

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I through IV pertaining to the	)	PROPOSED ADOPTION,
definition of origination of a mortgage	)	AMENDMENT, AND REPEAL
loan, certificate of bona fide not-for-	)	
profit entity, state-specific prelicensing	)	
education, and when an application is	)	
deemed abandoned, the amendment of	)	
ARM 2.59.1701, 2.59.1702, 2.59.1728,	)	
2.59.1731, and 2.59.1743 pertaining to	)	
definitions, proof of experience,	)	
standardized forms, reinstatement of	)	
licenses, and reporting forms for	)	
mortgage servicers, and the repeal of	)	
ARM 2.59.1725, 2.59.1727, and	)	
2.59.1749 pertaining to licensing	)	
exemptions, mortgage loan originator	)	
testing, and written exemption form	)	

TO: All Concerned Persons

1. On November 22, 2013, at 10:00 a.m., the Department of Administration will hold a public hearing in Room 342 of the Park Avenue Building, at Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on October 30, 2013, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 444-1421; facsimile (406) 841-2930; or e-mail to [banking@mt.gov](mailto:banking@mt.gov).

3. The rules proposed to be adopted provide as follows:

NEW RULE I CLARIFICATION OF DEFINITION (1) "Origination of a mortgage loan" as used in 32-9-103(26)(b), MCA, does not include credit underwriting activities as long as the credit underwriter does not communicate directly with the borrower about specific credit terms. Credit underwriting activities include the analysis done by a mortgage underwriter to determine whether:

- (a) credit should be extended to a borrower;
- (b) a loan meets the requirements for funding; or
- (c) a loan meets the criteria to be sold on the secondary market.

AUTH: 32-9-130, MCA  
IMP: 32-9-103(26), MCA

STATEMENT OF REASONABLE NECESSITY: New Rule I is designed to clarify that the term "underwriter" as used in 32-9-103(26), MCA, means the underwriting typically done by a loan processor to gather documents necessary to get the loan approved, not the underwriting typically done by an underwriter who is analyzing the loan to determine whether credit should be extended to the borrower, the loan meets funding requirements, or the loan meets secondary market criteria. As long as the credit underwriting activities do not include communication directly with the borrower about specific credit terms, the credit underwriting activities are not intended to be included in this definition.

This new rule is necessary because the department has already received an inquiry from a mortgage lender who expressed confusion over the meaning of 32-9-103(26)(b), MCA. This clarification will clear up any potential misunderstanding that may exist as to which activities are or are not intended to be covered by the term "origination of a mortgage loan" in 32-9-103(26)(b), MCA.

NEW RULE II CERTIFICATE OF BONA FIDE NOT-FOR-PROFIT ENTITY

(1) A bona fide not-for-profit entity shall certify that it meets the exemption in 32-9-104(1)(f), MCA. It shall use the "Montana Bona Fide Not-For-Profit Certification" dated August 13, 2013, to make its certification both initially and annually. The "Montana Bona Fide Not-For-Profit Certification" dated August 13, 2013, is adopted and incorporated by this reference. A copy of the "Montana Bona Fide Not-For-Profit Certification" dated August 13, 2013, is available at the Montana Division of Banking and Financial Institutions, 301 S. Park Ave., Suite 301, Helena, Montana, during regular business hours or on the department's web site at [www.banking.mt.gov](http://www.banking.mt.gov).

AUTH: 32-9-104(2), MCA  
IMP: 32-9-103(6), 32-9-104(1), 32-9-104(2), MCA

STATEMENT OF REASONABLE NECESSITY: The 2013 Montana Legislature amended the exemption section of the Montana Mortgage Act (Act). Section 32-9-104(1)(f), MCA, now exempts entities that are bona fide not-for-profit entities from licensure. Section 32-9-104(2), MCA, requires an entity seeking a bona fide not-for-profit exemption to certify on a form prescribed by the department that it is a bona fide not-for-profit entity. This rule proposes the form that will be used by bona fide not-for-profit entities to make that certification.

The form is adapted from forms used by California and Oregon. The form is designed to be used both for an initial certification and a yearly renewal of a certification. This is because 32-9-104(2)(a), MCA, requires the bona fide not-for-profit entity to recertify by December 31 of each year to maintain the exemption. The department seeks to be efficient in requiring one form that can be used for the initial certification and the annual renewal. This will save resources and time for both exempt entity applicants and the department. The form was developed to be

simple for users to understand and follow and to provide the department with the information it needs to make an exemption determination both initially and annually thereafter.

The form requires the name of the bona fide not-for-profit entity. This is needed for the department to grant an exemption. If the bona fide not-for-profit's name has changed, there is a space for it to write its prior name. This is to allow the department to determine whether there was already an exemption in place under a different name. If the entity is the same entity that was already granted an exemption but the name changed, there is no need to conduct an analysis to determine whether it meets the requirements of a bona fide not-for-profit. If the entity met the exemption at a prior time and only the name changed, it is still exempt.

The address and mailing address, if they are different, are used by the department for two things: first, the department reserves the right to examine exempt entities and needs to know the physical location of the exempt entity and second, the department must mail the letter granting an exemption to the entity. So the department needs to know both the mailing address and the physical location of the exempt entity.

The telephone number is needed in case the department needs to contact the exempt entity for any reason.

The web site is needed by the department to verify the entity is in fact a bona fide not-for-profit.

The contact person is needed in case of questions about an exempt entity or to contact the entity if any issues arise with borrowers.

The additional documentation for an initial certification was chosen because these items are necessary for the department to initially determine that the entity is a bona fide not-for-profit as defined in 32-9-103(6), MCA.

The first document that the department requests is the determination letter that the entity has been granted 501(c)(3) or 501(c)(4) status by the Internal Revenue Service. This is necessary to determine whether the entity meets the definition of a bona fide not-for-profit in 32-9-103(6)(a), MCA, which requires that the entity maintain a tax-exempt status under 26 USC 501(c)(3) or 501(c)(4).

The second document requested is the organic documents of the entity. This is necessary for two reasons: first, to verify the entity is in fact a not-for-profit entity and, second, to determine what its purpose(s) is. This is required by 32-9-103(6)(b), MCA, which requires the entity promote affordable housing or provide homeownership education or similar services and 32-9-103(6)(c), MCA, which requires the bona fide not-for-profit to conduct its activities in a manner that serves public or charitable purposes, rather than commercial purposes.

The third document requested is the registration for a foreign entity to allow it to do business in this state. The registration process with the Secretary of State allows a foreign entity to do business in this state. The Secretary of State requires a foreign entity to appoint a registered agent for service of process. This ensures that any Montana resident who wants to sue a foreign entity will have a registered agent for service of process in this state. The department views this as necessary to protect Montana citizens who may want to file a lawsuit against a foreign entity.

The fourth item requested is the Form 990 filed by the entity with the IRS. This document is public under IRS regulations 26 USC 6104(d). It contains information necessary for the department to assess whether the entity is a bona fide not-for-profit entity including, but not limited to: the organization's mission or more significant activities; its sources of revenue and expenses; the organization's service accomplishments; compensation to officers, directors, and key employees; highest paid employees; and independent contractors.

The fifth item is required by the department because 32-9-103(6)(e), MCA, requires the department to determine that the entity does not compensate its employees in a manner that creates incentives for the employee to act other than in the client's best interests.

The sixth item is necessary for the department to determine whether the entity provides to or identifies for the borrower residential mortgage loans with terms that are favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs. In making this assessment, the department must determine that the terms are consistent with loan origination in a public or charitable context, rather than a commercial context. This is required by 32-9-103(6)(f), MCA.

The seventh item is required for the department to determine that the entity has been granted a certification from the federal Department of Housing and Urban Development (HUD) or holds a designation as a community housing development organization under 24 CFR 92.2. This is necessary for the department to determine that the entity meets the requirement of 32-9-103(6)(g), MCA, which requires that the entity be certified by HUD or designated as a community housing development organization by the same agency.

The eighth item is necessary because employees of the bona fide not-for-profit are exempt under 32-9-104(1)(g), MCA. The department needs a list of the employees of the bona fide not-for-profit in order to identify the individuals exempt under this section. This information also allows the department to ensure that the entity is not compensating its employees in a manner that incentivizes them to act other than in the client's best interest. If the department knows who is employed by a bona fide not-for-profit entity, the department can examine the entity's filings with the department to ensure they are being compensated in an acceptable manner.

The additional documentation for a renewal certification was chosen because, unless there has been a change to the documents filed in the initial certification, the department only needs a copy of the most recent Form 990 and the list of mortgage loan originators employed by the bona fide not-for-profit entity. All the other documents are retained on file by the department and only need to be provided if something has changed since the earlier certification.

The certification is necessary to ensure the bona fide not-for-profit understands and agrees that the department reserves the right to examine it under 12 CFR 1008.103(e)(7)(iii) and that it must recertify annually to the department in order to maintain its exemption under 32-9-104(2), MCA.

**NEW RULE III STATE-SPECIFIC PRELICENSING EDUCATION** (1) An individual seeking a mortgage loan originator's license shall complete two hours of prelicensing education specific to Montana residential mortgage statutes and rules.

AUTH: 32-9-107, MCA  
IMP: 32-9-107, MCA

STATEMENT OF REASONABLE NECESSITY: The 2013 Montana Legislature amended the Act to allow the department to require, by rule, additional hours of prelicensing education that are specific to Montana statutes and rules. Twenty hours of prelicensing education are already required by 32-9-107, MCA. Of that twenty hours, eight hours must be in specific subject matter areas.

The department has chosen to require that two hours of the twenty hours of prelicensing education be in Montana-specific areas because the department has recently adopted the uniform state test. In the past, Montana administered a Montana-specific test to all applicants for a license in this state. However, on July 1, 2013, Montana adopted the uniform state test. The uniform state test is a state test for all the states that participate in the Nationwide Mortgage Licensing System (NMLS). It tests on areas of law that are common to most states. It is not specific to Montana. Montana chose to adopt this test because it is intended to allow a more fluid transfer of mortgage loan originators from the registration side of the NMLS, which financial institutions use, to the licensing side of the NMLS, which non-financial institutions use. Uniformity is increasingly seen in the world of mortgage regulation due to the impact of federal laws and rules in this area. In general, the industry has requested that state laws be made as uniform as possible to allow mortgage loan originators to do business in as many states as possible. To the extent that Montana is able to become more uniform, without sacrificing its own standards of consumer protection, the department strives to do so.

But since the Montana Legislature chose not to adopt the model state law in 2009 when it was presented by the department, Montana law varies from laws in other states in many ways. In order to ensure that current applicants for a license are familiar with Montana law, the department is proposing that the prelicensing education include two hours of Montana-specific education. There is no other way to ensure that applicants for a Montana loan originator's license are familiar with Montana statutes and rules.

NEW RULE IV APPLICATION DEEMED ABANDONED (1) An application is deemed abandoned if the applicant fails to provide the information requested by the department within 60 days of notification of the deficiencies to applicant by the department or December 31, whichever comes first.

AUTH: 32-9-120, MCA  
IMP: 32-9-120, MCA

STATEMENT OF REASONABLE NECESSITY: The 2013 Legislature amended the Act to allow the department to consider an application abandoned if the applicant fails to provide the information requested by the department within the time period set by the department. This is necessary for two reasons: first, applications can remain pending indefinitely if applicants do not timely respond to a request for information and second, all licenses expire on December 31. If an

applicant applied in 2012, but did not respond to a request for information until 2013, the applicant could argue that the license application was still pending a year or more later. Due to concerns about staleness of an application, as well as concerns of staff about pending applications that clog up workloads for extended periods of time, the department has determined that 60 days is the appropriate time period to allow an applicant to gather information. The department surveyed other states and found that other states use time periods ranging from 15 days to 60 days before they consider an application to be abandoned for failure to provide information. The department staff unanimously felt that 60 days was the appropriate time period. Sometimes applicants are asked to gather information that is not immediately available and may take some time to gather. However, the staff felt that 60 days was a more-than-generous amount of time to allow an applicant to gather information. The December 31 date is included to make clear that the 60-day period cannot run over the end of the expiration date of the license.

4. The rules proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

2.59.1701 DEFINITIONS For purposes of the Montana Mortgage Act and this subchapter, the following definitions apply:

~~(1) "Another person involved in the transaction" means a licensee, the borrower's employer, the lender, the real estate agent, or other persons or entities allowed by the lender guidelines.~~

(2) through (4) remain the same, but are renumbered (1) through (3).

~~(5)~~(4) "Material change" means:

~~(a) a change in the physical location of the principal location and/or branch office;~~

~~(b) a change in the phone number;~~

~~(c) a change in the nature of the business;~~

(d) remains the same, but is renumbered (a).

~~(e) a change in the share ownership of the company of 10% or more;~~

(f) and (g) remain the same, but are renumbered (b) and (c).

(6) through (8) remain the same, but are renumbered (5) through (7).

~~(9)~~(8) "Table funding" means the closing of a loan naming a mortgage broker, a mortgage broker's business entity, or a loan originator as the lender on the mortgage loan note, which note is then sold to another party within three business days of closing ~~to another party~~.

(10) remains the same but is renumbered (9).

~~(11)~~(10) "Work in a related field" or "in a related field" means:

~~(a) for a designated manager, three years of experience as a:~~

~~(i)~~(a) as a mortgage broker, or a branch office manager of a mortgage broker business;

~~(ii)~~(b) as a mortgage banker, or responsible individual, or branch manager of a mortgage banking business;

~~(iii)~~(c) as a mortgage loan officer;

~~(iv)~~(d) as a branch manager of a mortgage broker or lender;

~~(v)~~(e) as a mortgage loan originator; or

~~(vi)(f) as a state or federal regulator who examines compliance of residential mortgages of state or federally chartered financial institutions; or,~~  
~~(vii) as a mortgage loan originator licensee in another state where the licensing standards are substantially similar to those in this state, as determined by the department; and~~  
~~(b) for a mortgage loan originator, six months:~~  
~~(i) as a loan originator in a mortgage broker business;~~  
~~(ii) as a loan originator in a mortgage banking business;~~  
~~(iii) as a mortgage loan officer;~~  
~~(iv) as a mortgage loan originator licensee in another state where the licensing standards are substantially similar to those in this state, as determined by the department;~~  
~~(v) as a mortgage loan processor;~~  
~~(vi) as a mortgage loan closing agent; or~~  
~~(vii) as a state or federal regulator who examines compliance of residential mortgages of state or federally chartered financial institutions.~~

AUTH: 32-9-109, 32-9-121, ~~32-9-125~~, 32-9-130, MCA

IMP: 32-9-109, 32-9-116, ~~32-9-117~~, 32-9-121, 32-9-122, 32-9-123, ~~32-9-125~~, 32-9-133, 32-9-166, MCA

STATEMENT OF REASONABLE NECESSITY: The first section of the rule is being deleted because the statute in which the term was used was deleted by the 2013 Montana Legislature in Senate Bill 93.

The change of a licensee's physical location, phone number, or branch office is no longer considered a material change that requires notice to the department under 32-9-166, MCA. These changes are now required to be reported through the NMLS, which will automatically notify all the states in which the licensee is licensed. If the entity desires, it is able to file an advance change notification with the NMLS, which will allow the entity to tell the states in which it is licensed of an anticipated change before it occurs. This allows the states to review the changes and determine whether any additional information is needed before the change can be made in NMLS.

In the case of a change in the nature of the business or a change in share ownership of 10% or more, the NMLS would require the entity to file an amendment to reflect the change in the nature of the business, which may trigger a license requirement depending on what the change is, or an amendment disclosing the names of the new owners of 10% or more of the shares. These changes are now handled through the NMLS and do not require a manual notification to the department.

Minor editorial changes are being made for ease in reading the rules.

Having a mortgage loan originator license in another state is being deleted from this rule, but it is being added to ARM 2.59.1702 on what constitutes proof of experience. This is because this criterion logically belongs there, not in the definitions rule.

The six-month experience requirement for mortgage loan originators is being eliminated because this requirement was repealed in Senate Bill 93 of the 2013 Montana Legislature.

The sections are being renumbered to correct the numbers after deletion.

Section 32-9-109, MCA, is being added to the authorizing section because it authorizes rulemaking on experience requirements. Section 32-9-125, MCA, is being deleted because it was repealed in Senate Bill 93 of the 2013 Montana Legislature. Section 32-9-117, MCA, was revised in the 2013 Montana legislative session and no longer references designated managers so it is being removed since this rule no longer implements it. Section 32-9-125, MCA, is being deleted because it was repealed in Senate Bill 93 of the 2013 Montana Legislature. Section 32-9-166, MCA, is being added because the term "material change" was moved to this section in the 2013 Montana legislative session.

2.59.1702 PROOF OF EXPERIENCE (1) Satisfactory proof of experience is for a designated manager demonstrates three years of experience by providing:

(a) copies of W-2 or 1099 tax forms verifying employment; or

~~(b) copies of paystubs.~~

(b) verification of active licensure as a mortgage loan originator in another state through the Nationwide Mortgage Licensing System (NMLS).

AUTH: ~~32-9-109~~, 32-9-130, MCA

IMP: ~~32-9-108~~, 32-9-109, MCA

STATEMENT OF REASONABLE NECESSITY: The NMLS is used by all 50 states for licensing mortgage loan originators employed by nondepository financial institutions such as mortgage lenders and mortgage brokers. The department has access on the NMLS to verify when a mortgage loan originator obtained their mortgage loan originator license in other states. This also includes viewing the licensing status to ensure that the license is maintained in an active status. The ability to view this information is an acceptable method to verify the proof of experience of a mortgage loan originator. The Montana Mortgage Act requires that each designated manager have three years of experience as a mortgage loan originator. The department is adding the option of NMLS licensure because it further streamlines the paper licensing process that relies upon a central database and document uploads.

The option to provide copies of paystubs is being eliminated because it was originally included as an option for mortgage loan originators who were required to demonstrate six months of experience and may not have yet received a W-2 or 1099. The six-month experience requirement for mortgage loan originators was repealed in Senate Bill 93 during the 2013 legislative session.

The statute implemented is 32-9-109, MCA, not 32-9-108, MCA, and it specifically provides for the department to establish by rule what work in a related field means; therefore, that statute is being added to the authorizing section.

2.59.1728 ADOPTION OF STANDARDIZED FORMS AND PROCEDURES OF THE NMLS (1) The NMLS Policy Guidebook dated ~~April 16, 2012~~ July 23,

2012, is incorporated and adopted by reference. It can be found at <http://mortgage.nationwidelicensingsystem.org/slr/common/policy/Pages/default.aspx>.

(2) The following standardized NMLS forms relating to licensing are approved and adopted by reference:

- (a) NMLS Company Form dated ~~March 19, 2012~~ April 16, 2012;
- (b) NMLS Branch Form dated ~~March 19, 2012~~ April 16, 2012;
- (c) NMLS Individual Form dated ~~March 19, 2012~~ April 16, 2012;
- (d) Mortgage Uniform 1 Registry (MU1R) version 1 dated January 27, 2011;
- (e) Mortgage Uniform 4 Registry (MU4R) version 1 dated January 27, 2011;
- (f)(d) Uniform Company Renewal Checklist dated ~~September 15, 2010~~

September 11, 2013; and

(g)(e) Uniform Individual Renewal Checklist dated ~~September 15, 2010~~ September 8, 2013.

(3) The Mortgage Loan Originator (MLO) Testing Handbook dated April 7, 2013, is incorporated and adopted by reference. It may be found at <http://mortgage.nationwidelicensingsystem.org/profreq/testing/Documents/MLO%20Handbook.pdf>.

(3) remains the same, but is renumbered (4).

AUTH: 32-9-130, MCA

IMP: 32-9-105, 32-9-110, 32-9-112, ~~32-9-117~~, 32-9-130, 32-9-134, MCA

STATEMENT OF REASONABLE NECESSITY: The policy guidebook and the standardized forms used by the NMLS have been updated. The department is adopting the updated versions of the forms being used on the NMLS. This is necessary because otherwise the department rules would require forms to be used that are no longer available on the NMLS. The Mortgage Loan Originator (MLO) Testing Handbook dated April 7, 2013, is being adopted because it contains all the information, policy, and guidelines necessary to study for, schedule, take, and get results from a test as well as the test takers code of conduct and representations, and everything the test taker needs to know to retake an examination if they fail one or more times. It takes the place of ARM 2.59.1727, which is being proposed for repeal in this notice.

Section 32-9-110, MCA, is being added because it is the testing statute, and the MLO Testing Handbook implements that section. Section 32-9-117, MCA, was revised by the 2013 Montana Legislature and no longer references renewals of licenses; therefore, this section is being removed. Section 32-9-134, MCA, is being added because the 2013 Montana Legislature moved the license renewal section to this statute. Accordingly, this rule implements it.

#### 2.59.1731 REINSTATEMENT OF EXPIRED OR SUSPENDED LICENSES

(1) Upon expiration of a license under ~~32-9-117~~ 32-9-134, MCA, due to nonrenewal by the renewal date, the licensee shall immediately cease from engaging in the activities for which the license was issued. Except as provided in (3), the department may reinstate an expired license, provided that by the last day of February following expiration of the license, the following are submitted:

(a) through (d) remain the same.

(e) proof that the licensee continues to meet standards for licensure under ~~32-9-127~~ 32-9-120, MCA; and

(f) remains the same.

(2) An expired license that is not reinstated by the last day of February in accordance with (1) is "~~Terminated-Failed to Renew~~" "Terminated-Expired" and may not be reinstated except as provided in (3). The holder of a "~~Terminated-Failed to Renew~~" "Terminated-Expired" license may reapply as a new license applicant.

(3) If a "~~Terminated-Failed to Renew~~" "Terminated-Expired" status of the license of a military member or reservist was the result of the licensee being on active duty status at the time of renewal, the license may be reinstated, if within 30 days of the licensee's discharge from active duty status, the department receives through NMLS an acceptable sponsorship request from the licensee's employing mortgage broker or mortgage lender and it receives outside of the NMLS renewal process within that 30-day period, the following:

(a) through (f) remain the same.

(4) remains the same.

AUTH: 32-9-130, MCA

IMP: ~~32-9-117~~, 32-9-120, 32-9-126, 32-9-134, MCA

STATEMENT OF REASONABLE NECESSITY: The 2013 Montana Legislature revised the Act in many ways. Several statutes were deleted or moved. These changes rendered several citations incorrect. The rule is being revised to correct the citations both in the body of the rule as well as in the authority and implementing sections.

Section 32-9-117, MCA, was revised in the 2013 Montana legislative session and no longer references renewals of licenses; it is therefore being removed. Section 32-9-120, MCA, contains the general requirements for issuance of a license, not 32-9-127, MCA. Section 32-9-134, MCA, is being added because the 2013 Montana Legislature moved the license renewal section to this statute. This rule implements it.

The terminology currently being used by the NMLS is "Terminated-Expired" if the licensee has failed to renew a license after the reinstatement period, not "Terminated-Failed to Renew." The rule is being amended to reflect this change.

2.59.1743 REPORTING FORMS FOR MORTGAGE SERVICERS (1) A mortgage servicer licensee shall compile and submit a report to the department 45 days after the end of each quarter containing the information in (3) for the preceding quarter. The quarter end dates are March 31, June 30, September 30, and December 31.

(2) At the servicer's election, the servicer may submit either the expanded mortgage call report (MCR) through the NMLS or the Quarterly Statement for Mortgage Servicing Activity dated December 23, 2011. Each servicer shall submit either an expanded MCR through the NMLS or the Quarterly Statement for Mortgage Servicing Activity dated December 23, 2011 for each and every quarter during which it held a license.

(3) The Quarterly Statement for Mortgage Servicing Activity dated December 23, 2011, which is adopted and incorporated by reference, is available on the department's web site at [www.banking.mt.gov](http://www.banking.mt.gov).

~~(2) The mortgage servicer report must contain the following information:~~

~~(a) the number of Montana mortgage loans the servicer is servicing;~~

~~(b) the type of loans (such as Federal Housing Administration guaranteed or private label) and characteristics of the loans in this state (fixed, variable, home equity lines of credit [HELOCs], reverse mortgages, high-cost loans, higher-priced loans, option adjustable rate mortgages [ARMs], and negative amortization loans);~~

~~(c) the number of mortgage loans the servicer is servicing that are in payment default and a breakdown of these mortgage loans by length of payment delinquency, including 30-day, 60-day, 90-day, and longer delinquencies;~~

~~(d) for each loan in (3)(c), the unique identifier of the mortgage loan originator and the broker who originated the loan;~~

~~(e) information on loss-mitigation activities undertaken including, but not limited to, the following:~~

~~(i) the number of workout arrangements entered into by the servicer in connection with mortgage loans;~~

~~(ii) a description of the types of workout arrangements, including mortgage loan modifications, and the percentage of each type of workout arrangement entered into;~~

~~(iii) the ratio of loan modifications requested by the borrower to the actual number granted by the mortgage servicer; and~~

~~(iv) the proactive steps taken by the mortgage servicer to identify borrowers at a heightened risk of default, such as those with impending interest rate resets, including, but not limited to, contacts with borrowers to assess their ability to repay their mortgage loan obligations; and~~

~~(f) the number of foreclosure actions commenced in this state in connection with mortgage loans the mortgage servicer is servicing and where the loan is in the foreclosure process.~~

AUTH: 32-9-130, MCA

IMP: 32-9-170, MCA

STATEMENT OF REASONABLE NECESSITY: The department is proposing to allow mortgage servicers to file an expanded mortgage call report, if they choose to do so, instead of filing the Quarterly Statement for Mortgage Servicing Activity. The expanded version of the MCR is only available to servicers that are listed in the NMLS as a Fannie Mae or Freddie Mac Seller/Servicer or a Ginnie Mae issuer. In addition, if the expanded MCR is completed by a servicer for Montana, it must be completed for all states in which the servicer is licensed. For servicers that are a Fannie Mae or Freddie Mac Seller/Servicer or a Ginnie Mae issuer who already file the expanded MCR, the department will accept the expanded MCR in lieu of the Quarterly Statement for Mortgage Servicing Activity. This will lessen the regulatory burden on those servicers.

Some servicers, however, are not a Fannie Mae or Freddie Mac Seller/Servicer or a Ginnie Mae issuer so they are not eligible to file an expanded

MCR. Also, the filing of an expanded MCR in one state triggers the requirement to file in all states in which the servicer is licensed. For these reasons, the department will continue to accept the Quarterly Statement for Mortgage Servicing Activity from servicers.

The servicer must file one report or the other for every quarter in which they are licensed. This amendment is intended to allow a servicer to elect to file whichever report is easiest for it to file. Either report will provide the department with the information necessary for the department to supervise the servicer. The department seeks to make quarterly reporting requirements as easy on servicers as it can, within the bounds of the information that the department needs to do its job.

5. The department proposes to repeal the following rules:

2.59.1725 LICENSING EXEMPTIONS AND VOLUNTARY REGISTRATION BY EXEMPT ENTITIES WITH THE NATIONWIDE MORTGAGE LICENSING SYSTEM (NMLS), found on ARM page 2-6160.

AUTH: 32-9-130, MCA  
IMP: 32-9-104, MCA

STATEMENT OF REASONABLE NECESSITY: The exemptions listed in the rule have been repealed. When the reason of a rule ceases, so should the rule itself. 1-3-201, MCA.

2.59.1727 MORTGAGE LOAN ORIGINATOR LICENSING EXAM RETAKES, found on ARM page 2-6161.

AUTH: 32-9-130, MCA  
IMP: 32-9-110, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is being repealed because the department is adopting the Mortgage Loan Originator (MLO) Testing Handbook, dated April 7, 2013, by reference in ARM 2.59.1728. The MLO Testing Handbook contains test components and specifications, the uniform state test implementation, an enrollment eligibility chart, test content outlines, the effective dates of the tests, an overview of the testing process, instructions on how to enroll for the test, instructions on how to schedule a test appointment, appointment cancellation and rescheduling, special accommodations, NMLS rules of conduct, test procedures, test center policies, exit survey, score reporting, stand-alone uniform state test scoring, test content comments and challenges, and the waiting period for retaking a failed test. The MLO Testing Handbook also contains sample test questions. The MLO Testing Handbook is far more comprehensive than the rule being repealed.

2.59.1749 WRITTEN EXEMPTION FORM FOR REQUESTING A MORTGAGE LICENSING EXEMPTION, found on ARM page 2-6177.

AUTH: 32-9-130, MCA

IMP: 32-9-104, MCA

STATEMENT OF REASONABLE NECESSITY: The requirement for a written request for an exemption has been repealed. When the reason of a rule ceases, so should the rule itself. 1-3-201, MCA.

6. Concerned persons may present their data, views, or arguments concerning the proposed action to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to [banking@mt.gov](mailto:banking@mt.gov); and must be received no later than 5:00 p.m., November 29, 2013.

7. Kelly O'Sullivan, Department of Administration, has been designated to preside over and conduct this hearing.

8. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name and mailing address and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to [banking@mt.gov](mailto:banking@mt.gov); or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the department's web site at <http://doa.mt.gov/administrativerules.mcp>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by the department by mail on August 26, 2013.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that these new rules and the proposed rule amendments and repeals will not significantly and directly impact small businesses.

By: Sheila Hogan  
Sheila Hogan, Director  
Department of Administration

By: Michael P. Manion  
Michael P. Manion, Rule Reviewer  
Department of Administration

Certified to the Secretary of State October 21, 2013.