

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED  
BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066  
Informational Statement  
LCB FILE NO. R126-16**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 645E.

**1. A clear and concise explanation of the need for the adopted regulation.**

To comply with the Division's statutory duty to carry out the provisions of NRS 645E governing mortgage bankers, as well as NRS 645F, in order to carry out the provisions of law relating to mortgage servicing by certain mortgage bankers (Nevada mortgage servicer provisions, as contained in sections 86.2 through 86.7 of Assembly Bill 480 ("AB 480"), having been adopted into law during the 78<sup>th</sup> Session of the Nevada Legislature (2015)). Also to ensure that regulations are written clearly and concisely and to remove or clarify provisions that are unnecessary, duplicative or in conflict with statutory provisions.

**2. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.**

Copies of the proposed regulation, notice of workshop, small business impact statement, and notice of intent to act upon the regulation were e-mailed to Division licensees and other interested parties on the Division's mailing list as well as any persons who had specifically requested such notice. These documents were also made available at the Division of Mortgage Lending's Website at <http://www.mld.nv.gov> and the Nevada Public Notice Website at <http://notice.nv.gov>; posted at the Division's Las Vegas office and Office of the Department of Business and Industry in Carson City; and provided to the Nevada State Library for posting. The proposed regulation and notice of intent to act upon the regulation were additionally provided to the Nevada State Library and all county libraries in Nevada at which the Division does not maintain an office, for posting. Notice of intent to act upon the regulation was further submitted for posting on the Nevada Legislature's website.

Following the Division's e-mail notification to approximately 341 of its licensees and interested parties containing the proposed regulation amendments in which it solicited comments concerning whether these would impose a direct and significant economic burden upon a small business, or directly restrict the formation operation, or expansion of a small business, the Division received two written comments: One identified minor drafting errors, and the other questioned the requirement of a communication log which the Division proposed to be encompassed within the proposed expanded interpretation of "complete and suitable records" as provided in NAC 645B.072 concerning mortgage brokers. In addition, the Division reached out to a variety of stakeholders, including the Nevada Mortgage Lenders Association and the Advisory Council on Mortgage Investments and Mortgage Lending, which provided comments, suggestions, and feedback considered by the Division.

A duly-noticed workshop was held on June 28, 2016 in Las Vegas, Nevada as video conferenced with Carson City, Nevada. Minutes of the workshop are attached hereto as “Exhibit A.” Thereafter, on November 7, 2016, the Commissioner of the Division of Mortgage Lending (Commissioner) issued and posted a Notice of Intent to Act Upon a Regulation based upon the LCB Draft of Proposed Regulation R126-16.

A duly-noticed public hearing for adoption of the proposed regulation was held on December 12, 2016 in Las Vegas, Nevada, as video conferenced with Carson City, Nevada. An attorney in private practice representing clients in the lending industry and in the secondary mortgage market, appeared in Las Vegas to testify in support of the proposed regulation. He presented a written copy of correspondence which he submitted to the Division dated December 12, 2016, in relation to his testimony. He also verbally expressed on the record that the certainty and predictability of such rulemaking in the mortgage lending industry was a good policy which permitted institutional investors to extend capital in the sense of buying loans or making large institutional loans, thereby making more mortgages available to homeowners and businesses. This attendee voiced particular support for the adoption of the proposed changes to NAC 645E.270 (in which activity in certain secondary mortgage transactions would not be considered conduct within the definition of a “mortgage banker”).

Minutes of the public hearing are attached hereto as “Exhibit B.” No further comments were received.

A copy of the summary of the public response to the proposed regulation, including the written submittal of the attorney described above, may be obtained from the Division of Mortgage Lending, 7220 Bermuda Road, Suite A., Las Vegas, Nevada, 89119, or by e-mailing a request to [sslack@mld.nv.gov](mailto:sslack@mld.nv.gov).

**3. The number of persons who:**

	<u><b>Carson City</b></u>	<u><b>Las Vegas</b></u>
<b>Attended <i>June 28, 2016</i> workshop:</b>	0	1
<b>Testified at the workshop:</b>	0	0
<b>Attended <i>December 12, 2016</i> hearing:</b>	0	1
<b>Testified at the hearing:</b>	0	1

**Submitted written comments::** 3 (1 via e-mail, 1 via U.S. mail, and 1 hand-delivered)

**4. A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified in #3, above, as provided to the agency.**

*Attended June 28, 2016 workshop in Las Vegas, Nevada:*

Sarah Hibbard of Encore Capital [Encore Real Estate Group LLC], (858) 309-9748, [sarah.hibbard@MCMCG.com](mailto:sarah.hibbard@MCMCG.com)

*Attended December 12, 2016 hearing in Las Vegas, Nevada:*

Mark H. Goldstein, Bailey Kennedy Attorneys at Law, (702) 562-8820, 8984 Spanish Ridge Avenue, Las Vegas, Nevada, 89148-1302, MGoldstein@BaileyKennedy.com

*Submitted written comments:*

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- 5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

Comments were solicited from affected businesses in the same manner as they were solicited from the public. The summary of public response may be obtained in the same manner as instructed in the response to Item #2, above.

- 6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

At the conclusion of the noticed public hearing on December 12, 2016, the permanent regulation was adopted in the form as proposed and reflected in the *LCB Draft of Proposed Regulation R126-16* because there was no significant objection to the proposed language.

- 7. The estimated economic effect of the adopted regulation on the businesses which it is to regulation and on the public. These must be stated separately, and each case must include:**

- (a) Both adverse and beneficial effects; and**
- (b) Both immediate and long-term effects.**

- (a) Both adverse and beneficial effects

The Division does not foresee any major adverse effects of the adopted regulation to either the business of a mortgage broker, its mortgage agents, or to the public.

The adopted regulation may have a minor adverse impact on small business as it will assess an annual supervision fee upon a mortgage banker whose annual volume of loans reported to the Commissioner pursuant to NRS 645E.350 is at least \$10,000,000.00. Where such criteria is met, the mortgage banker is required to pay a supervision fee at a rate of ½ cent per \$1,000.00 of the annual volume of loans reported.

The Division anticipates that the beneficial effects of the adopted regulation will protect the health and welfare of Nevadans without unnecessarily burdening business activity.

(b) Both immediate and long-term effects.

The Commissioner has determined that the adopted regulation may have a minor adverse economic impact on small business based upon implementation of an annual supervision fee upon certain mortgage bankers, based upon a stated volume of loans reported to the Commissioner by the mortgage banker. However, the Commissioner has concluded that the fees are necessary to ensure the effective and efficient operation of the Division in carrying out its mission to protect consumers without discouraging economic growth.

Since 2008, the statutory revenue structure has been insufficient to appropriately fund the Division's ongoing staffing needs and support costs required to carry out its responsibilities. The fees imposed will enable the Division to develop a revenue structure that provides a long-term funding solution.

To reduce the adverse impact of the proposed regulation on small business, the Division conducted an analysis of the fees under its existing licensing programs and those assessed by other licensing jurisdictions, as well as solicited comments from stakeholders in order to establish a fair fee structure.

The Division anticipates that both the immediate and long-term beneficial effects of the adopted regulation will protect the health and welfare of Nevadans without unnecessarily burdening business activity.

**8. The estimated cost to the agency for enforcement of the adopted regulation.**

The Division estimates that the adopted regulation will result in minimal costs to the agency for enforcement, as such can be incorporated in to the agency's existing billing and collection process, as well as initiated through the Nationwide Mortgage Licensing System and Registry.

**9. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the**

**duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

There are no other state or government agencies regulations known by the Division that the proposed regulation overlaps or duplicates.

**10. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.**

The adopted regulation does not include provisions which are known to be more stringent than a federal regulation which regulates the same activity.

**11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

A new fee, in the form of an annual charge for supervision of certain mortgage bankers, shall be collected from such mortgage bankers based upon a specified annual volume of loans reported by the mortgage banker to the Commissioner.

Based on an analyses of calendar year 2015 loan volume reported by mortgage broker and mortgage banker licensees, the implementation of a supervision fee is anticipated to generate approximately \$68,000.00 annually.

Revenue generated from the proposed regulation would fund the ongoing staffing needs and support costs required to carry out statutory responsibilities.