

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PUBLIC HEARING ON
adoption of New Rules I through VII)	PROPOSED ADOPTION,
pertaining to mortgage servicers, the)	AMENDMENT, AND REPEAL
amendment of ARM 2.59.1701,)	
2.59.1703, 2.59.1706, 2.59.1707,)	
2.59.1709, 2.59.1725, 2.59.1727,)	
2.59.1728, 2.59.1730, 2.59.1731, and)	
the repeal of ARM 2.59.1721,)	
2.59.1722, 2.59.1723, 2.59.1732, and)	
2.59.1736)	

TO: All Concerned Persons

1. On May 17, 2012, a public hearing will be held in Room 342 of the Park Avenue Building, 301 South Park, Helena, Montana at 10 a.m. 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 May 10, 2012, 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.

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

NEW RULE I REPORTING FORMS FOR MORTGAGE SERVICERS (1) An applicant for a mortgage servicer license in Montana shall provide a report to the department of the Montana residential mortgage loans serviced within the previous 12-month period prior to the submission of its mortgage servicer application. The report must contain the information in (3). The report must be submitted to the department on the mortgage servicer reporting form, MT-5 Servicer Reporting Form, which is adopted by reference. The form may be downloaded from the Nationwide Mortgage Licensing System web site <http://mortgage.nationwidelicingsystem.org/slr/StateForms/MT5-Servicer%20Reporting%20Form.pdf>.

(2) 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. The Quarterly Statement for Mortgage Servicing Activity, which is adopted by reference, is available on the department's web site at www.banking.mt.gov.

- (3) 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: House Bill 90 (HB 90) was passed by the 2011 Legislature and signed by the Governor on May 5, 2011. HB 90 provides that the department must license and regulate mortgage loan servicers through the Nationwide Mortgage Licensing System (NMLS). As part of the licensing process, HB 90 enacted 32-9-170, MCA, which requires mortgage loan servicers to file with the department, upon request, a report detailing the mortgage servicer's activities in this state in a form and format acceptable to the department. This new rule sets forth the substance of the report and the timing requirements of when the report should be submitted.

Applicants for a mortgage servicer license must submit the report as part of the application process. The report for new applicants should cover the previous 12-month period prior to the submission of the mortgage servicer application. This will give the department an approximate annual servicing volume. This information is used by the department for the timing and frequency of examinations. Obviously, a mortgage servicer that services a large percentage of Montana loans should be

examined sooner and more frequently than a mortgage servicer that services only a few Montana loans.

On an ongoing basis, all other entities in the mortgage loan origination process must submit quarterly call reports to the NMLS on their mortgage-related activities. For purposes of consistency with the NMLS and because many servicers are also lenders who must file call reports through the NMLS, the department believes mortgage servicers should do the same. In addition, in the case of mortgage servicers, the department needs timely information on Montana loans that are in default and where in the process they are. Annual or even semiannual reports are simply not timely enough to allow the department to keep current on mortgage loan conditions in the state.

The report is due 45 days after the end of the quarter because the NMLS call report is due at the same time. This allows entities sufficient time after the quarter ends to collect and report the data for the prior quarter. It is also consistent with the timing of the mortgage call reports on NMLS. The department has developed a Quarterly Statement for Mortgage Servicing Activity, which is on the department's web site at www.banking.mt.gov.

This rule repeats the language of 32-9-170(5), MCA; however, it is necessary to repeat the statutory language in order to flesh out what information and data the department is requesting. Section 32-9-170, MCA, provides that the servicer must file a report with this information: (a) the number of mortgage loans the mortgage servicer is servicing; (b) the type and characteristics of the loans in this state; (c) the number of serviced loans in default, along with the breakdown of 30-day, 60-day, and 90-day delinquencies; (d) information on loss mitigation activities, including details on workout arrangements undertaken; and (e) information on foreclosures in this state. In order to draft the rule, it was necessary to repeat "the types of loans" in (3)(b) in order to define what the department believes "types of loans" means. In this case, the department believes that "types of loan" means the guarantor or entity making the loan as opposed to the characteristics of the loans, which is its terms and conditions. And in (3)(c) it was necessary to repeat the number of serviced loans in default in order to specify that the specific default that the department is concerned with is payment default.

One additional set of information is being added by this rule to the statutory requirements: the unique identifier of the loan originator and broker that originated loans in default. This is found in (3)(d). The unique identifier of the loan originator and broker that originated the loans in default will enable the department to track the history of loans made by an individual and a company in order to determine whether there are problems that need to be addressed through an examination and/or an enforcement action. Without this information, the department would have no way to track the individuals and entities involved in making a series of loans to individuals who later went into default. Since one of the purposes of the Secure and Fair Enforcement Mortgage Licensing Act of 2008 (SAFE Act) is consumer protection, the department must know the identities of the individuals and entities involved in making loans that borrowers cannot afford to repay. If the department sees a pattern of loans being made by an individual or entity to persons who cannot afford the loan, the department would likely conduct an examination in order to determine

whether inappropriate activities were taking place which were harming Montana consumers.

The statute allows the department to inquire into loss mitigation activities undertaken in this state. Loss mitigation is an area of particular interest to the department and it requires careful monitoring to determine if the servicer is focusing its efforts on these matters. To some extent, the servicer should be able to identify borrowers at risk who need a workout arrangement, such as borrowers with adjustable rate mortgages that are resetting. But the servicer may not be able to identify those borrowers who may need a workout until the borrower says so. The servicer has no way to identify those borrowers who may lose a job or get divorced.

There are many types of workout arrangements that can be agreed to by a borrower and the note holder. Some are: a principal reduction, rate reduction, short sale, or some combination thereof.

In order to monitor the loss mitigation being done for Montana borrowers, the department has determined that it needs the number of workout arrangements entered into by the servicer in connection with mortgage loans it services. This will give the department the total number of workouts done by each servicer. While these numbers will vary given the types of loans that the servicer is servicing, there should be some rough consistency across types of servicers. For instance, if the department saw a subprime servicer who had an abnormally low number of workout arrangements, the department may well schedule an examination to determine why that was. It may be that the servicer does not have sufficient staff to address the requests for workouts that it is getting or that it is simply not receiving the requests for assistance from the borrower. In any case, it would be something that the department should investigate.

The department is also requesting a description of the types of workout arrangements, including mortgage loan modifications, and the percentage of each type of workout arrangement entered into by the servicer over the period. As stated above, there are several different types of workout arrangements that can be made between a borrower and a note holder. The department is requesting this information because it can be used to determine exactly what types of modifications are being done in Montana, successfully or not.

The department is requesting the ratio of loan modifications requested by the borrower to the actual number granted by the mortgage servicer. This information will be used by the department to identify the servicers who are responding to requests for modification as opposed to those who are not. If the department saw a servicer with an inordinately high number of requests for modification and an inordinately low number of actual modifications, the department would likely conduct an examination in order to try to determine why this situation exists.

Montana law requires that if the borrower is delinquent or is otherwise in default, the servicer must act in good faith to inform the borrower of the facts concerning the loan, and the nature of the delinquency or default. If the borrower replies, the servicer must negotiate with the borrower, subject to the mortgage servicer's duties and obligations under the servicing contract, if any, to attempt a resolution or workout pertaining to the delinquency or default. For the department to determine whether Montana law has been followed, the department must know all the servicer's efforts.

The department is also asking for 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. To the extent that servicers can identify borrowers who may be going into default, the servicer should be taking proactive steps to reach out to those borrowers at risk rather than just sending adjustment letters and waiting to see if those borrowers will go into default. To the extent that the servicers can address potential defaults before the fact, it helps everyone, the borrowers, noteholders, and the servicer, to stay out of a default situation.

The other sections of the statute were repeated for completeness of the rule.

NEW RULE II RECORDS TO BE MAINTAINED BY MORTGAGE SERVICERS (1) A mortgage servicer shall create and retain a file for each Montana residential mortgage loan which it services. The file must contain, if applicable:

- (a) the borrower (or borrowers) name(s);
- (b) a copy of the original note and deed of trust or mortgage;
- (c) a copy of any disclosures or notifications provided to the borrower required by state or federal law or rule or regulation;
- (d) a copy of all written requests for information received from the borrower and the mortgage servicer's response to such requests as required by state or federal law;
- (e) a record of all payments received from the borrower containing all information required to be provided to a borrower upon request under 32-9-169(1), MCA;
- (f) a copy of any bankruptcy plan approved in a proceeding filed by the borrower or a co-owner of the property subject to the mortgage;
- (g) a communications log documenting all verbal communication with the borrower or the borrower's representative;
- (h) a record of all efforts by the mortgage servicer to comply with the duties required under 32-9-170(7), MCA, including all information utilized in the mortgage servicer's determination regarding loss-mitigation proposals offered to the borrower;
- (i) a copy of all notices sent to the borrower related to any foreclosure proceeding filed against the encumbered property;
- (j) records regarding the final disposition of the loan including a copy of any collateral-release document, records of servicing transfers, charge-off information, or real estate owned (REO) disposition; and
- (k) copies of all contracts, agreements, and escrow instructions to or with any depository institution, any mortgage lender, mortgage servicer, or mortgage broker, any warehouse lender or other funding facility, any servicer of mortgage loans, and any investor, for a period of not less than five years after expiration of any such contract or agreement.

AUTH: 32-9-130, MCA

IMP: 32-9-121, 32-9-170, MCA

STATEMENT OF REASONABLE NECESSITY: HB 90 requires the department to license, examine, and supervise mortgage servicers that service Montana residential mortgage loans. Section 32-9-121, MCA, requires licensees to maintain books, accounts, records, and copies of residential mortgage loan files and escrow account records that are necessary to enable the department to determine whether the licensee is in compliance with the applicable laws and rules.

To allow the department to conduct an examination, the records listed in this rule must be examined. For instance, the department needs copies of disclosures and notifications required by federal and state law as well as rules and regulations so that the department can ensure the disclosures were done correctly and that the borrowers received all the required disclosures and notifications. A record of all payments received from the borrowers is critical since the main function of the servicer is to collect and correctly apply the payments. The department does an escrow analysis when it conducts an examination to ensure that the proper amounts are being collected from borrowers and properly applied to debts owed and investors' accounts.

The communications log is used to determine what the communications were between the borrower and servicer in order to flag the examiners to look at problem areas in the file. A copy of the note is needed in order to determine the name on the note. The deed of trust is needed in order to determine if it is, in fact, a deed of trust or a mortgage. Those two instruments are treated differently under Montana law, and the foreclosure processes are different as are the remedies available to the lender. Therefore, in order to determine whether the foreclosure was done properly, the department must know whether the instrument foreclosed on was a deed of trust or a mortgage.

Copies of all borrowers' requests for information and the response by the servicer are needed because federal law and regulation establish timelines in which borrowers' requests for information must be responded to by servicers. In order for the department to determine if those timelines have been met, it must have copies of the borrower's request for information and the response by the servicer. Montana law requires that if a borrower is delinquent or is otherwise in default, the servicer must act in good faith to inform the borrower of the facts concerning the loan, and the nature of the delinquency or default. If the borrower replies, the services must negotiate with the borrower, subject to the mortgage servicer's duties and obligations under the servicing contract, if any, to attempt a resolution or workout pertaining to the delinquency or default. For the department to determine whether Montana law has been complied with, the department must know all the servicer's efforts.

The department needs the final disposition of the loan records to determine what happened to the loan; for example, if it was transferred to another servicer, certain notices must be given in specific timeframes according to federal law. If the property was sold in a short sale, there should be charge-off information showing the amount charged off. If the loan was refinanced or paid off, there should be collateral release documents. If the loan was foreclosed on or the borrower signed a quit claim deed in lieu of foreclosure, the records regarding the ultimate sale and disposal of the property should be kept in order to allow the department to determine if all proper processes were followed.

Obviously, copies of the contracts, agreements, and escrow instructions are needed in order to determine whether the contracts, agreements, or instructions were followed appropriately according to their terms. In addition, to facilitate an examination, the department is requiring that Montana records be kept in a separate folder for each Montana residential mortgage loan serviced. This will allow examiners to request that all Montana residential mortgage loan files be pulled, rather than all loans being serviced by the mortgage servicer anywhere in the country. The department believes that keeping separate files will improve the efficiency of the examination process.

Finally, the documents listed above must be retained for purposes of any enforcement action that may be taken by the department.

There are alternative approaches to the above requirements. First, the department could propose not including any requirements, but this approach would abdicate the department's duties under the law by preventing the department from being able to conduct examinations and investigations of its licensees. Second, the department could propose some but not all the requirements. The department, however, believes that all the information is necessary in order for the department to examine and supervise licensees.

NEW RULE III WRITTEN EXEMPTION FORM FOR REQUESTING A LICENSING EXEMPTION (1) The written exemption form for requesting exemptions under 32-9-104(1)(b), MCA, is the Mortgage Uniform 1 Registry (MU1R) version 1, which is filed with the Nationwide Mortgage Licensing System, www.mortgage.nationwidelicensingsystem.org.

(2) The written exemption form for requesting exemptions under 32-9-104(1)(c), MCA, is the Mortgage Uniform 4 Registry (MU4R) version 1, which is filed with the Nationwide Mortgage Licensing System, www.mortgage.nationwidelicensingsystem.org.

(3) These forms are adopted and incorporated by reference in ARM 2.59.1728.

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

STATEMENT OF REASONABLE NECESSITY: Section 32-9-104(2), MCA, requires the department to create a form for requesting an exemption from state licensure. Two categories of exemptions, one for financial institutions and one for individuals employed by financial institutions, are required to be registered through the NMLS. See 32-9-103(30) and 32-9-104(1)(b) and (1)(c), MCA. Rather than duplicate the registration form through NMLS with another exemption form, the department adopts the registration form filed with NMLS as its form for requesting an exemption from licensure under Montana law. The department believes the NMLS form covers all the relevant areas and no purpose would be served by requiring that a separate state form be completed.

To file an MU1R through the NMLS, the financial institution or its subsidiary must be regulated by a federal banking agency under 32-9-103(30), MCA. If the financial institution or its subsidiary has filed a MU1R, and received a unique

identifier assigned by the NMLS, that is sufficient for purposes of state law to meet the exemption in 32-9-014(1)(b), MCA. Likewise, an employee of a financial institution or its subsidiary that has registered by filing an MU4R through the NMLS and been assigned a unique identifier is sufficient for purposes of state law to meet the exemption under 32-9-104(1)(c), MCA.

NEW RULE IV DEADLINE FOR RENEWAL APPLICATIONS

(1) Applications for renewal of licenses may be submitted to the department through the NMLS during the annual renewal period from November 1 to December 31.

(2) The department shall process all completed renewal applications submitted to it in the order received.

(3) The holder of an expired license may not conduct any business in Montana until becoming properly licensed.

AUTH: 32-9-130, MCA

IMP: 32-9-117, MCA

STATEMENT OF REASONABLE NECESSITY: The NMLS sets the renewal period, which runs from November 1 to December 31. All licenses expire by operation of law on December 31. Montana has no ability to change the renewal period set by NMLS.

NMLS could have set a different renewal period but it didn't. NMLS apparently decided that a two-month renewal period was sufficient, i.e., not too long and not too short. Regardless, Montana has no ability to change the renewal period set by NMLS.

The department processes the applications for renewal in the order it receives them. The department could process the renewal applications in inverse order, but that would lead to having to wait until all the applications for renewal were submitted before processing any renewals and would mean that all licenses would expire before any renewal applications could be processed. It would also mean that the last person who filed for renewal could resume business before anyone else could and the first person who filed for renewal would be the last person who could resume business.

The department determined after considerable thought that the easiest way to process applications is in the order in which they are received, provided, however, that the application is not considered "received" until it is complete. It is impossible to process an incomplete application because, by definition, something is missing.

Section 32-9-117(2) provides, "[t]he license of a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator is valid for up to a 1-year period and expires on December 31." Therefore, by statute, if a license is not renewed before December 31, it expires. An expired license is no license. No business may be conducted without a valid license. Section 32-9-102, MCA, provides that a person may not act as a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator with respect to any residential mortgage loan located in Montana unless licensed under the Montana Mortgage Act. The department cannot allow an individual or entity to act as an unlicensed

mortgage loan broker, lender, servicer, or loan originator because they once held a license. The statutory language is clear; no one can act as a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator with respect to any residential mortgage loan located in Montana unless licensed under the Montana Mortgage Act.

The department continues to receive inquiries from individuals and entities, believing they have some grace period to renew their licenses after December 31. They do not. All licenses expire on December 31, and if the license is not renewed before that date, the entity or individual must shut down, cease all activity, and not resume business until their license has been renewed. Any person or entity conducting mortgage activity with an expired license is guilty of unlicensed activity and the department will bring an enforcement action against them.

That an individual or entity has applied for renewal does not mean that the license has been renewed. The application for renewal must then be processed by the department (in the order in which it was received as stated above) before it can be determined if the individual or entity meets all the qualifications for renewal. The license is not renewed until it has been renewed on NMLS. Any license not renewed on the NMLS before December 31 expires by operation of law and no business may be conducted under that license.

NEW RULE V RECORD MAINTENANCE, STORAGE, TRANSFER, AND DESTRUCTION (1) Records may be maintained electronically if the storage system complies with the Fair and Accurate Credit Transactions Act of 2003 (15 USC 1681 et seq.), the Gramm-Leach-Bliley Act (15 USC 6801 et seq.), and the regulations adopted thereunder (16 CFR 314).

(2) A licensed entity shall make all records available to the department in a usable format pursuant to 32-9-121 and 32-9-130, MCA.

(3) An individual who terminates sponsorship with an entity shall relinquish to the entity any records in the individual's possession at the time of termination.

(4) A person who disposes of records at the end of the retention period shall destroy personal information by shredding, burning, erasing, or otherwise making the information indecipherable as required by 30-14-703, MCA, the Fair and Accurate Credit Transactions Act of 2003 (15 USC 1681 et seq.), and the regulations adopted thereunder (16 CFR 682).

(5) A licensed entity that becomes aware of an instance of unauthorized access to customer information shall comply with 30-14-1704, MCA.

AUTH: 32-9-121, 32-9-130, MCA

IMP: 32-9-121, 32-9-124, MCA

STATEMENT OF REASONABLE NECESSITY: Section 32-9-121, MCA, requires the department to adopt rules to control the maintenance, transfer, storage, and destruction of records when a licensee ceases business. It also requires the licensee to maintain records in accordance with good business practices. Maintaining personal information of borrowers in a secure manner is not only good business practice, it is the law. Licensees are required to comply with the Montana Mortgage Act and the rules adopted thereunder as well as any other state or federal

law, rules, and regulations adopted under those laws that are applicable to any business covered under the Montana Mortgage Act pursuant to 32-9-124(1)(i), MCA.

To the extent that licensees have borrowers' personal information, they must comply with Gramm-Leach-Bliley (15 USC 6801 et seq.) and the regulations adopted thereunder (16 CFR 314). To the extent that licensees have consumer reporting information, otherwise known as credit reports, they must comply with the Fair and Accurate Credit Transactions Act of 2003 (15 USC 1681 et seq.) and the regulations adopted thereunder (16 CFR 682).

This new rule allows licensees to keep records electronically as long as federal laws and rules regarding the security and destruction of electronic records are met. The department believes that allowing electronic storage will ease the burden on those entities that store records in electronic format.

The records, whether maintained electronically or not, must be available to the department for investigation and examination purposes. Without these records, the department cannot perform its statutory responsibilities. If the records are in a format that cannot be accessed by the examiners, the entity is responsible for converting them into an accessible format and providing them to the department.

If an individual terminates sponsorship with an entity, the individual must relinquish the business records to the entity. As a matter of policy, borrowers' records should be maintained by the entity at the entity's facility, not by the individual. It creates the opportunity for identity theft if individuals keep borrower records at their homes or if an individual leaving a job were able to take borrowers' files with them.

At the end of the retention period set forth in 32-9-121, MCA, records must be destroyed in a manner that does not allow identity theft. They cannot be left in the trash or simply torn up in a manner that would allow them to be pieced back together. The department does not and cannot specify a particular means or method of disposal of records. The licensee is able to determine the most effective and efficient manner of disposal given the volume of records it has, its storage medium, costs, and timing needs. The burden is on the licensee to ensure that, whatever method of disposal is selected, the licensee safeguards personal information by making it indecipherable as required by 30-14-703, MCA, the Fair and Accurate Credit Transactions Act of 2003 (15 USC 1681 et seq.), and the regulations adopted thereunder (16 CFR 682).

If a security breach occurs, despite the entity having taken the necessary steps to prevent it, the entity is required by 30-14-1704, MCA, to notify the owner or licensee of the data of the breach. This language is necessary since licensees may not be aware of this Montana statute and its application to them.

NEW RULE VI RESPONSIBLE PARTY FOR RECORDS (1) If a licensed entity is actively engaged in the business of residential mortgage loans, the entity's designated manager is responsible for proper retention, maintenance, safeguarding, and disposal of records for the whole entity. The designated manager of each branch is responsible for proper retention, maintenance, safeguarding, and disposal of records for the branch managed.

(2) If a licensed entity ceases doing business in Montana, the entity's designated manager, as of the entity's last day of operation as designated on the

NMLS Company Form, is responsible for proper retention, maintenance, safeguarding, and disposal of records as set forth in [NEW RULE V]. The designated manager's failure to properly fulfill this duty may result in revocation or suspension of their license or civil penalties.

AUTH: 32-9-121, 32-9-130, MCA

IMP: 32-9-121, MCA

STATEMENT OF REASONABLE NECESSITY: This new rule makes the entity's designated manager responsible for records management while the entity exists and after it ceases operation. It also assigns responsibility for records management at the branch to the designated manager of the branch. It is necessary to assign direct responsibility for records management to a specific individual so that there is no confusion about who in an entity is responsible for this duty. The designated manager was chosen because that individual must have three years of experience in order to be a designated manager. Section 32-9-122, MCA. The designated manager is responsible for the operation of a particular location under the designated manager's full management, operation, and control. Section 32-9-103(10), MCA. That responsibility includes ensuring the maintenance, storage, retention, and disposal of records.

The problem that arises when an entity ceases operation is that the entity is out of business and it therefore can no longer maintain, store, transfer, or dispose of its records. Yet, borrowers and the department still need the records in the entity's possession. The reason that the borrowers need the records is because they are vitally important records of the single most important financial transaction that most people will make in their lives. In addition, mortgage loan files contain documents that have social security numbers, addresses, account numbers and balances, tax records, verification of income forms, child support costs, divorce decrees, and other sensitive personal information that retains its sensitive nature even after the mortgage company goes out of business. Borrowers have a reasonable expectation that their personal information will be safeguarded, even if an entity ceases operation.

The department needs the information in order to determine whether borrowers have a three-year right to rescission of their mortgage loans because the mortgage loan origination disclosures were improper when made. The borrowers will need copies of relevant documents such as notes, deeds, and mortgages in the event the loan pays off or goes into default. In other states, this has resulted in entities dumping all their records on the department when they cease operations. The state has no choice but to securely store and maintain and dispose of the records.

The department has no facilities, and no budget, to store, maintain, and dispose of records of licensees who have ceased doing business. Instead, this proposed new rule makes the designated manager of the entity responsible for the proper retention, maintenance, safeguarding, and disposal of records as set forth in New Rule V. The entity's designated manager was chosen because this individual is a high ranking official in the company who will have the resources to accomplish this task. The designated manager must be individually licensed so the manager would

have a strong incentive to properly protect records because the failure to do so will jeopardize the manager's license.

NEW RULE VII MONTANA SPECIFIC ESCROW FUND (1) A mortgage servicer shall establish an escrow fund specifically for Montana residential mortgage loans being serviced. The escrow fund must contain only money related to Montana residential mortgage loans.

AUTH: 32-9-130, MCA
IMP: 32-9-145, MCA

STATEMENT OF REASONABLE NECESSITY: HB 90 amended 32-9-145, MCA, to require a mortgage servicer to hold money received from a borrower on Montana residential mortgage loans in an escrow account that meets the requirements of 32-9-145, MCA. This rule is necessary to ensure that the escrow account contains money only from Montana residential mortgage loans.

In examining mortgage servicers, the department has found that some large servicers have one escrow account for all the loans they service, regardless of where the loan is located. This has resulted in a situation in which examiners requested escrow account statements and received over 1,000 pages in response. It was literally impossible to determine which payment was for which loan. In this instance, only a very few were loans located in Montana. It made it impossible for the examiners to track the money paid on Montana loans to determine where it went. This is a critical part of the examination process, and the examiners were unable to determine whether payments made on Montana loans were processed correctly.

This rule is designed to make it clear that 32-9-145, MCA, means that the escrow account held by a mortgage servicer must be a Montana-specific account, or an account which is dedicated only to Montana residential mortgage loans, not an account comingled with loans from all other states.

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 ~~Broker,~~
~~Mortgage Lender,~~ and ~~Mortgage Loan Originator Licensing Act~~ and this subchapter,
the following definitions apply:

(1) remains the same.

~~(2) "Dwelling" means a residential structure that contains one to four residential units whether or not that structure is attached to real property and includes an individual condominium unit, cooperative unit, mobile home, and a trailer, if used as a residence.~~

(3) through (5) remain the same, but are renumbered (2) through (4).

~~(6)~~ (5) "Material change" means:

(a) through (e) remain the same.

(f) the acquisition or disposition of another company; or

~~(g) any civil action involving fraud or dishonesty has been filed against the licensee;~~

~~(h) any criminal charge has been filed against the licensee; or~~

~~(i) remains the same, but is renumbered (g).~~

~~(7) "Mortgage loan servicer" means one who performs traditional mortgage loan servicing tasks such as sending monthly payment statements; collecting monthly payments; maintaining records of payments and balances; collecting and paying taxes and insurance; remitting funds to note holders; or following up on delinquencies provided the follow-up does not include offering or negotiating loan modifications or refinances.~~

~~(6) "Personal information" means:~~

~~(a) a customer's name, address, or telephone number, in conjunction with the customer's social security number, date of birth, driver's license number, account number, credit or debit card number, or a personal identification number or password that would permit access to the customer's account; or~~

~~(b) any combination of components of customer information that would allow an unauthorized third party to access the customer's account electronically, such as user name and password or password and account number.~~

~~(8) remains the same, but is renumbered (7).~~

~~(8) "Safeguard" means to prevent unauthorized access, use, disclosure, or dissemination.~~

~~(9) through (11) remain the same.~~

AUTH: 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, MCA

STATEMENT OF REASONABLE NECESSITY: HB 90 amended the name of the Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act to the Montana Mortgage Act. The corresponding change is being made in rule to make it consistent with statute.

HB 90 includes a definition of "dwelling" in 32-9-103(11), MCA, and a definition of "mortgage servicer" in 32-9-103(25), MCA. These two definitions are being removed from rule so as not to unnecessarily duplicate statutory language.

HB 90 requires the reporting of a civil or criminal action initiated against the licensee within 15 business days of its occurrence (32-9-166, MCA). Applicants for renewal are required to attest that there has not been a material change in the status of the license for the preceding 12 months as part of the annual renewal process. See 32-9-117, MCA. Since the initiation of a civil or criminal action against the licensee will be separately reported within 15 business days of its occurrence, it is no longer necessary to report them as material changes, and so the sections of material change as being any civil action involving fraud or dishonesty has been filed against the licensee and any criminal charge has been filed against the licensee are removed from the material change definition.

Two new definitions are being added to this rule. Both relate to the records maintenance, transfer, and storage found in 32-9-121, MCA. The first is the definition of personal information. Mortgage files are replete with borrowers' personal information including social security numbers, account numbers and balances, debit and credit card numbers and balances, paystubs, and tax records.

In storing, transferring, maintaining, and destroying records, this data must be kept secure because otherwise it would be a treasure trove for identity thieves. The definition of "personal information" identifies the type of information that must be safeguarded. This information was chosen because it is particularly valuable to identity thieves. With the information listed in (6)(a) and (b) or parts of that information, an identity thief could either access an existing account or set up a new account using the identity of the victim. Either of these options is not good for the victim who stands to have money stolen and his or her credit ruined.

The definition of "safeguard" is broad enough to allow many means of data protection. If the data is in paper form, it must be safeguarded by physical means, such as locking and preventing unauthorized access. If the data is electronic, it must be safeguarded using electronic means, encryption, secure passwords, or a separate server to which only authorized persons have access or other electronic method. The definition is purposely being kept broad because each storage system is different. No specific means of safeguarding can be defined that will fit every situation. The department is not mandating a particular method or manner of securing sensitive data, only that the data be secure. The security chosen will be up to the entity based on its needs, size, and sophistication. However, whatever method is chosen, it must be secure.

Section 32-9-121, MCA, is being added as both an authority and implemented statute. This is because it contains the authority for rulemaking, and new definitions (6) and (8) provide clarity to requirements regarding the maintenance, storage, transfer, and destruction of records.

2.59.1703 TRANSFER OF LOAN ORIGINATOR LICENSE (1) Transfer of an individual mortgage loan originator license from one entity to another must be approved by the department. To transfer an individual mortgage loan originator license, the individual mortgage loan originator shall ~~obtain a relocation application from the department.~~ request sponsorship through the NMLS by the new entity. The new entity must accept sponsorship of the individual through the NMLS. ~~The completed relocation application~~ request for sponsorship must be accompanied by a nonrefundable processing fee of \$50.

~~(a) If a license is not transferred within six months and has been canceled, a complete new application with all required information must be submitted along with the appropriate new application fees and supporting documentation.~~

~~(b) If the lapse in employment occurs over a renewal period, the individual mortgage loan originator license must be renewed as required by 32-9-117, MCA, to qualify for a transfer of the license. The relocation six-month time frame would remain in effect and would be from the date of termination from the previous licensed entity.~~

~~(2) If an individual mortgage loan originator is terminated by a mortgage broker or lender, and within six months is re-employed by the same mortgage broker or lender, a request for reinstatement form must be filed with the department. The form is available from the department. There is a \$10 processing fee for reinstatement. If the break in employment occurs over a renewal period, the individual mortgage loan originator license must be renewed as required by 32-9-~~

~~117, MCA, to qualify for reinstatement. The six-month time frame would remain in effect and would be from the date of termination.~~

AUTH: 32-9-130, MCA

IMP: 32-9-116, 32-9-117, MCA

STATEMENT OF REASONABLE NECESSITY: Now that Montana processes its mortgage-related licenses through the NMLS, sponsorship requests must be made online through the NMLS. The sponsorship process through NMLS is a two-step process. First, the mortgage loan originator must request sponsorship by the company. Then the company must accept the individual it sponsors. The sponsorship is not complete until both steps have been completed and the fee has been paid.

Since Montana is on the NMLS, unsponsored licenses are now placed into an "Approved-Inactive" status. The license will remain in that status until it expires for failure to renew. Montana no longer has a six-month period to become sponsored before the license is "cancelled." "Cancelled" is an obsolete term no longer used by the NMLS. This rule is being amended to make the sponsorship process and terminology consistent with the NMLS.

The department is deleting (2), which addresses an individual who terminates from one employer and is re-employed with them within six months. This section has rarely been used; in fact, department employees can recall using this rule twice in the past five years. And since the process for sponsorship is exactly the same regardless of whether the sponsoring entity is a new entity or the old one, it does not make sense any longer to charge less for re-sponsorship than for initial sponsorship. The same amount of staff time is involved in sponsorship as in a re-sponsorship. Eliminating the \$10 reinstatement fee will have no fiscal impact. This fee was rarely utilized and the department assumes there will be no reinstatements meeting these criteria in the future.

2.59.1706 SURETY BOND (1) The surety bond shall be issued by a surety company authorized to do business in the state of Montana. The bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, shall be placed on file with the department. The entity name on the application and on the surety bond must match exactly. The bond shall be continuous ~~and may be cancelled by the surety upon the surety giving 30 days written notice to the department of its intent to cancel the bond.~~ Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond.

(2) remains the same.

AUTH: 32-9-130, MCA

IMP: 32-9-123, MCA

STATEMENT OF REASONABLE NECESSITY: HB 90 amended 32-9-123, MCA, to include language regarding cancellation of a surety bond. Since this language is now in statute, it is being removed from the rule so as not to unnecessarily duplicate the statutory language.

2.59.1707 REVOCATION, SUSPENSION, OR SURRENDER OF LICENSE

(1) A licensee may offer to surrender a license by ~~delivering to the department written notice of the offer of surrender~~ submitting an offer of surrender or withdrawal of a license through the NMLS. An offer of surrender or accepted surrender does not affect the licensee's civil or criminal liability for acts initiated or committed while licensed.

~~(2) The department may refuse to accept the offer of surrender of a license if:~~

~~(a) a final order has been issued in an enforcement action and the licensee has not fully complied with the order regardless of whether compliance is yet due;~~

~~(b) the licensee has violated, or is under investigation for a suspected violation of, the Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act or any rule in this subchapter;~~

~~(c) there is an enforcement action or complaint pending against the licensee;~~

~~or~~

~~(d) the licensee has not made arrangements satisfactory to the department regarding loans in process at the time of the offer of surrender.~~

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

AUTH: 32-9-130, MCA

IMP: 32-9-126, MCA

STATEMENT OF REASONABLE NECESSITY: The first sentence of the rule is being amended to reflect the fact that Montana uses the NMLS to license mortgage entities. Licensees no longer submit written notices to the department. Instead, they request withdrawal or surrender through the NMLS. The language being removed from (2) is now contained in statute. See 32-9-126(6), MCA. Since this language is now in statute, it is being removed from the rule so as not to unnecessarily duplicate the statutory language.

2.59.1709 CONSUMER COMPLAINT PROCESS (1) A complaint form ~~will be~~ is provided by the department at <http://www.banking.mt.gov>. A complaint must be submitted in writing to the department. If the basis of the complaint relates to the Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act, it will be investigated by the department or designated party.

AUTH: 32-9-130, MCA

IMP: 32-9-130, MCA

STATEMENT OF REASONABLE NECESSITY: HB 90 changed the name of the statutes found at Title 32, chapter 9, part 1, MCA, from the Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act to the

Montana Mortgage Act. The rule is being changed to conform to the new statutory language.

The complaint form is available on the department's web site at <http://www.banking.gov>. The web site address has been added to clarify where the complaint form is accessible.

2.59.1725 LICENSING EXEMPTIONS AND VOLUNTARY REGISTRATION BY EXEMPT ENTITIES WITH THE NATIONWIDE MORTGAGE LICENSING SYSTEM (NMLS)

~~(1) Any person claiming to be exempt under 32-9-104(1)(f), (h), or (i), MCA, from the licensing requirements of the Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act must receive an exemption from the department before engaging in activities claimed to be exempt. A claim form may be found online at www.banking.mt.gov.~~

~~(2) A mortgage company entity that is exempt from licensing requirements under 32-9-104, MCA, may voluntarily register through NMLS for the purpose of sponsoring a mortgage loan originator licensee or license applicant. Any fee for such an exempt registration must be determined is set by NMLS and must be is payable as directed by NMLS.~~

~~(3) For purposes of the licensing exemption in 32-9-104(1)(j), MCA, "bona fide low income individuals" are individuals:~~

~~(a) whose income is not more than two times the U.S. Department of Health and Human Services Poverty Guidelines for Montana in effect at the time the loan application is processed, adjusted for size of household, as published in the Federal Register under authority of 42 USC 9902(2);~~

~~(b) whose income does not exceed 115% of the median income in the applicable area of Montana as determined by the U.S. Department of Housing and Urban development, adjusted for size of household; or~~

~~(c) who are eligible under the income criteria for Habitat for Humanity housing assistance in the Montana county of the individual's residence.~~

AUTH: 32-9-130, MCA

IMP: 32-9-104, MCA

STATEMENT OF REASONABLE NECESSITY: The Nationwide Mortgage Licensing System has already been used and abbreviated as NMLS in these rules. HB 90 changed the name of the statutes found at Title 32, chapter 9, part 1, MCA, from the Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act to the Montana Mortgage Act. The rule is being changed to conform to the new statutory language.

Subsections (1)(f), (h), or (i) of 32-9-104, MCA, are listed for clarity since two other subsections of the statute, 32-9-104(1)(b) and (1)(c), MCA, utilize the MU1R and MU4R filed with the NMLS as the exemption form. Other subsections of 32-9-104, MCA, require different exemption forms which will be implemented by separate rulemaking.

The language removed from (2) is now contained in statute; the language is being removed from the rule so as not to unnecessarily repeat statutory language.

"Exempt" is being added in order to identify which fee is referenced.

On June 30, 2011, the Department of Housing and Urban Development (HUD) promulgated final rules found at 24 CFR 3400 et seq. interpreting the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act), Public Law 110-289. These rules became effective on August 29, 2011. Montana must comply with the federal SAFE Act and rules promulgated thereunder. The final HUD rules provide that an employee of a bona fide nonprofit organization who acts as a loan originator only with respect to the work duties to the bona fide nonprofit organization and who acts as a loan originator only with respect to residential mortgage loans with terms that are favorable to the borrower is not required to be licensed by the states. The final HUD rules also define the factors to be considered in order to determine whether an organization is a bona fide nonprofit organization at 24 CFR 3400.103(7)(ii). The factors defined in the federal rules are not consistent with the factors in the state rules. The state rules must be repealed to leave the federal rules in place. Additional statutory changes and administrative rulemakings will be needed to conform Montana law with the final HUD rules.

2.59.1727 MORTGAGE LOAN ORIGINATOR LICENSING EXAM RETAKES

(1) remains the same.

(2) Retakes of the mortgage loan originator licensing examination following failed attempts and the waiting periods applicable to retakes are governed by the following table:

TEST ATTEMPT	TEST RESULT	RETAKE WAITING PERIOD
Initial	Fail	30 days
2nd	Fail	30 days
3rd	Fail	30 180 days
4th	Fail	180 days
Initial	Fail	30 days

(Retake cycle repeats)

(3) through (6) remain the same.

AUTH: 32-9-130, MCA

IMP: 32-9-110, MCA

STATEMENT OF REASONABLE NECESSITY: HUD issued final rules interpreting the SAFE Act on June 30, 2011. Those rules clarified the meaning of 32-9-110(6), MCA. 24 CFR 3400.105(e)(2) provides the individual may take the test three consecutive times, with each retest 30 days after the preceding test. If an individual fails three consecutive tests, the individual must wait six months before taking the test again. The Montana rule is being amended to conform to the new federal rules.

2.59.1728 ADOPTION OF STANDARDIZED FORMS AND PROCEDURES

OF THE NMLS (1) ~~The Nationwide Mortgage Licensing System~~ NMLS Policy Guidebook dated January 25, 2010 April 16, 2012, is incorporated ~~approved~~ and

adopted by reference. It can be found at <http://mortgage.nationwidelicencingsystem.org/slr/common/policy/Pages/default.aspx>.

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

(a) ~~MU1 Uniform Mortgage Lender/Mortgage Broker form~~ NMLS Company Form dated ~~January 25, 2010~~ March 19, 2012;

(b) ~~MU2 Uniform Mortgage Biographical Statement & Consent Form~~ dated ~~January 25, 2010~~;

(c) ~~MU3 Uniform Mortgage Branch Office form~~ NMLS Branch Form dated ~~January 2, 2008~~ March 19, 2012; and

(d) ~~MU4 Uniform Individual Mortgage License/Registration & Consent NMLS Individual Form~~ dated ~~January 25, 2010~~ March 19, 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) Uniform Company Renewal Checklist dated September 15, 2010; and

(g) Uniform Individual Renewal Checklist dated September 15, 2010.

(3) Copies of the NMLS forms are available on the department's NMLS web site ~~www.banking.mt.gov~~ www.mortgage.nationwidelicencingsystem.org for review and informational purposes only. All standardized forms to be submitted to the department must be accessed through NMLS and submitted electronically through the NMLS. **Supplemental hard copy materials required for verification of qualifications must be submitted to the department** through the NMLS and submitted electronically. ~~Supplemental hard copy materials required for verification of qualifications must be submitted to the department at Division of Banking and Financial Institutions, 301 S. Park Ave., P.O. Box 200546, Helena, MT 59620-0546.~~

AUTH: 32-9-130, MCA

IMP: 32-9-105, ~~32-9-107~~, 32-9-112, ~~32-9-114~~, 32-9-117, ~~32-9-118~~, ~~32-9-127~~, 32-9-130, MCA

STATEMENT OF REASONABLE NECESSITY: The rule amendments are necessary because the NMLS policy guidebook was updated on April 12, 2012. The intent of the rule is to utilize the current version of the guidebook, not the prior version. In addition, correction of the location of the NMLS forms (the NMLS web site, not the department web site) needs to be made clear. All standardized forms submitted to the department must be submitted electronically through the NMLS. The two new NMLS exemption forms, MU1R and MU4R, are being adopted by reference as the department's required forms. The NMLS renewal forms are also being adopted by reference. The other forms have been updated since we last adopted them by reference. The department is adopting the current version by reference.

Sections 32-9-107 and 32-9-118, MCA, are being deleted because those sections are not being implemented by this rule. Sections 32-9-114 and 32-9-127, MCA, have been repealed and can no longer be implemented by this rule. Section 32-9-130, MCA, is being added because that statute requires the department to adopt rules prescribing forms for applications.

2.59.1730 CONFIDENTIALITY – AGREEMENTS AND SHARING ARRANGEMENTS (1) In addition to the trade associations specifically named in 32-9-160(2), MCA, the department may enter into agreements or sharing arrangements allowing the sharing of information and material with the following governmental agencies and associations representing governmental agencies:

- (a) State Regulatory Registry, LLC; and
- (b) Multi-State Mortgage Committee;
- (c) Federal Housing Administration;
- (d) Consumer Financial Protection Bureau;
- (e) United States Department of Housing and Urban Development;
- (f) Federal Trade Commission; and
- (g) Financial Crimes Enforcement Network (FinCEN).

AUTH: 32-9-130, 32-9-160, MCA
IMP: 32-9-160, MCA

STATEMENT OF REASONABLE NECESSITY: Since the NMLS has come into existence, several other governmental regulatory agencies have sought information sharing and confidentiality agreements with the states that are on the NMLS. They are the Federal Housing Administration, the Consumer Financial Protection Bureau, the United States Department of Housing and Urban Development (HUD), Federal Trade Commission, and FinCEN. The department needs the authority to enter into agreements and information sharing arrangements with these governmental agencies in order to fulfill its mission to protect consumers in Montana.

Since the Consumer Financial Protection Bureau is the regulator of the department, the department must share records with the Bureau, or it will find the department out of compliance with the SAFE Act. The Federal Housing Administration is the entity that provides mortgage insurance to a large number of residential mortgage loans made in this country. The Federal Housing Administration is part of HUD. Those two agencies both have need for access to the records in the NMLS because they require all entities and individuals in the loan origination process be licensed and in good standing in the NMLS in order to make government-insured loans. The Federal Trade Commission is the agency that has jurisdiction over unfair and deceptive acts and practices. The sharing of information with these two entities allows them to ensure that Montana borrowers are dealing with properly licensed entities and individuals.

2.59.1731 REINSTATEMENT OF EXPIRED OR SUSPENDED LICENSES

(1) Upon expiration of a license under 32-9-117, 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, ~~within 30 days of the date of expiration,~~ 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 32-9-1270, MCA; and

(f) remains the same.

(2) An expired license that is not reinstated by the last day of February ~~within 30 days of the date of expiration~~ in accordance with (1) is cancelled "Terminated-Failed to Renew" and may not be reinstated except as provided in (3). The holder of a ~~cancelled~~ "Terminated-Failed to Renew" license may reapply as a new license applicant.

(3) If ~~nonrenewal and expiration~~ "Terminated-Failed to Renew" 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) remains the same.

(b) a full year renewal fee ~~or, if the application is submitted on or after July 1, a half-year renewal fee;~~

(c) remains the same.

(d) proof of completion of ~~42~~ eight hours of approved continuing education;

(e) remains the same.

(f) proof that the licensee continues to meet standards for licensure under 32-9-1270, MCA.

(4) Upon suspension of a license under 32-9-126, MCA, the licensee shall immediately cease from engaging in the activities for which the license was issued. The department may lift the suspension and reinstate the license upon its determination that the suspended licensee has complied with the terms and conditions of the final order by which the license was suspended and there is no fact or condition then existing that disqualifies the suspended licensee from being licensed. The department on its own or at the suspended licensee's request may initiate a review of a suspended licensee's compliance with the terms and conditions of the order suspending the license.

AUTH: 32-9-130, MCA

IMP: 32-9-117, 32-9-118, 32-9-120, 32-9-126, MCA

STATEMENT OF REASONABLE NECESSITY: The reinstatement period is being changed from 30 days to the end of February because HB 90 repealed the half year fee. Since licensees no longer have a financial incentive to delay licensure if they miss the renewal deadline, Montana is adopting the NMLS reinstatement period in order to be consistent with other states. The NMLS reinstatement period is from January 1 to the last day of February, which is either the 28th or 29th depending on whether or not it is a leap year. This makes Montana consistent with other states and allows licensees more uniformity.

"Cancelled" is an obsolete term not used in the NMLS. The proper license status in NMLS is "Terminated-Failed to Renew" and the rule is being amended to reflect the license status in NMLS.

HB 90 repealed the half-year fee so it is being removed from the rule. Section 32-9-118, MCA, changed the number of continuing education credits required per year from 12 to 8. The rule is being amended to reflect these changes.

HB 90 repealed 32-9-127, MCA. Instead, 32-9-120, MCA is the statute used to license or renew licenses of applicants.

"Suspended" is being added to (4) to make clear the licensee referenced is the suspended licensee.

Due to the changes in HB 90, both 32-9-118 and 32-9-120, MCA, are added as implemented statutes.

5. The department proposes to repeal the following rules based on legislative changes that rendered these rules unnecessary:

2.59.1721 NET WORTH REQUIREMENT FOR MORTGAGE BROKERS, found on Administrative Rules of Montana (ARM) page 2-6143.

AUTH: 32-9-114, MCA

IMP: 32-9-123, MCA

STATEMENT OF REASONABLE NECESSITY: Section 32-9-114, MCA, was repealed by HB 90. Section 32-9-123, MCA, was amended in the 2011 session; it no longer allows a mortgage broker to use net worth in lieu of a surety bond and so the rule must be repealed.

2.59.1722 UNACCEPTABLE ASSETS, found on ARM page 2-6144.

AUTH: 32-9-114, MCA

IMP: 32-9-123, MCA

STATEMENT OF REASONABLE NECESSITY: Section 32-9-114, MCA, was repealed by HB 90. Section 32-9-123, MCA, was amended in the 2011 session; it no longer allows a mortgage broker to use net worth in lieu of a surety bond and so the rule must be repealed.

2.59.1723 PROOF OF NET WORTH, found on ARM page 2-6145.

AUTH: 32-9-114, MCA

IMP: 32-9-123, MCA

STATEMENT OF REASONABLE NECESSITY: Section 32-9-114, MCA, was repealed by HB 90. Section 32-9-123, MCA, was amended in the 2011 session; it no longer allows a mortgage broker to use net worth in lieu of a surety bond and so the rule must be repealed.

2.59.1732 MORTGAGE CALL REPORTS, found on ARM page 2-6150.5.

AUTH: 32-9-130, MCA

IMP: 32-9-151, MCA

STATEMENT OF REASONABLE NECESSITY: The language of this rule is now contained in statute. So the rule is being repealed so as not to unnecessarily repeat statutory language.

2.59.1736 DEADLINE FOR CONDITIONALLY LICENSED MORTGAGE LOAN ORIGINATORS TO COMPLETE THE MONTANA EXAM, found on ARM page 2-6150.6.

AUTH: 32-9-130, MCA

IMP: 32-9-114, MCA

STATEMENT OF REASONABLE NECESSITY: Section 32-9-114, MCA, has been repealed so the rule is no longer necessary.

6. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted 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, and must be received no later than 5:00 p.m., May 29, 2012.

7. Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, has been designated to preside over and conduct the hearing.

8. 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.

9. 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; or may be made by completing a request form at any rules hearing held by the department.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Representative Walt McNutt, was contacted by mail on May 20, 2011.

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

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

Certified to the Secretary of State April 16, 2012.