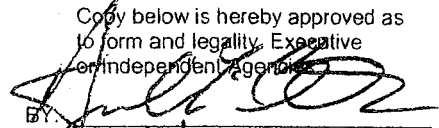
DATE OF ADOPTION: \_\_\_\_\_

BY: 

TITLE: 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  
for independent agencies

BY:   
Andrew C. Clark

MAR 10 2010

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.

FINAL OMITTED REGULATION  
DEPARTMENT OF BANKING  
BUREAU OF CONSUMER CREDIT AGENCIES  
MORTGAGE LICENSEE CONTINUING EDUCATION  
[10 PA. CODE CH. 44]

## FINAL RULEMAKING

### DEPARTMENT OF BANKING

#### TITLE 10 – BANKS AND BANKING DEPARTMENT OF BANKING

[10 Pa. Code §§ 44.1 – 44.5]

The Pennsylvania Department of Banking, under the authority contained in section 6138(a)(4) of the Mortgage Licensing Act (7 Pa. C.S. § 6138(a)(4)), deletes 10 Pa. Code §§ 44.1 – 44.5, which has become obsolete.

#### Introduction

The Department has determined that the existing regulation is preempted by statute and thus obsolete.

#### Analysis

On November 5, 2008, Chapter 3 of the Mortgage Bankers and Brokers and Consumer Equity Protection Act was repealed by operation of law and replaced by 7 Pa. C.S. § 6101 *et seq.* On August 5, 2009, 7 Pa. C.S. § 6101 *et seq.* (now entitled the Mortgage Licensing Act), was amended to include more stringent education requirements for all mortgage licensees. *See* 7 Pa. C.S. § 6131.1. The amendment was made, in part, to conform to the new federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, 12 U.S.C.S. § 5101 *et seq.*, which mandates minimum education requirements for all mortgage loan originators. Based on the new statutory requirements, the regulation at 10 Pa. Code §§ 44.1 – 44.5 has been superseded by statute and is thus obsolete.

#### Cost and Paperwork Requirement

Repealing the regulation will have no effect on costs or paperwork requirements.

#### Fiscal Impact

Repealing this regulation will have no fiscal impact.

#### Notice

Notice of proposed rulemaking has been omitted under section 204(3) of the act of July 31, 1968 (P.L. 769, No. 240)(45 P.S. § 1204(3)) (CDL), which specifies that a regulation may be adopted without notice of proposed rulemaking if proposed rulemaking procedures are “in the circumstances impracticable, unnecessary, or contrary to the public interest.” The proposed rulemaking procedures in this instance are unnecessary because the Department is repealing an obsolete regulation that has been superseded by statute.

## Regulatory Review

This regulation is being submitted as a final omitted Regulation. Pursuant to section 5.1(c) of the Regulatory Review Act (71 P.S. § 745.5a(c)), on March 25, 2010, the Department submitted a copy of the final omitted regulation and a copy of the Regulatory Analysis Form to the Pennsylvania Office of Attorney General, the Independent Regulatory Review Commission ("IRRC") and the Chairmen of the House Committee on Commerce and the Chairmen of the Senate Committee on Banking and Insurance.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on \_\_\_\_\_, the final omitted regulation was deemed approved by the House and Senate Committees. Under Section 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5a(e)), IRRC met on \_\_\_\_\_, and approved the final omitted regulation.

## Effective Date

These deletions will become effective upon final publication in the *Pennsylvania Bulletin*.

## Sunset Date

Since this rulemaking deletes an obsolete regulation, a sunset date is not necessary.

## Contact Person

For an explanation of this rulemaking contact Lauren A. Sassani, Assistant Counsel, Department of Banking, 17 N. Second Street, Suite 1300, Harrisburg, PA 17101, telephone number (717)-787-1471, or by email at [pabankreg@state.pa.us](mailto:pabankreg@state.pa.us) or Robert C. Lopez, Deputy Chief Counsel, Department of Banking, 17 N. Second Street, Suite 1300, Harrisburg, Pennsylvania 17101, telephone number (717) 787-1471, or by email at [pabankreg@state.pa.us](mailto:pabankreg@state.pa.us).

## Findings

The Department finds that:

(1) The proposed rulemaking procedures in sections 201 and 202 of the CDL (45 P.S. §§ 1201 and 1202) are unnecessary because this rulemaking eliminates an obsolete regulation.

(2) Public notice of intention to adopt this rulemaking has been omitted under section 204 of the CDL and 1 Pa. Code § 7.4.

## Order

The Department orders that:



- (a) The regulation of the Department at 10 Pa. Code §§ 3.1 – 3.16 are deleted.
- (b) The Department shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as to legality as required by law.
- (c) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

STEVEN KAPLAN,  
*Secretary*

Annex A

TITLE 10. BANKS AND BANKING

PART IV. BUREAU OF CONSUMER CREDIT AGENCIES

CHAPTER 44. MORTGAGE BANKERS AND BROKERS AND CONSUMER EQUITY  
PROTECTION ACT REGULATIONS

§ 44.1. [Definitions] Reserved.

[The following words and terms, when used in this chapter, 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 -- 456.3101).

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

*Annual renewal period* -- The licensing term commencing July 1 of 1-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) The term 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 minutes of classroom instruction or the equivalent as determined by the Department.

*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 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] Reserved.

[(a) Except as provided in subsection (b), to renew a license, a licensee shall 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 credit hours of continuing education programs which shall include 1 credit hour of Pennsylvania residential mortgage law, including the act and the Loan Interest and Protection Law (41 P. S. §§ 101 -- 605), 1 credit hour of business ethics and 4 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.A. §§ 2601 -- 2617), the Truth in Lending Act (15 U.S.C.A. §§ 1601 -- 1667e) and the Equal Credit Opportunity Act (15 U.S.C.A. §§ 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 2 credit hours of continuing education programs which shall include 1 credit hour of Pennsylvania residential mortgage law, including the act and the Loan Interest and Protection Law and 1 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 except when 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 shall be in compliance with this chapter within 6 months after its first annual renewal date.

(c) A mortgage professional who acts as an instructor shall be credited with 2 credit hours of continuing education for every 1 credit hour taught per annual renewal period.

(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 recordkeeping] Reserved.

[(a) Except as provided in § 44.2(b) (relating to requirements), a licensee shall include as part of its renewal application a statement that the requirements of this chapter have been 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 by methods including examination of the licensee.

(c) The Department may assess licensees examination costs for examinations made under subsection (b) consistent with section 308(a)(4) of the act (63 P. S. § 456.308(a)(4)).

(d) A licensee shall retain all original documents relating to the completion of each continuing education program by each mortgage professional for 3 annual renewal periods.]

§ 44.4 [Review and Approval] Reserved.

[(a) The Department will 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) Other information that the Department may require.

(c) The proposed continuing education program is required to satisfy the following criteria to be considered. The program shall be:

(1) 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) At least 1 credit hour.

(3) 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 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 this Commonwealth or acting in any other capacity related to activities regulated by the Department.

(d) The Department will have 60 days from receipt of a completed application to approve or deny the proposed continuing education program. An application will 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 will 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 1 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 3 annual renewal periods and shall provide the Department access to the records upon request.]

§ 44.5 [Enforcement] Reserved.

[(a) The Department may levy a fine of up to \$ 2,000 for each offense under section 314(c) of the act (63 P. S. § 456.314(c)) or suspend, revoke or refuse to renew a license under section 313(a) of the act (63 P. S. § 456.313(a)), 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.]

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

**I.D. NUMBER**      3-47

**SUBJECT:**            **MORTGAGE LICENSEE CONTINUING EDUCATION REPEAL**

**AGENCY:**            **DEPARTMENT OF BANKING**

**TYPE OF REGULATION**

- Proposed Regulation
- Final Regulation
- X** 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

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**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
3/25	<i>Jamie Macar</i>	HOUSE COMMERCE COMMITTEE MAJORITY CHAIRMAN Honorable Peter Daley
3/25	<i>Barbara Ramsey</i>	HOUSE COMMERCE COMMITTEE MINORITY CHAIRMAN Honorable Dick L. Hess
3/25	<i>Judy Merrill for Don White</i>	SENATE COMMITTEE ON BANKING & INSURANCE MAJORITY CHAIR Honorable Don White
<i>H Brawley</i>	<i>3-25-10</i>	SENATE COMMITTEE ON BANKING & INSURANCE MINORITY CHAIR Honorable Michael J. Stack
3/25/10	<i>K Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
3-25	<i>m. mummert</i>	ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)