

OFFICE OF THE SECRETARY OF STATE
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ARCHIVES DIVISION
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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 441
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
FINANCE AND SECURITIES REGULATION

FILED
10/24/2019 10:51 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Modernizing visible licensing requirement compatibility with Nationwide Multistate Licensing System

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/29/2019 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Karen Winkel
503-947-7694
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350 Winter Street NE
Salem, OR 97301

Filed By:
Karen Winkel
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/22/2019

TIME: 9:00 AM

OFFICER: Sofia Parra

ADDRESS: Labor & Industries Building

350 Winter Street NE

Conference Room E

Salem, OR 97301

SPECIAL INSTRUCTIONS:

Conference phone information:

Call 888-808-6929

Access code 4969117

NEED FOR THE RULE(S):

In 2009, the department adopted the Nationwide Multistate Licensing System (NMLS) to cut down on duplicative requirements for mortgage lending licensees. NMLS has since expanded to include other types of licenses and the department now issues a total of eight license types through the NMLS. Those who have collection agency, debt buyer, debt management service provider, and money transmitter licenses are only required to display their NMLS number and are not required to post a paper license. NMLS does not provide a way to print off a paper license for posting. The department has been taking the extra step to input data into its own systems to create annual licenses for licensees who are required to post it.

Because the department is moving towards paper-less licensing and switching to a new database for licensing, the department is proposing these rules to change the requirement from posting an annual license to posting a form with

the NMLS information instead. For licenses we issue using NMLS, we are proposing that the company will instead display our form with their NMLS number and license information at their licensed location. Websites only need to prominently display the NMLS number, not a license or form. The new form will not require updating unless there is a change to the licensee's name or license type(s). We will update the rules as needed to state that our form is posted at the place of business and their NMLS number is to be posted on their website.

The proposed rules will reduce the burden on licensees by only requiring the initial completing and posting of a department approved form for each business location instead of requiring the licensee to replace the paper license provided by the department each year. This proposed change will create uniform requirements for licensees using NMLS. In the rare case that a licensee's license is suspended or revoked or there are changes to their NMLS license information, the licensee would need to remove the form or complete a new form and replace the old one just like they are currently required. The proposed rules also include grammatical changes to update and clarify the language.

These proposed rules are necessary in order to modernize the requirements to post a license per ORS 86A.166, 86A.309, 725.160, and 725A.032. This change would affect the following license types: Consumer Finance, Mortgage Lender, Mortgage Servicer, and Payday/Title Lender. This change would be for licenses issued or renewed using NMLS for periods on or after January 1, 2020.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Draft rules are available from Karen Winkel located at 350 Winter St. NE, Salem, OR 97301 and are available on the division's website at:

<https://dfr.oregon.gov/laws-rules/Pages/proposed-rules.aspx>.

FISCAL AND ECONOMIC IMPACT:

There is no anticipated fiscal impact because the proposed rules are only meant to update how to meet the license posting requirements.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) These proposed rules will help keep the costs of the Department of Consumer Business Services from rising as much as they would if we were to continue to provide annual paper licenses. The department does not anticipate that the proposed rule will affect costs for other state agencies, units of local government, or the public.

(2)(a) The department estimates that there are about 3,330 Oregon licenses that will be impacted. It is unknown how many affected licensees meet the definition of a small business. However, since approximately 90% of Oregon businesses employ 50 people or less, the department assumes that at least some of the impacted entities are "small businesses." The proposed rules should not change costs because it amends the process that the department uses to help licensees meet their obligation to post a license. There is no anticipated impact on small businesses.

(2)(b) The proposed rules will not change costs and is expected to reduce department workload, so there should be no affect on small businesses.

(2)(c) The department does not anticipate that licensees will need to acquire new equipment or supplies or an increase in labor and administration to comply with the proposed rules.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Consumer and industry advocates were invited to participate in the committee and an industry advocate participated. Businesses were invited to participate in the committee and all four affected license types were represented with at least one participant.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

441-730-0070, 441-735-0070, 441-850-0045, 441-890-0075

AMEND: 441-730-0070

RULE SUMMARY: Amended advertising regulations to add new requirement regarding displaying mortgage servicer licensing information.

CHANGES TO RULE:

441-730-0070

Advertising Regulations ¶

(1) A licensee, or other person ~~must not, in any advertisement printed, displayed, published, distributed, or broadcasted, acting on the licensee's behalf, may not including on the Internet, by the licensee or on the licensee's behalf include in any advertisement, that is oral or written for any purpose,~~ any reference to the state's supervision of the business of the licensee by this state or any department or official of this state licensee, except the phrase "licensed under the Oregon Consumer Finance Act" or "subject to state regulation" or both.¶

(2) A licensee, or other person ~~must not, in any advertisement printed, displayed, published, distributed, broadcast, including on the Internet, by the licensee or acting on the licensee's behalf, use any name other than can only use~~ the name under which the license is issued in any oral or written advertisement.¶

(3) A licensee must retain a copy of all advertising for the period beginning with the date of the last examination in a designated licensed office, or at another location with the prior approval of the director, ~~at another location~~ until an examiner has reviewed the material.¶

(4) Notwithstanding the provisions of sections (1) and (2) of this rule:¶

~~(a) A licensee that makes and closes the majority of loans in a licensed location must prominently post their license in a manner conspicuous to the public; or~~¶

~~(b) If a licensee makes an at their licensed closes the majority of loans electronically, they must~~ cation and prominently post their license on their website and at their licensed location in a manndisplay their Nationwide Multistate Licensing System (NMLS) number conspicuous to the public their website.¶

(5) The posted license ~~shall~~ must state that the business is licensed and regulated by the Department of Consumer and Business Services, and will include the ~~D~~ department's toll-free telephone number for public inquiries or complaints.¶

(6) For licenses issued or renewed through NMLS for periods on or after January 1, 2020, licensees can meet the requirements of ORS 725.160 by posting a form provided by the department completed with current and valid NMLS licensing information.

Statutory/Other Authority: ORS 725.505

Statutes/Other Implemented: ORS 725.060, ORS 725.160

AMEND: 441-735-0070

RULE SUMMARY: Amended advertising regulations to add new requirement regarding displaying mortgage servicer licensing information.

CHANGES TO RULE:

441-735-0070

Advertising Regulations ¶

(1) A licensee, or other person ~~must not, in any advertisement printed, displayed, published, distributed, or broadcasted, acting on the licensee's behalf, may not~~ including on the Internet, by the licensee or on the licensee's behalf ~~include~~ in any advertisement, that is oral or written for any purpose, any reference to the state's supervision of the ~~business of the licensee by this state or any department or official of this state~~ licensee, except the phrase "subject to state regulation." ¶

(2) A licensee, or other person ~~must not, in any advertisement printed, displayed, published, distributed, broadcast, including on the Internet, by the licensee or~~ acting on the licensee's behalf, use any name other than ~~can~~ only use the name under which the license is issued in any oral or written advertisement. ¶

(3) A licensee must retain a copy of all advertising for the period beginning with the date of the last examination in a designated licensed office, or at another location with the prior approval of the director, ~~at another location~~ until an examiner has reviewed the material. ¶

(4) Notwithstanding the provisions of sections (1) and (2) of this rule: ¶

~~(a) A licensee that makes and closes the majority of loans in a licensed location must prominently post their license in a manner conspicuous to the public; or ¶~~

~~(b) If a licensee makes an~~ at their licensed ~~closes the majority of loans electronically, they must~~ cation and prominently post their license on their website and at their licensed location in a man ~~display their Nationwide Multistate Licensing System (NMLS) number conspicuous to the public~~ their website. ¶

(5) The posted license must state that the business is licensed and regulated by the Department of Consumer and Business Services, and will include the ~~D~~department's toll-free telephone number for public inquiries or complaints. ¶

(6) For licenses issued or renewed through NMLS for periods on or after January 1, 2020, licensees can meet the requirements of ORS 725A.032 by posting a form provided by the department completed with current and valid NMLS licensing information.

Statutory/Other Authority: ORS 725A.092

Statutes/Other Implemented: ORS 725A.058, ORS 725A.032

ADOPT: 441-850-0045

RULE SUMMARY: Adopted to provide information on displaying mortgage lender licensing information.

CHANGES TO RULE:

441-850-0045

Displaying mortgage lender licensing information

For licenses issued or renewed through Nationwide Multistate Licensing System (NMLS) for periods on or after January 1, 2020, licensees can meet the requirements of ORS 86A.166 by posting a form provided by the Department of Consumer and Business Services completed with current and valid NMLS licensing information.

Statutory/Other Authority: ORS 86A.136

Statutes/Other Implemented: ORS 86A.166

ADOPT: 441-890-0075

RULE SUMMARY: Adopted to provided information on displaying mortgage servicer licensing information.

CHANGES TO RULE:

441-890-0075

Displaying mortgage servicer licensing information

For licenses issued or renewed through Nationwide Multistate Licensing System (NMLS) for periods on or after January 1, 2020, licensees can meet the requirements of ORS 86A.309 by posting a form provided by the Department of Consumer and Business Services completed with current and valid NMLS licensing information. The licensee must also prominently display their NMLS number on their website.

Statutory/Other Authority: ORS 86A.306

Statutes/Other Implemented: ORS 86A.309