

# **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

Five-Year-Review Report

20 A.A.C. 4, Articles 6,7,8,10,11

September 30, 2014

## ***INTRODUCTION***

The Arizona Department of Financial Institutions (Department) is responsible for execution of the laws of this state relating to financial institutions and enterprises pursuant to A.R.S. §6-110.

The Department is statutorily charged with the licensing, supervision and regulation of state-chartered financial institutions and enterprises with responsibility that is twofold: Ensuring the safety and soundness of the financial services industry in Arizona, as well as compliance with state and applicable federal laws. The Department also investigates complaints that are filed by consumers against licensed entities and directs appropriate remedial action if the violations are substantiated.

This five year rule review report covers 27 sections in A.A.C. Title 20, Chapter 4, Articles 6, 7, and 8 (rules relating to debt management companies, escrow agents, and trust companies), Article 10 (one rule governing notice if there is a change in location of a safe deposit repository), and Article 11 (two rules, one defining “capital structure” as the term is applied to banks, the other defining “capital structure” as the term is applied to savings and loan associations).

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### **Information That Is Identical Within Groups of Rules**

The following information is identical for each group of rules listed. Because this information is the same for each rule in the groups listed it is not included in the analysis of each individual rule within the group.

**A. Authorization:** The Department’s general authority derives from A.R.S. § 6-123 (2), which provides general authority to the Superintendent to make rules.

**C. Effectiveness:** With the exception of the rules discussed in the individual rule review, the remaining rules in Article 6, 7, 8, 10 and 11 are generally effective in achieving their stated objectives. There has been no substantive change to these rules or statutes, including the statutes governing the authority of the Superintendent that would diminish the effectiveness of these rules. Effectiveness was determined by analyzing the rules contained in this report against the applicable Department governing statutes. There have been no substantive changes to rule or statute since the previous five year rule review. The Department has determined effectiveness through analysis and practice that the rules achieve their regulatory purpose.

**D. Consistency:** With the exception of the rules discussed in the individual rule review, the remaining rules in Articles 6, 7, 8, 10, and 11 are consistent with statute and other rules made by the agency. The Department consulted with its field examiners and division managers who did not find inconsistencies with the rules subject to this report except the rules discussed in the individual rule review.

**E. Enforcement:** With the exception of the rules discussed in the individual rule review, the remaining rules in Articles 6, 7, 8, 10, and 11 are enforced through the established policies and procedures as prescribed by the rules and statutes. All rules are consistently and fairly enforced. There have been no substantive problems with enforcing the rules as written.

**G. Clarity, Conciseness, and Understandability of the Rule:** With the exception of the rules discussed in the individual rule review, the remaining rules are clear, concise, and understandable as reported by the field examiners and division managers.

**H. Criticisms Received within the Last Five Years:** The Department has not received any written criticisms of any of the rules in Articles 6,7,8,10 and 11 within the past five years immediately preceding the five-year review report as reported from the examiners, and licensing managers.

**I. Estimated Economic, Small Business and Consumer Impact:** No substantive change in the economic impact of the following group of rules on small business or consumers has occurred since their currently effective text was approved by GRRC.

### **Article 6. Debt Management Companies**

The Department was unable to locate the Economic, Small Business and Consumer Impact Statement (“EIS”) that was submitted with the last five-year rule review. However, it should be noted that there has been no adverse economic impact of these Rules on the Department, the regulated community or the public.

The Administrative Rules in Article 6, govern Debt Management Companies to inform licensees of the specific actions required to comply with the statutory law found at A.R.S. Title 6, Chapter 6 (A.R.S. §6-701-§6-716).

As of the date of this report, Article 6 of the rules regulates the business of a total of 35 Debt Management Companies and 14 branches. In June 2009 there were 35 Debt Management Companies and 15 branches licensed with the department. There has been no significant change.

#### **Article 7. Escrow Agents**

The Department was unable to locate the Economic, Small Business and Consumer Impact Statement (“EIS”) that was submitted with the last five-year rule review. However, it should be noted that there has been no adverse economic impact of these Rules on the Department, the regulated community or the public.

The Administrative Rules in Article 7, governing Escrow Agents, inform licensees of the specific action required to comply with the statutory law found at A.R.S. Title 6, Chapter 7 (A.R.S. §6-801 through §6-846.04).

As of the date of this report, Article 7 regulates the business of 119 Escrow Agents and 424 branches. In June 2009 there were 92 Escrow Agents and 381 branches. In the past five years there has been 22 percent growth in the number of Escrow Agents and a ten percent growth in the number of branches.

#### **Article 8. Trust Companies**

The Economic, Small Business and Consumer Impact Statement (“EIS”) that was submitted with the final rulemaking effective November 9, 2001 is attached. There has been no adverse economic impact of these Rules on the Department, the regulated community or the public.

The Administrative Rules in Article 6, governing Trust Companies inform licensees of specific action required to comply with the statutory law found at A.R.S. Title 6, Chapter 8 (A.R.S. §6-851 through §6-882).

As of the date of this report, Article 8 regulates the business of a total of five Trust Companies. Two of these licensees are new within the past year. One application is pending and would bring the total to six by close of 2014. In June 2009 there were four trust companies licensed with the department. The slight growth in trust companies demonstrates that there has been no adverse economic impact of these Rules.

#### **Article 10. Safe Deposit and Safekeeping code**

The Department was unable to locate the Economic, Small Business and Consumer Impact Statement (“EIS”) that was submitted with the last five-year rule review. However, it should be noted that there have been no adverse economic impact of these Rules on the Department, the regulated community or the public.

#### **Article 11. Public Depositories for public monies**

The Department was unable to locate the Economic, Small Business and Consumer Impact Statement (“EIS”) that was submitted with the last five-year rule review. However, it should be noted that these rules have no real economic impact on consumer, small businesses, or state government. Article 11 contains definitions required by the provisions of A.R.S. Title 35, Chapter 1, Articles 2 and 2.1 budgetary and fiscal provisions for state agencies.

**J. Analysis Submitted to the Agency:** There has not been any analysis submitted to the Department in the past five years by another person regarding the rules impact on this state’s business competitiveness as compared to the business competitiveness in other states regarding this group of rules.

**K. Completed Previous Five Year Rule Review:** This group of rules was the subject of a normal five-year rule review in 2009 and approved by GRRC in May 2010. The Department proposed changes to two rules in the previous report. The rulemaking was not completed due to the moratorium which is set to expire in December 31, 2014. The Department will submit these changes and others as discussed in the Individual rule review if the moratorium is not extended, or if granted an exception from the moratorium.

**L. Probable Benefits of the Rule:** The benefits of the rules in Articles 6, 7, 8, 10 and 11, outweighs the probable costs of the rule, and imposes the least burden and cost on the persons regulated necessary to achieve the regulatory objective of ensure safety and soundness in state chartered institutions. The rules covering the subject matter are necessary to fulfill the agency’s mission.

**M. Stringency of the Rule:** No rule in this report was considered to be more stringent than related federal rules or statutes. This was determined by analyzing Title 6, Arizona Revised Statutes, Analysis of applicable federal laws including the Fair Debt Collection Practices Credit Repair Organization Act, the Fair Credit Reporting Act and confirmation that nothing in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, affected any rule in Title 6 and 7 for Debt Management Companies and Escrow Agents. Federal rules for trust companies generally can only be used for best practice and there is no rule for trust companies that is more stringent than the state rules. Federal laws analyzed for Articles 8, 10 and 11 include 12CFR9, Rules of Practice and Procedure, FFIEC Consolidated Reports of Condition and Income, the Federal Deposit Insurance Act and the Dodd-Frank Wall Street Reform.

**N. Compliance with A.R.S. § 41-1037:** No rule in Articles 6, 7, 8, 10 and 11 was adopted after July 29, 2010, therefore no analysis for compliance is required.

**O. Course of Action:** The Department of Financial Institutions has no course of action planned for rulemaking on the articles in this five-year rule review with the possible exception of the rules that are discussed in the individual rule review. Pursuant to Executive Order 2015-01 the Department will provide the Governor’s office, by September 1, 2015, with a review of the administrative rules governing the Department. This review will include any requests for exception to the moratorium on rulemaking to amend and/or repeal the discussed rules.

## Analysis of Individual Rules

### R20-4-602 Applications

- A. **Authorization:** Specific rule authority derives from A.R.S. § 6-123 (1) which authorizes the exercise of “. . . all powers necessary for the administration and enforcement of the laws and rules relating to financial . . . enterprises.” More specifically, A.R.S. § 6-704 authorizes the making of this rule.
- B. **Objective:** The objective of this rule is to specify the contents and procedures required for a debt management company to achieve a completed application package for a license, branch license or license renewal. The rule is necessary to provide clarification of the process to complete these applications.
- C. **Effectiveness:** The stated objectives of the rule are effectively met except that the Department no longer pulls a credit report when an application is received. The applicant is required to pull its own credit report and submit it with the license application.
- D. **Consistency:** There are no inconsistencies with statutes, or with other rules, even after the proposed amendment is completed.
- E. **Enforcement:** This rule is reflected in established policy and procedures and is consistently and fairly enforced except for the sentence that requires the Department to pull a credit report. The Department no longer pulls a credit report when an application is received. The applicant is required to pull its own credit report and submit it with the license application.
- G. **Clarity, Conciseness, and Understandability of the Rule:** The rule will be more clear, concise and understandable to the applicant when following department procedures after the Department submits a rule revision to remove the verbiage from section (A) as follows: “The Department shall order a credit report from a local credit reporting agency disclosing the credit history of the applicant’s principals or managing agents. The Department shall direct the credit reporting agency to send the credit report directly to the Superintendent. The applicant shall pay the cost of obtaining the credit report.” And replace it by amending the next sentence to read “a complete application shall include a credit report for each of the applicant’s principals or managing members, provided by the applicant, and all of the following:”...
- L. **Probable Benefits of the Rule:** The benefits of this rule outweigh the burden or costs to the individuals regulated by the rule. The benefit to the proposed amendment would be to the applicant in that it would not have to bear the cost of paying twice for a credit report when issues arise with the credit report that may disqualify the application in obtaining a debt management license.
- M. **Stringency of the Rule:** The Department is not aware of any federal law that addresses applications and therefore the Department believes that this rule is not more stringent than federal rules or statutes.

**O. Course of Action:** The Department is proposing to amend this rule in accordance with Executive Order 2015-01 by removing the requirement that the Department order a credit report from the reporting agency and replace it with the applicant providing the credit report for principals or managing members at the time of application. The Department plans to submit its request for exception by September 1, 2015.

## **R20-4-603     Reports**

**A. Authorization:** Pursuant to A.R.S. § 6-121, “[a]ll financial institutions and enterprises shall be subjected to examination and supervision by the department.” The Superintendent is provided “...the authority and responsibility for the discharge of all imposed by law on the department.” [A.R.S. § 6-122(A)]. Furthermore, pursuant to A.R.S. § 6-123, the Superintendent is authorized to “...1. Exercise all powers that are necessary for the administration and enforcement of the laws and rules relating to financial institutions and enterprises.  
2. In accordance with Title 41, Chapter 6, adopt rules that are necessary or appropriate to administer, enforce and accomplish the purposes of this title and adopt rules and issue orders that limit transactions between financial institutions or enterprises and the directors, officers or employees of the financial institutions or enterprises.  
3. Require appropriate records, documents, information and reports from any financial institution or enterprise...”

Specifically as this rule relates to A.R.S. § 6-709(M), “[a] licensee shall annually on or before August 15 file a report with the superintendent giving such relevant information as the superintendent may require concerning the business and operations of each place of business during the preceding year beginning July 1 and ending June 30. The superintendent may assess a penalty of five dollars for each day the licensee fails to file such report.”

**B. Objective:** The rule’s purpose is to specify the details of the reporting obligations imposed on licensees by A.R.S. § 6-709(M). More specifically, the rule was adopted to specify the time frame of the annual reporting of the business and operations of each place of business, the acceptable method and documents for the annual reporting, and the deadline for said reporting to the Department.

**E. Enforcement:** This rule is reflected in established policy and procedures and is consistently and fairly enforced except for Section “B” which requires the company to submit a date-stamped copy of its annual report that was submitted to the Corporation Commission within 10 days of its submission. The Licensing Division does not enforce this section at this time because the Division does not know when an annual report has been submitted to the Corporation Commission in order to enforce the ten day filing requirement and the Division does not have enough manpower and too many licensees to refer to the Corporation Commission’s website to acquire the information. The requirement is reviewed in an examination but disciplinary action is not cited for the 10 day requirement as long as the licensee has filed with the Corporation Commission. Now that the Corporation Commission offers this information on their website, and if they continue to offer it, the need for disciplinary action may not necessary.

**I. Estimated Economic, Small Business and Consumer Impact:** No substantive change in the economic impact of the rule on small businesses or consumers has occurred since the current language of the rule was effective. The forms prescribed by the Superintendent are readily available on the Department website. The date-stamped copy of each annual report and disclosures filed with the Arizona Corporate Commission is a simple cost of doing business.

**O. Course of Action:** The Department is proposing to amend this rule in accordance with Executive Order 2015-01 by proposing an amendment to repeal or amend section “B” as the Department is not currently enforcing section B during licensing or examination of a debt management company. Section “B” relates to statutes that are under the purview of the Corporation Commission which makes it difficult for the Department to enforce disciplinary actions for the 10 day requirement and if the Corporation Commission continues to offer the information on their website, the need for disciplinary action may not be necessary and this rule may be proposed for a slight amendment. The Department plans to submit its request for exception by September 1, 2015.

### **R20-4-604 Records**

**A. Authorization:** Pursuant to A.R.S. § 6-121, “[a]ll financial institutions and enterprises shall be subjected to examination and supervision by the department.” The Superintendent is provided “...the authority and responsibility for the discharge of all imposed by law on the department.” [A.R.S. § 6-122(A)]. Furthermore, pursuant to A.R.S. § 6-123, the Superintendent is authorized to “...1. Exercise all powers that are necessary for the administration and enforcement of the laws and rules relating to financial institutions and enterprises. 2. In accordance with title 41, chapter 6, adopt rules that are necessary or appropriate to administer, enforce and accomplish the purposes of this title and adopt rules and issue orders that limit transactions between financial institutions or enterprises and the directors, officers or employees of the financial institutions or enterprises. 3. Require appropriate records, documents, information and reports from any financial institution or enterprise...”

Specifically, this rule interprets and advises the licensee, as well as describes the procedure or practice requirements of the Department relative to A.R.S. § 6-709(A) & (J). A.R.S. § 6-709(A) states in relevant part, that “[a] licensee at all times shall maintain minimum liquid assets of at least two thousand five hundred dollars in excess of his business liabilities and of his liabilities on account of monies received in the business of a debt management company.” Under R20-4-604(A)(5), provides description for documenting the financial condition of the licensee. A.R.S. § 6-708 provides for the denial, suspension, of a license, specifically stating “...the Superintendent may revoke or suspend any license issued under this article for...insolvency...” Pursuant to A.R.S. § 6-709(J) “[a] licensee shall keep and use in his business books, accounts and records which will enable the superintendent to determine whether such licensee is complying with the provisions of this article and with the rules of the department. Each licensee shall preserve such books, accounts and records for at least three years after making the final entry on any transaction recorded in the books, accounts or records.”

In addition, it interprets and advises the licensee, as well as describes the procedure or practice requirements of the Department relative to A.R.S. § 6-710(1), which states in part “...The

licensee shall retain the written budget analysis for at least three years after the termination of the contract in the files of the licensee. The licensee shall make the analysis available for inspection by the superintendent, except that such a budget analysis is not deemed unreasonable if facts which would prove it to be such were not furnished to the licensee by the debtor upon request.”

**B. Objective:** The objective of this rule is to specify the nature of the records a licensee must maintain to comply with A.R.S. § 6-709 (J). Specifically, this rule was adopted to interpret and advise the licensee, as well as describe the procedure or practice requirements of the Department relative to A.R.S. §§ 6-709(A), (J) and 6-710(1).

**I. Estimated Economic, Small Business and Consumer Impact:** No substantive change in the economic impact of the rule on small businesses or consumers has occurred since the current language of the rule was effective. The rule allows for the electronic retention of documents and locations of records outside this State as long as certain conditions are met, alleviating the need and cost for additional storage space and hardship and cost of accessing paper files.

**L. Probable Benefits of the Rule:** The benefit of the rule outweighs the burden or costs to the individuals regulated by the rule. The rule allows for the electronic retention of documents and locations of records outside this State as long as certain conditions are met, alleviating the need and cost for additional storage space and hardship and cost of accessing paper files. At the time of examination, if the Department requests the documentation within the scope of the examination be provided in paper format, the cost of printing and providing the documentation is less than the cost and hardship described previously.

#### **R20-4-607 Budget Analysis**

**A. Authorization:** Pursuant to A.R.S. § 6-121, “[a]ll financial institutions and enterprises shall be subjected to examination and supervision by the department.” The Superintendent is provided “...the authority and responsibility for the discharge of all imposed by law on the department.” [A.R.S. § 6-122(A)]. Furthermore, pursuant to A.R.S. § 6-123, the Superintendent is authorized to “...1. Exercise all powers that are necessary for the administration and enforcement of the laws and rules relating to financial institutions and enterprises. 2. In accordance with title 41, chapter 6, adopt rules that are necessary or appropriate to administer, enforce and accomplish the purposes of this title and adopt rules and issue orders that limit transactions between financial institutions or enterprises and the directors, officers or employees of the financial institutions or enterprises. 3. Require appropriate records, documents, information and reports from any financial institution or enterprise...”

Specifically, this rule interprets and advises the licensee, as well as describes the procedure or practice requirements of the Department relative to A.R.S. § 6-710(1), which provides that “[i]t is unlawful for the licensee to accept an account unless it appears on the basis of a reasonable budget analysis, reduced to writing, that the debtor can reasonably meet the payments agreed upon by the licensee and the debtor and that the agreed upon payment is sufficient to pay the service charges to the licensee and the full amount of the proposed payments to creditors as agreed upon by the licensee and debtor.

**B. Objective:** The objective of this rule is to specify the location and contents of the budget analysis required by A.R.S. § 6-710 (1). Specifically, this rule was adopted to identify that a detailed, written analysis acknowledged by the debtor is generated, documenting the debtor's income and necessary living expenses, from which the licensee can determine the disposable income for payment to the licensee

**L. Probable Benefits of the Rule:** The benefit of the rule outweighs the burden or costs to the individuals regulated by the rule. The rule ensures that customers are protected from arbitrary numbers used to compute a debtor's disposable income.

#### **R20-4-611 Advertising**

**A. Authorization:** Pursuant to A.R.S. § 6-121, "[a]ll financial institutions and enterprises shall be subjected to examination and supervision by the department." The Superintendent is provided "...the authority and responsibility for the discharge of all imposed by law on the department." [A.R.S. § 6-122(A)]. Furthermore, pursuant to A.R.S. § 6-123, the Superintendent is authorized to "...1. Exercise all powers that are necessary for the administration and enforcement of the laws and rules relating to financial institutions and enterprises. 2. In accordance with title 41, chapter 6, adopt rules that are necessary or appropriate to administer, enforce and accomplish the purposes of this title and adopt rules and issue orders that limit transactions between financial institutions or enterprises and the directors, officers or employees of the financial institutions or enterprises. 3. Require appropriate records, documents, information and reports from any financial institution or enterprise..."

Specifically, this rule interprets and advises the licensee, as well as describes the procedure or practice requirements of the Department relative to A.R.S. § 6-710(8), which provides that "[i]t is unlawful for a licensee to advertise his services, display, distribute, broadcast or televise or permit to be displayed, advertised, distributed, broadcasted or televised his services in any manner whatsoever in which any false, misleading or deceptive statement or representation with regard to the services to be performed by the licensee or the charges to be made for those services." Furthermore, A.R.S. § 6-714, provides that, "[t]he rules and regulations of the superintendent shall include standards and criteria for proper advertising and may include specific prohibitions as to improper advertising by a licensee." The rule advises of the standards and criteria for proper advertising.

**B. Objective:** The objective of this rule is to clarify that advertisements made by the debt management company must not be false, misleading or deceptive with regards to its services or charges. It further advises what information must be contained in the advertisement.

**L. Probable Benefits of the Rule:** This benefit of the rule outweighs the burden or costs to the individuals regulated by the rule. The rule ensures that customers are protected from arbitrary numbers used to compute a debtor's disposable income.

## **R20-4-612 Solvency and Minimum Liquid Assets**

**A. Authorization:** Pursuant to A.R.S. § 6-121, “[a]ll financial institutions and enterprises shall be subjected to examination and supervision by the department.” The Superintendent is provided “...the authority and responsibility for the discharge of all imposed by law on the department.” [A.R.S. § 6-122(A)]. Furthermore, pursuant to A.R.S. § 6-123, the Superintendent is authorized to “...1. Exercise all powers that are necessary for the administration and enforcement of the laws and rules relating to financial institutions and enterprises. 2. In accordance with title 41, chapter 6, adopt rules that are necessary or appropriate to administer, enforce and accomplish the purposes of this title and adopt rules and issue orders that limit transactions between financial institutions or enterprises and the directors, officers or employees of the financial institutions or enterprises. 3. Require appropriate records, documents, information and reports from any financial institution or enterprise...”

Specifically, this rule interprets and advises the licensee, as well as describes the procedure or practice requirements of the Department relative to A.R.S. § 6-709(A), which provides that “A licensee at all times shall maintain minimum liquid assets of at least two thousand five hundred dollars in excess of his business liabilities and of his liabilities on account of monies received in the business of a debt management company. The superintendent may determine by general rule what assets are liquid assets within the meaning of this section and may determine by specific ruling or demand that a particular asset is or is not a liquid asset within the meaning of this section.” [Insolvent is defined under A.R.S. § 47-1201(23) as (a) Having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute; (b) Being unable to pay debts as they become due; or (c) Being insolvent within the meaning of federal bankruptcy law.”]

**B. Objective:** The objective of this rule is to describe minimum asset requirements for a licensee under the applicable statute with the asset determination to be made using generally accepted accounting principles.

## **R20-4-701 Change in Location of Business**

**A. Authorization:** Pursuant to A.R.S. § 6-121, “[a]ll financial institutions and enterprises shall be subjected to examination and supervision by the department.” The Superintendent is provided “...the authority and responsibility for the discharge of all imposed by law on the department.” [A.R.S. § 6-122(A)]. Furthermore, pursuant to A.R.S. § 6-123, the Superintendent is authorized to “...1. Exercise all powers that are necessary for the administration and enforcement of the laws and rules relating to financial institutions and enterprises. 2. In accordance with title 41, chapter 6, adopt rules that are necessary or appropriate to administer, enforce and accomplish the purposes of this title and adopt rules and issue orders that limit transactions between financial institutions or enterprises and the directors, officers or employees of the financial institutions or enterprises. 3. Require appropriate records, documents, information and reports from any financial institution or enterprise...”

Specifically, this rule describes the procedure or practice requirements of the Department relative to A.R.S. § 6-813(C), which provides that “[a] license shall be kept conspicuously posted in all

licensed places of business of the licensee.” A.R.S. § 6-814(A) holds that “[e]very escrow agent before engaging in the escrow business shall file with the superintendent an application for a license, in writing, verified by oath and in the form prescribed by the superintendent. It shall state the location of the principal office and all branch offices in this state...”

Change in location of business notifications are delivered by the Department electronically whenever possible and when appropriate information is given. However, the Department will still send these correspondences by mail when necessary. Licensees on the Nationwide Mortgage Licensing System and Registry send and receive these change notifications through the system.

**B. Objective:** The objective of this rule is to provide the procedure a licensee must undertake to appropriately notify the Department of a change in address of any of its location of escrow business.

#### **R20-4-702. Account Practices and Records**

**A. Authorization:** Pursuant to A.R.S. § 6-121, “[a]ll financial institutions and enterprises shall be subjected to examination and supervision by the department.” The Superintendent is provided “...the authority and responsibility for the discharge of all imposed by law on the department.” [A.R.S. § 6-122(A)]. Furthermore, pursuant to A.R.S. § 6-123, the Superintendent is authorized to “...1. Exercise all powers that are necessary for the administration and enforcement of the laws and rules relating to financial institutions and enterprises. 2. In accordance with title 41, chapter 6, adopt rules that are necessary or appropriate to administer, enforce and accomplish the purposes of this title and adopt rules and issue orders that limit transactions between financial institutions or enterprises and the directors, officers or employees of the financial institutions or enterprises. 3. Require appropriate records, documents, information and reports from any financial institution or enterprise...”

Specifically, this rule interprets and advises the licensee, as well as describes the procedure or practice requirements of the Department relative to A.R.S. § 6-831, which provides that “All escrow agents shall keep and maintain at all times in their principal places of business complete and suitable records of all escrow transactions made by them, together with books, papers and data clearly reflecting the financial condition of the business of such agents.”

**B. Objective:** The objective of this rule is to advise and describe what documentation is to be retained to enable the Superintendent to reconstruct the details of each escrow transaction.

#### **R20-4-703 Preservation of Records**

**A. Authorization:** Pursuant to A.R.S. § 6-121, “[a]ll financial institutions and enterprises shall be subjected to examination and supervision by the department.” The Superintendent is provided “...the authority and responsibility for the discharge of all imposed by law on the department.” [A.R.S. § 6-122(A)]. Furthermore, pursuant to A.R.S. § 6-123, the Superintendent is authorized to “...1. Exercise all powers that are necessary for the administration and enforcement of the laws and rules relating to financial institutions and enterprises. 2. In accordance with title 41, chapter 6, adopt rules that are necessary or appropriate to administer,

enforce and accomplish the purposes of this title and adopt rules and issue orders that limit transactions between financial institutions or enterprises and the directors, officers or employees of the financial institutions or enterprises. 3. Require appropriate records, documents, information and reports from any financial institution or enterprise...”

Specifically, this rule interprets and advises the licensee, as well as describes the procedure or practice requirements of the Department relative to A.R.S. § 6-831, which provides that “[a]ll escrow agents shall keep and maintain at all times in their principal places of business complete and suitable records of all escrow transactions made by them, together with books, papers and data clearly reflecting the financial condition of the business of such agents.”

**B. Objective:** The objective of this rule is to interpret and describe the procedure and practice requirements acceptable to the Department for the length of time and method of retaining records books, and accounts pertaining to each escrow transaction.

**G. Clarity, Conciseness, and Understandability of the Rule:** Examiners noted in the last five year rule review that this Section would more clearly express the department’s regulatory needs if the phrase “final settlement date” in the first sentence were changed to “last transaction date.” The Department still agrees with this assessment.

**O. Course of Action:** The Department reported in the 2009 five year rule review that it would amend this section in order to more clearly express the rule by changing the phrase “final settlement date” in the first sentence to “last transaction date” In the 2010 progress report, it was reported that this change was not made due to the reinstatement of the Governor’s Moratorium on Rule Making which expires December 31, 2014. The Department is proposing to amend this rule in accordance with Executive Order 2015-01. In re-reviewing this rule, our examiners have found that this change is still necessary and the Department plans to submit its request for exception by September 1, 2015.

#### **R20-4-704    Subsidiary Account Records**

**A. Authorization.** Pursuant to A.R.S. § 6-121, “[a]ll financial institutions and enterprises shall be subjected to examination and supervision by the department.” The Superintendent is provided “...the authority and responsibility for the discharge of all imposed by law on the department.” [A.R.S. § 6-122(A)]. Furthermore, pursuant to A.R.S. § 6-123, the Superintendent is authorized to “...1. Exercise all powers that are necessary for the administration and enforcement of the laws and rules relating to financial institutions and enterprises. 2. In accordance with title 41, chapter 6, adopt rules that are necessary or appropriate to administer, enforce and accomplish the purposes of this title and adopt rules and issue orders that limit transactions between financial institutions or enterprises and the directors, officers or employees of the financial institutions or enterprises. 3. Require appropriate records, documents, information and reports from any financial institution or enterprise...”

**B. Objective.** The objective of this rule is to specify the records required to prove compliance with A.R.S. §§ 6-831 and 6-834(A). Specifically, this rule was adopted to interpret

and advise the licensee, as well as describe the procedure or practice requirements of the Department relative to A.R.S. § 6-834, which governs the deposit of escrow monies.

**R20-4-707** Payment to the All Other Escrow Agents Account of the Arizona Escrow Guaranty Fund. **Not reviewing, allowing to expire. (See cover letter)**

**R20-4-708 Financial Condition and Resources**

**A. Authorization:** Pursuant to A.R.S. § 6-121, “[a]ll financial institutions and enterprises shall be subjected to examination and supervision by the department.” The Superintendent is provided “...the authority and responsibility for the discharge of all imposed by law on the department.” [A.R.S. § 6-122(A)]. Furthermore, pursuant to A.R.S. § 6-123, the Superintendent is authorized to “...1. Exercise all powers that are necessary for the administration and enforcement of the laws and rules relating to financial institutions and enterprises. 2. In accordance with title 41, chapter 6, adopt rules that are necessary or appropriate to administer, enforce and accomplish the purposes of this title and adopt rules and issue orders that limit transactions between financial institutions or enterprises and the directors, officers or employees of the financial institutions or enterprises. 3. Require appropriate records, documents, information and reports from any financial institution or enterprise...”

**B. Objective:** The objective of this rule is to establish a set of criteria the Superintendent uses in evaluating an applicant’s or escrow agent’s financial condition and resources. Specifically, this rule interprets and advises the licensee, as well as describes the procedure or practice requirements of the Department relative to A.R.S. § 6-817.

**R20-4-801 Definitions**

**A. Authorization:** The Department’s general authority derives from A.R.S. § 6-123, which provides general authority to the Superintendent to make rules. More specifically, A.R.S. § 6-123 (2) provides specific authority for the Superintendent to make this rule by directing the making of rules “. . . necessary or appropriate to administer, enforce, and accomplish the purposes of . . .” Title 6, A.R.S. That title authorizes the activities of the Department in regulating the state’s financial institutions.

**B. Objective:** The objective of this rule is to define terms used in the rules but not defined elsewhere, and to cross-reference definitions either from the statutes or from other provisions of these rules.

**D. Consistency:** The definition of “Superintendent” is not consistent with the statutes. The rule cross references A.R.S. § 6-851 but the definition of “Superintendent” is actually defined in A.R.S. § 6-101.16 or more specifically in 6-111(A).

**G. Clarity, Conciseness, and Understandability of the Rule:** The following rules are clear and concise as reported by the Financial Institutions Manager except for the cross reference to the definition of “Superintendent”.

**H. Criticisms Received within the Last Five Years:** The Department of Financial Institutions has not received any written criticism of this rule during the past five years.

**O. Course of Action:** The Department is proposing to amend this rule in accordance with Executive Order 2015-01. The Department proposes to amend the definition of “Superintendent” to cross reference to the correct corresponding statute after its review of all administrative rules submitted to the Governor’s office by September 2015. Further the Department may amend its reference to 12 CFR Chapter 1, part 1 of this rule if the citation is found to have been updated.

#### **R20-4-805     Reports**

**A. Authorization:** The Department’s general authority derives from A.R.S. § 6-123 (2), which provides general authority to the Superintendent to make rules. Also, A.R.S. § 6-861 provides specific authority for the Superintendent to make this rule fixing the time for filing reports described in the statute.

**B. Objective:** The objective of this rule is to specify the subject matter and contents of the reports required by the Superintendent under this statutory authority.

#### **R20-4-806     Records**

**A. Authorization:** The Department’s general authority derives from A.R.S. § 6-123 (2), which provides general authority to the Superintendent to make rules. Also, the last sentence of A.R.S. § 6-859(A) provides specific authority for the Superintendent to make this rule.

**B. Objective:** The objective of this rule is to provide the periods of time and the manner in which each licensee’s record shall be kept.

#### **R20-4-807     Unsafe and Unsound Condition**

**A. Authorization:** The Department’s general authority derives from A.R.S. § 6-123 (2), which provides general authority to the Superintendent to make rules. Also, the language of A.R.S. §§ 6-863(A)(8) and 6-865 require the clarification provided by this rule’s definition of unsafe or unsound condition.

**B. Objective:** The objective of this rule is to explicitly state the circumstances that trigger the Superintendent’s statutory power to suspend or revoke the certificate of a trust company, or to apply to the Superior Court for appointment as a receiver.

#### **R20-4-808     Administration of Fiduciary Powers**

**A. Authorization:** The Department’s general authority derives from A.R.S. § 6-123 (2), which provides general authority to the Superintendent to make rules. Also, A.R.S. § 6-123 (1) authorizes the exercise of “. . . all powers necessary for the administration and enforcement of the laws and rules relating to financial . . . institutions.” In particular, many provisions of this rule are authorized by A.R.S. § 6-859.

**B. Objective:** The objective of this rule is to inform licensees of the standards of conduct for the administration of fiduciary powers, and the records required to prove compliance with those standards.

#### **R20-4-809      Fiduciary Duties**

**A. Authorization:** The Department’s general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. Also, A.R.S. § 6-123(1) gives the Superintendent specific authority to “. . .exercise all powers necessary for the administration and enforcement of the laws and rules relating to financial institutions. . . .”. Provisions of this rule are authorized by A.R.S. § 6-859 et seq and §6-860 et seq.

**B. Objective:** The objective of this rule is to specify the primary duties of the licensees’ management in the conduct of trust business.

#### **R20-4-810      Funds Awaiting Investment or Distribution**

**A. Authorization:** The Department’s general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. Also, A.R.S. § 6-123(1) gives the Superintendent specific authority to “. . .exercise all powers necessary for the administration and enforcement of the laws and rules relating to financial institutions. . . .” This rule implements A.R.S. § 6-862.

**B. Objective:** The objective of this rule is to require prompt investment or distribution of funds held in trust by a licensee, to require that deposited funds be secured to the extent they are not covered by deposit insurance, and to permit retention of such funds in deposit accounts of a bank acting as a fiduciary under certain circumstances.

**O. Course of Action:** The Department may propose to amend this rule in accordance with Executive Order 2015-01 after consideration of the rules clarity.

#### **R20-4-811      Investment of Trust Funds**

**A. Authorization:** The Department’s general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. Also, A.R.S. § 6-123(1) gives the Superintendent specific authority to “. . .exercise all powers necessary for the administration and enforcement of the laws and rules relating to financial institutions. . . .” This rule implements A.R.S. § 6-870.02.

**B. Objective:** The objective of this rule is to specify the legal limits on the licensee’s investment discretion, and to clarify the sole legal basis on which a licensee may rely in deciding to make collective investments.

**C. Consistency:** There is one inconsistency with the statutes in that this rule cross references statutes A.R.S. §14-7601 through 7611 which do not exist.

**G. Clarity, Conciseness, and Understandability of the Rule:** The following rules are clear and concise except the portion of the rule that references A.R.S. §14-7601 through 7611. The rule would be much clearer if the reference was A.R.S. §14-7501 through 14-7512.

**O. Course of Action:** The Department will propose to amend this rule by July 2015 to remove the reference of A.R.S. §14-7601 through 14-7611 on line (A)(2) of this rule and replace it with A.R.S. §14-7501 through 14-7512.

#### **R20-4-812 Self-Dealing**

**A. Authorization:** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. Also, A.R.S. § 6-123(1) gives the Superintendent specific authority to “. . .exercise all powers necessary for the administration and enforcement of the laws and rules relating to financial institutions. . . .” Also, this rule expands upon the general prohibitions of §§ 6-870.02(B) and 6-870.02(D).

**B. Objective:** The objective of this rule is to explicitly advise licensees of the acts of self-dealing that are prohibited under the statute and these rules. The rule also lists the special circumstances that create exceptions to the rule's prohibitions.

#### **R20-4-813 Custody of Investments**

**A. Authorization:** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. Also, A.R.S. § 6-123(1) gives the Superintendent authority to “. . .exercise all powers necessary for the administration and enforcement of the laws and rules relating to financial institutions. . . .” This rule implements A.R.S. § 6-862.

**B. Objective:** The rule's objective is to advise licensees of the permissible means of custody and control of account assets, as well the records required to demonstrate compliance with this rule.

#### **R20-4-814 Compensation**

**A. Authorization:** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. Also, A.R.S. § 6-123(1) gives the Superintendent authority to “. . .exercise all powers necessary for the administration and enforcement of the laws and rules relating to financial institutions. . . .” This statute implements A.R.S. § 6-870.02(E).

**B. Objective:** The objective of this rule is to describe the legal bases under which a licensee may charge a fee for its services, and to list those circumstances under which neither it, nor its employees may receive a fee.

#### **R20-4-815 Collective Investments**

**A. Authorization:** The Department’s general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) gives the Superintendent authority to “. . .exercise all powers necessary for the administration and enforcement of the laws and rules relating to financial institutions. . . .” Also, A.R.S. § 6-871 provides authority for the making of this rule

**B. Objective:** The purpose of this rule is to establish the procedures used by licensees to establish a common trust fund, and to list the specific duties imposed at the organization phase.

#### **R20-4-816 Termination of Trust or Fiduciary Powers and Duties**

**A. Authorization:** The Department’s general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) gives the Superintendent authority to “. . .exercise all powers necessary for the administration and enforcement of the laws and rules relating to financial institutions. . . .” This rule implements A.R.S. § 6-864.

**B. Objective:** The objective of this rule is to describe the procedures a licensee shall use to surrender its right to conduct trust business. It also states the level of regulation imposed while a licensee winds up its trust business affairs.

#### **R20-4-1001 Notice of Change of Location of Safe Deposit Repository**

**A. Authorization:** The Department’s general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) gives the Superintendent authority to “. . .exercise all powers necessary for the administration and enforcement of the laws and rules relating to financial institutions. . . .” Also, A.R.S. § 6-1003 gives the Superintendent specific authority to make this rule.

**B. Objective:** The objective of this rule is to specify the form and timing of notice required to comply with A.R.S. § 6-1003 so that safe deposit box lessees are notified when a safe deposit box will be moved.

#### **R20-4-1101 Capital structure of banks; defined**

**A. Authorization:** The Department’s general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) gives the Superintendent authority to “. . . exercise all powers necessary for the administration and enforcement of the laws and rules relating to financial institutions. . . .” Specific reference to the obligation of the Department can be found in A.R.S. §35-321(3) where capital structure means the eligible depository shown by the latest call statement of condition as defined by rule of the superintendent of financial institutions for the purpose of administration of this article.

**B. Objective:** The objective of this rule is to specify the components of the statutory term “capital structure” for the benefit to reporting requirements and definition in the state treasurer’s statutes.

**O. Course of Action:** The Department may propose to amend this rule in accordance with Executive Order 2015-01 after consideration of the rules clarity.

**R20-4-1102 Capital structure of savings and loan association; defined**

**A. Authorization:** The Department’s general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) gives the Superintendent authority to “. . . exercise all powers necessary for the administration and enforcement of the laws and rules relating to financial institutions. . . .” Specific reference to the obligation of the Department can be found in A.R.S. §35-321(3) that requires the Superintendent to define, by rule, the capital structure of financial institutions for management of public monies.

**B. Objective:** The objective of this rule is to specify the components of the statutory term “capital structure” for the benefit of the institution’s reporting requirements and definition of the state treasurer’s statutes.

**C. Effectiveness:** This rule is no longer effective in achieving its objective because there are no state-chartered savings and loan industry in Arizona. However, the Department feels it is unwise to take any action on this Section because institutions that fit the criteria of these regulations could form in Arizona.

**E. Enforcement:** The Department does not currently enforce this Section because there are no savings and loan associations in Arizona. The rule would be enforceable if there was a savings and loan association in Arizona.

**O. Course of Action:** The Department may propose to amend this rule in accordance with Executive Order 2015-01 after consideration of the rules clarity. On June 2, 2009, a progress report was filed to the GRRC by our previous Superintendent that this rule is obsolete because there are no State Chartered Savings and Loan Associations due to the defunct state-chartered savings and loan industry. At this time, the Financial Institution Division Manager believes that this rule may be necessary even during times when the saving and loan industry is dormant because of the laws that permit credit unions to convert to associations. A.R.S. §6-588(C) allows state chartered credit unions to convert into an association, therefore, the Department feels it is unwise to take any action on this rule because institutions that fit the criteria of these regulations have showed interest in converting and could form in Arizona.

# **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

Five-Year-Review Report

20 A.A.C. 4, Articles 12,13,14,15,16,17

November 30, 2015

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## ***INTRODUCTION***

The Arizona Department of Financial Institutions (Department) is responsible for execution of the laws of this state relating to financial institutions and enterprises pursuant to A.R.S. §6-110.

The Department is statutorily charged with the licensing, supervision and regulation of state-chartered financial institutions and enterprises with responsibility that is twofold: Ensuring the safety and soundness of the financial services industry in Arizona, as well as compliance with state and applicable federal laws. The Department also investigates complaints that are filed by consumers against licensed entities and directs appropriate remedial action if the violations are substantiated.

This five year rule review report covers 42 sections in A.A.C. Title 20, Chapter 4, Article 12 (nine rules relating to the rules of practice and procedure before the Superintendent), Article 13 (five rules under review for the first time relating to Loan Originators), Article 14 (three rules relating to investigations carried out by the Department), Article 15 (twenty rules relating to collection agencies), Article 16 (two rules relating to acquiring control of a financial institutions), and Article 17 (three rules relating to the Arizona interstate Bank and Savings and Loan Association Act).

## INFORMATION THAT IS IDENTICAL WITHIN GROUPS OF RULES

For convenience, the numbering in this report mirrors R1-6-301(A).

The following information is identical for each group of rules listed. Because this information is the same for each rule in the groups listed, it is not included in the analysis of each individual rule. *Pursuant to A.A.C. R1-6-301(B)*

**3. Effectiveness in Achieving Objectives:** With the exception of the rules discussed in the individual rule review, the remaining rules in Article 12, 13, 14, 15, 16 and 17 are generally effective in achieving their stated objectives. Effectiveness was determined by analyzing the rules contained in this report against the applicable Department Governing statutes. Also, the Department has determined effectiveness through analysis and practice that the rules achieve their regulatory purpose.

**4. Consistency with Statutes and Other Rules Made by the Agency:** With the exception of the rules discussed in the individual rule review, the remaining rules in Articles 12, 13, 14, 15, 16 and 17 are consistent with statute and other rules made by the agency. The Department consulted with its field examiners and division managers who did not find any inconsistencies with the rules subject to this report except the rules discussed in the individual rule review.

**5. Enforcement:** With the exception of the rules discussed in the individual rule review, the remaining rules in Articles 12, 13, 14, 15, 16 and 17 are enforced through the established policies and procedures as prescribed by the rules and statutes. All rules are consistently and fairly enforced. There have been so substantive problems with enforcing the rules as written.

**6. Clarity, Conciseness, and Understandability of the Rule:** With the exception of the rules discussed in the individual rule review, the remaining rules are clear, concise, and understandable as reported by the field examiners and division managers.

**7. Criticisms Received within the Last Five Years:** The Department has not received any written criticisms of any of the rules in Articles 12, 13, 14, 15, 16 and 17 within the past five years as reported from the examiners and division managers.

### **8. Estimated Economic, Small Business and Consumer Impact:**

#### **Article 12. Rules of Practice and Procedure Before the Superintendent**

The Department is unable to locate the Economic, Small Business and Consumer Impact Statement that was submitted with the last amendment to the Rules contained in Article 12. However, it should be noted that there has been no adverse economic impact of these Rules on the Department, the regulated industry and/or the public. Since the last rule review, there have been 106 requests for hearings as a result of 655 actions initiated by the Department. 92% of the requests for hearings were settled favorably during the informal settlement process and therefore did not go before the Office of Administrative Hearings. The Office of Administrative Hearings ruled on 8 actions taken by the Department.

### **Article 13. Loan Originators**

The adopted rules are intended to satisfy statutory requirements outlined in the loan originator statutes. The rules specify the following: who the rules are intended for; what is required in the course of study for pre-licensure and continuing education; how to demonstrate financial responsibility; the fees for application, licensure, and maintenance of the license; and the practice and procedure for challenging information that the Superintendent enters into the Nationwide Mortgage Licensing System and Registry. The statutes explicitly state that the Superintendent shall establish the details in these noted areas, and that is what these rules are intended to do. Without these rules, the Department will not be able to collect fees related to loan originator licensing, nor will there be clear guidelines for the course of study by which applicants and licensees must abide.

### **Article 14. Investigations**

There has been no substantive change in the Economic, Small Business and Consumer Impact of the Rules contained in Article 14. The EIS indicated that there would be an estimated cost of \$2,500 to the department in administrative costs, and that cost is no longer applicable.

The numbers of licensees indicated in the EIS have also changed. There are now 12 banks (down from 29), 713 collection Agencies (up from 486), 19 commercial mortgage bankers (up from 5), 51 Consumer Lenders (up from 20), 20 credit unions (down from 31), 34 debt management companies (up from 14), 109 escrow agents (up from 74), 0 Financial Institution Holding Companies, 93 money transmitters (up from 48), 362 mortgage bankers (down from 379), 351 mortgage brokers (down from 922), 818 motor vehicle dealers (up from 652), 35 premium finance companies (up from 33), 615 sales finance companies (up from 402), and 6 trust companies (up from 4). It should be noted that deferred presentment companies (payday lenders) are no longer a license type in Arizona, so that number has gone to zero. Furthermore, since the EIS was written, statute has added 3 license types; advance fee loan brokers (18), commercial mortgage brokers (57) and loan originators (9,541).

### **Article 15. Collection Agencies**

There has been no substantive change in the Economic, Small Business and Consumer Impact of the Rules contained in Article 15. The EIS indicated that there would be an estimated administrative cost of \$2,500 to implement the rules, and that cost is no longer applicable. Since the EIS was written, the number of collection agencies has increased from 486 to 713; however this minimal increase is not believed to have an adverse economic impact on the Department.

### **Article 16. Acquiring Control of Financial Institutions**

There has been no substantive change in the Economic, Small Business and Consumer Impact of the Rules contained in Article 16. The EIS indicated that there would be an estimated administrative cost of \$2,500 to implement the rules, and that cost is no longer applicable. Since the EIS was written, bank licensees have gone down from 29 to 12, consumer lenders have gone up from 20 to 51, credit unions have gone down from 151 to 20, savings and loan companies have remained the same at 0, trust companies have gone up from 4 to 6, and trust divisions have remained the same at 0.

**Article 17. Arizona Interstate Bank and Savings and Loan Association Act**

There has been no substantive change in the Economic, Small Business and Consumer Impact of the Rules contained in Article 17. The EIS indicated that there would be an estimated administrative cost of \$2,500 to implement the rules, and that cost is no longer applicable. Since the EIS was written, bank licensees have gone down from 29 to 12, financial institutions holding companies remain at 0, and savings and loan associations still remain at 0.

**9. Analysis Submitted by Another Person Regarding the Rules' Impact on this State's Business Competitiveness as Compared to the Competitiveness of Businesses in Other States:**

There has not been any analysis submitted to the Department in the past five years by another person regarding the rules impact on the state's business competitiveness as compared to the business competitiveness in other states regarding this group of rules.

**10. Completed Previous Five Year Rule Review:** Articles 12, 14, 15, 16, and 17 was the subject of a normal five-year rule review in 2011 and approved by GRRC. The Department proposed changes to 14 rules in the previous report. The Department identified the following issues:

- R20-4-1202: Update the statutory reference in the definition of "license" and to remove state in the definition of Department.
- R20-4-1204: Amend for clarification by changing the word "serve" to "file" in Subsection A.
- R20-4-1208: Remove reference to Notice of Hearing
- R20-4-1209: Amend Subsection (C) so that it is not redundant.
- R20-4-1219: Amend to reference rehearing in contested cases and in appealable agency actions. Also, remove Subsection (H) as it is a contradiction with statute.
- R20-4-1401: Amend to clarify that licensees are only financial institutions or enterprises licensed with the Department of Financial Institutions.
- R20-4-1405: Clarify rule as it relates to whom the Department has the authority to fingerprint.
- R20-4-1501: Amend the statutory reference in the definition of "collection agency".
- R20-4-1502: Amend to clarify duplications, and incorrect references.
- R20-4-1503: Amend by removing Subsection (B).
- R20-4-1504: Amend to clarify the confusion of "timely manner".

R20-4-1505: Correct an ARS citation from A.R.S. §44-307 to A.R.S. §44-317.

R20-4-1512: Amend Subsection B and remove Subsection C.

R20-4-1704: Amend rule to be consistent with the agency's new name.

The Department planned to submit a rulemaking to the Council by December 2011 when the moratorium expired but the moratorium was continued and is now set to expire December 31, 2015.

**11. Probable Benefits of the Rule:** The benefit of the rules in Articles 12, 13, 14, 15, 16 and 17 outweigh the probable costs of the rule, and imposes the least burden and cost on the persons regulated necessary to achieve the regulatory objective. The rules covering the subject matter are necessary to fulfill the agency's mission.

**12. Stringency Compared with Corresponding Federal Law.** With the exception of the rules discussed in the individual rule review, no rule in this report was considered to be more stringent than federal rules or statutes unless there is statutory authority to exceed the requirements for that federal law. This was determined by analyzing Title 6, Arizona Revised Statutes, and an analysis of applicable federal laws including by the field examiners and division managers.

**13. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. §41-1037.** No rule in Articles 12, 14, 15, 16 and 17 was adopted after July 29, 2010, therefore no analysis for compliance is required. Article 13 was adopted on April 22, 2011 and while the individual rules do not require issuance of an individual license, they are in support of statutes that require issuance of an individual loan originator license and fall under the exemption of A.R.S. §41-1037(A) 1-4 in compliance with A.R.S. §§ 6-126, 6-991, 6-991.01, 6-991.02, 6-991.03, and 6-991.04 and 6-991.05.

**14. Proposed Course of Action:** The Department will propose to Council for approval to amend and/or repeal the rules that are discussed in the individual rules review within one year after the moratorium expires as it is currently slated to do on December 31, 2015.

## ANALYSIS OF INDIVIDUAL RULES

### Article 12. Rules of Practice and Procedure Before the Superintendent

#### R20-4-1201 Scope of Article

1. **Authorization of the Rules by Existing Statutes.** The Department's general authority derives from Arizona Revised Statutes (hereinafter, "A.R.S.") § 6-123(2), which provides general authority to the Superintendent (who is the chief officer of the Department) to make rules. More specifically, A.R.S. § 6-138 authorizes the conduct of the hearings contemplated by these rules. Finally, A.R.S. § 6-123 (2) directs the making of rules ". . . necessary or appropriate to . . . enforce . . . the purposes of . . ." Title 6, A.R.S. That title creates and authorizes the activities of the Department in regulating the State's financial institutions, enterprises.
2. **Objective.** The objective of the rule is to clarify the scope of Title 20, Chapter 4, Article 12 of the Arizona Administrative Code (hereinafter, the "Code") so that the public and the regulated community will better comprehend it.

#### R20-4-1202- Definitions

1. **Authorization of the Rules by Existing Statutes.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. The Superintendent's specific authority for this rule is under A.R.S. §6-138, which provides authority to conduct hearings.
2. **Objective.** The objective of the rule is to provide definitions for terms used in Article 12 of the Code.
4. **Consistency with Statutes and Other Rules Made by the Agency.** The statute has been updated since this rule was established and therefore the statutory reference in the definition of "Contested case" is no longer correct. The actual reference should be A.R.S. §41-1001(5). Also, the statutory reference to the definition of "License" is no longer correct. The actual reference should be A.R.S. § 41-1001(12). The Department proposes to insert parentheses between the numbers 2 and 3 of the statutory reference in the definition of "appealable agency action." Furthermore, for the purpose of consistency; the definition of "Department" should not include "State" in the department's name.
6. **Clarity, Conciseness, and Understandability of the Rule.** The rule is clear and concise, except for the incorrect statutory reference in the definition of "Contested case", "License", and "Appealable agency action".
10. **Completion of the Previous Five-Year-Rule Report Process.** The previous five-year review report indicated the intention to make the same change as is being proposed in this report

by December 2011. It is unclear as to why this change was not made with the last five years; however it is probably due to the Governor's Moratorium on Rule Making.

**14. Proposed Course of Action.** The Department proposes to amend R20-4-1202 to update the statutory reference in the definition of "Contested case" and "License". The Department also proposes to remove "state" in the definition of "Department," and to insert parentheses between the numbers 2 and 3 of the statutory reference in the definition of "appealable agency action." The Department will propose to Council for approval to amend the rule within one year after the moratorium expires as it is currently slated to do on December 31, 2015.

#### **R20-4-1204 Filing; Service**

**1. Authorization of the Rules by Existing Statutes.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. In addition, A.R.S. § 6-123(1) specifically requires the Superintendent to exercise "... all powers necessary . . ." in enforcing and administering these rules.

**2. Objective.** The objective of the rule is to provide procedures for filing and serving documents pertinent to contested cases and appealable agency actions.

**6. Clarity, Conciseness, and Understandability of the Rule.** The rule is clear and concise, except that in Subsection (A) it should read, "or shall *file* them by any method..." not "shall *serve* them by any method." This rule would also be clearer if Subsection (A) included electronic delivery. The Office of Administrative Hearings moved to paperless filings and in 2012 our attorneys researched and found that electronic e-mail service is acceptable as OAH further explained R2-19-108 by issuing a Substantive Policy Statement clarifying that "Express Mail" mentioned in Subsection (A) includes e-mail delivery. The Department has since been using electronic delivery and would like the rule to state it to avoid unnecessary research in the future.

**10. Completion of the Previous Five-Year-Rule Report Process.** The previous five-year review report proposed to make the abovementioned change for clarification. The Department did not take action because of the Governor's Moratorium on Rule Making.

**14. Proposed Course of Action.** The Department proposes to amend R20-4-1204 Subsection (A) to read, "or shall *file* them by any method..." not "shall *serve* them by any method." The Department would also like to propose adding electronic mail as an option of delivery. The Department will propose to Council for approval to amend the rule within one year after the moratorium expires as it currently slated to do on December 31, 2015.

#### **R20-4-1208 Commencement of Proceedings; Notice of Hearing**

**1. Authorization of the Rules by Existing Statutes.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make

rules. Specifically, this rule lists exact actions that the Department might take that allows a person to appeal that action and receive a fair hearing in relation to A.R.S. §41-1092.03 (B).

2. **Objective.** The objective of the rule is to identify appealable agency actions or contested cases appropriate for obtaining a hearing for any party who may be adversely affected or whose legal rights, duties, or privileges are determined by an appealable agency action or contested case issued by the Department.

6. **Clarity, Conciseness, and Understandability of the Rule.** The rule is clear and concise, although it is unclear as to why “Notice of Hearing” is included in the heading of the rule, instead of “Request for Hearing” since the content of the rule is a list of appealable agency actions and contested cases that gives an aggrieved party the right to *request a hearing*.

10. **Completion of the Previous Five-Year-Rule Report Process.** The previous five-year review report proposed to make a change to remove “Notice of Hearing” from the heading by December of 2011. The Department did not take action because of the Governor’s Moratorium on Rule Making.

14. **Proposed Course of Action.** The Department proposes to amend the heading of this Section to change the heading reference of the rule from “Commencement of Proceeding: Notice of Hearing” to “Commencement of Proceedings; Request for Hearing”. The Department will propose to Council for approval to amend the rule within one year after the moratorium expires as it currently slated to do on December 31, 2015.

#### **R20-4-1209 Answer to Notice of Hearing**

1. **Authorization of the Rules by Existing Statutes.** The Department’s general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. §§ 6-123(1), 6-123(2), and 6-123(3) provide specific authority for the Superintendent to make this rule.

2. **Objective.** The objective of the rule is to specify those eligible to respond to a notice of hearing, the time limits for filing a response, the required content of any response, the effect of a default, and the effect of a failure to state a defense.

10. **Completion of the Previous Five-Year-Rule Report Process.** The course of action indicated in the previous Five Year Rule Review proposed to amend Subsection (C) so that it is not redundant in using the words “to qualify an assertion” The Department did not take action because of the Governor’s Moratorium on Rule Making.

14. **Proposed Course of Action.** The Department reported in the last rule review that it would amend this section to eliminate redundancy, but in re-review, the Department found that this rule is not redundant and no action is necessary to change or alter this rule.

#### **R20-4-1210 Stays**

1. **Authorization of the Rules by Existing Statutes.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. Specifically, this Section implements A.R.S. § 6-137(D).
2. **Objective.** The objective of the rule is to specify the circumstances under which an aggrieved person may request a stay of an order from the Superintendent until the matter can be heard and decided in a hearing.

#### **R20-4-1211 Intervention**

1. **Authorization of the Rules by Existing Statutes.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules.
2. **Objective.** The objective of the rule is to specify those persons entitled to intervene in a proceeding before the Superintendent.

#### **R20-4-1219 Rehearing**

1. **Authorization of the Rules by Existing Statutes.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-138 provides specific authority for the Superintendent to conduct hearings, and this Section implements that authority.
2. **Objective.** The objective of the rule is to specify the procedures and grounds for obtaining a rehearing of a matter decided by the Superintendent.
3. **Effectiveness in Achieving Objectives.** The rule is not efficient or effective because the rule refers to a rehearing solely in contested cases. The statute also permits a rehearing in appealable agency actions.
4. **Consistency with Statutes and Other Rules Made by the Agency.** This Section is inconsistent with the Uniform Administrative Hearing Procedures A.R.S. § 41-1092, et seq., because the Rule refers to rehearing solely in contested cases, while the Statute also permits rehearing in appealable agency actions. Subsection (H) is also inconsistent with the Arizona Administrative Procedure Act because the rule allows the Department to deny any opportunity for administrative review based on certain circumstances, while A.R.S. § 41-1092.09 gives the explicit authority to a party to file a motion for a rehearing.

6. **Clarity, Conciseness, and Understandability of the Rule.** The rule is clear and concise, except that it applies to contested cases and appealable agency actions as demonstrated above.

10. **Completion of the Previous Five-Year-Rule Report Process.** The previous five-year review report proposed to make a change to amend this section to reference rehearing both in contested cases and in appealable agency actions. The Department also planned to remove Subsection (H) as it is in direct contradiction with statute. The Department did not take action because of the Governor's Moratorium on Rule Making.

14. **Proposed Course of Action.** Although the Department is currently following the statute and not the rule, the Department proposes to amend this section to reference rehearing both in contested cases and in appealable agency actions. The Department will propose to Council for approval to amend the rule within one year after the moratorium expires as it currently slated to do on December 31, 2015.

#### **R20-4-1220 Consent Agreements**

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-138 provides specific authority for the Superintendent to conduct hearings, and this Section implements that authority.

2. **Objective.** The objective of the rule is to specify the circumstances that permit the resolution of a proceeding by consent agreement.

#### **Article 13. Loan Originators**

##### **R20-4-1301 Scope of Article**

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. Specifically, this Section implements the authority of the Superintendent stated in A.R.S. §§ 6-126, 6-991.03, 6-991.04.

2. **Objective.** The objective of the rule is to clarify the scope of Title 20, Chapter 4, Article 12 of the Code so the public and the regulated community has a clear understanding of who is licensed and the required conduct of licensee.

10. **Completion of the Previous Five Year Rule report Process.** This rule was made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011, and this is the first rule review.

12. **Stringency Compared with Corresponding Federal Law.** The S.A.F.E. Act, a Federal Law, also affects the licensing of loan originators. The rule is not more stringent than Federal law.

#### **R20-4-1302 Course of Study to Qualify for Licensure**

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. Specifically, this Section implements the authority of the Superintendent stated in A.R.S. §§ 6-991.03, 6-991.04.
2. **Objective.** The object of this rule is to provide clarity to the loan originator as to what courses will be acceptable to the Superintendent. The rule is to further clarify the number of hours of education required to be taken.
10. **Completion of the Previous Five Year Rule report Process.** This rule was made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011, this is the first rule review.

#### **R20-4-1303 Financial Responsibility**

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. Specifically, this Section implements the authority of the Superintendent stated in A.R.S. § 6-991.03.
2. **Objective.** The objective of the rule is to detail the ways a licensee can demonstrate they are financially responsible.
4. **Consistency with Statutes and Other Rules Made by the Agency.** This rule is not consistent with the statute. The rule refers to A.R.S. Section 6-991.03(B)(4) and (B)(6). Since the rule was made, there have been changes to the statutes. The referenced statutes in the rule now refer to A.R.S. Section 6-991(B)(6) and (B)(8) respectively. The Agency is enforcing the rule as it was intended.
10. **Completion of the Previous Five Year Rule report Process.** This rule was made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011, this is the first rule review.
14. **Proposed Course of Action.** The only changes that should be made to this rule is to amend the reference to A.R.S. Section 6-991.03(B)(4) and (B)(6) to 6-991.03(B)(6) and (B)(8) respectively. The Department will propose to Council for approval to amend the rule within one year after the moratorium expires as it currently slated to do on December 31, 2015.

#### **R20-4-1304 Fees**

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. Specifically, this Section implements the authority of the Superintendent stated in A.R.S. §§ 6-126, 6-991.03, 6-991.04, 6-991.07.

2. **Objective.** The objective of the rule is to specify the program fee amounts set by the Superintendent pursuant to A.R.S. §§ 6-126, 6-991.03, 6-991.04, 6-991.07. It provides clear guidelines on the fees required to be paid to the Agency for applying for and maintaining this license

8. **Estimated Economic, Small Business and Consumer Impact.**

The Department will realize no immediate economic benefit from this rulemaking. Licensing fees collected under the present statutory scheme accrue to the Financial Services Fund, established by A.R.S. § 6-991.21. Under that provision, at a point in the future, the Department will realize the benefit of those funds when sums are appropriated by the legislature for use in supervising and regulating loan originators. That future, contingent benefit arises not under these rules but as a result of possible legislative appropriations. The Department expects to realize an indirect economic benefit from these rules because they will facilitate communication with licensees and applicants about how to satisfy the demands of the new licensing program.

10. **Completion of the Previous Five Year Rule report Process.** This rule was made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011. This is the first rule review.

#### **R20-4-1305 Practice and Procedure**

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. Specifically, this Section implements the authority of the Superintendent stated in A.R.S. §§ 6-991.03, 6-991.04.

2. **Objective.** The object of this rule is to provide the process for loan originators to challenge information that the superintendent enters into the nationwide mortgage licensing system and registry.

10. **Completion of the Previous Five Year Rule report Process.** This rule was made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011. This is the first rule review.

12. **Stringency Compared with Corresponding Federal Law.** The S.A.F.E. Act requires that loan originator supervisory authority has a process in place for challenging information contained in the nationwide mortgage licensing system. The rule is not more stringent than Federal law.

#### **Article 14. Investigations**

##### **R20-4-1401 Definitions**

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. Specifically, this Section implements the authority of the Superintendent to conduct investigations, as permitted by A.R.S. § 6-124.

2. **Objective.** The objective of the rule is to specify the meaning of terms used in this Article of the Code.

6. **Clarity, Conciseness, and Understandability of the Rule.** The rule is clear and concise with the exception of the definition of “licensee”. Currently it states that a licensee is a financial institution or enterprise; however, not every financial institution or enterprise is a licensee. There should be clarification that the definition only pertains to financial institutions or enterprises licensed by the Department of Financial Institutions.

10. **Completion of the Previous Five-Year-Rule Report Process.** The previous five-year review report proposed to make the abovementioned change for clarification. The Department did not take action because of the Governor’s Moratorium on Rule Making.

14. **Proposed Course of Action.** The Department proposes that this rule be amended to clarify that licensees are only financial institutions or enterprises licensed with the Department of Financial Institutions. The Department will propose to Council for approval to amend the rule within one year after the moratorium expires as it currently slated to do on December 31, 2015.

#### **R20-4-1403 Subpoenas: Service; Amendment; Investigation or Examination not a Condition of the Superintendent’s Subpoena Power**

1. **Authorization.** The Department’s general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. Specifically, this Section implements the authority of the Superintendent stated at A.R.S. §§ 12-2212 and 6-124.

2. **Objective.** The objective of the rule is to specify the method of service of a subpoena issued by the Superintendent, and the circumstances in which the Superintendent may issue or amend a subpoena.

#### **R20-4-1405 Fingerprints; Background Information**

1. **Authorization.** The Department’s general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. Specifically, this Section implements the authority of the Superintendent to obtain fingerprints, as permitted by A.R.S. §§ and 6-123(4) and 6-123.01.

2. **Objective.** The objective of this rule is to provide guidance as to whom the Agency may conduct an examination or investigation on. It also provides clarity regarding the ability to obtain a criminal record on such persons.

## **Article 15. Collection Agencies**

### **R20-4-1501 Definitions**

1. **Authorization:** The Department’s general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule.
2. **Objective:** The objective of the rule is to define the terms used in this Article.
4. **Consistency.** The statutory reference in the definition of “collection agency” is incorrect. It currently says A.R.S. § 32-1001(A)(2) and it should simply read A.R.S. § 32-1001(2).
10. **Completion of the Previous Five-Year-Rule Report Process.** The previous five-year review report proposed to make the abovementioned change for clarification. The Department did not take action because of the Governor’s Moratorium on Rule Making.
14. **Course of Action.** The Department proposes to amend the statutory reference in the definition of “collection agency” as mentioned above. The Department will propose to Council for approval to amend the rule within one year after the moratorium expires as it currently slated to do on December 31, 2015.

### **R20-4-1502 Applications**

1. **Authorization.** The Department’s general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule. This Section implements A.R.S. § 32-1021.
2. **Objective.** The objective of the rule is to specify the details of the application process for collection agencies for new, renewal and provisional licenses, and to list the documents applicants must submit in support of an application.
4. **Consistency with Statutes and Other Rules Made by the Agency.** There are some questions with regard to the effectiveness of a few provisions in this Rule. In Subsection (A) (2), the Rule requires that applicants pay a nonrefundable investigation fee and original license fee under A.R.S. § 6-126; however the stated fees are not referenced in A.R.S. § 6-126. With regard to applications, the Department only requires an application fee and a license renewal fee as permitted by A.R.S. § 6-126. The Department does not charge an “investigation fee” as suggested by the rule, nor does the statute permit charging that fee. With regard to “C” of this rule, it is not consistent with A.R.S. Section 32-1025(A). The rule states an applicant for renewal **shall** include a financial statement. The statute provides the applicant for renewal an opportunity to request an extension in which to submit the financial statement. Subsection (F) is confusing because it refers to the request for a provisional license as an “Application for a Provisional License,” yet the statute does not refer to it as an application,

nor is it treated as an application by the Department. Provided that the individual shows proof to the department that they fall within the provisions of A.R.S. § 32-1027, the Superintendent is required to issue a provisional license. The verbiage should be amended to clarify that it is a “request” for a provisional license, versus an “application.”

6. **Clarity, Conciseness, and Understandability of the Rule.** This rule is not clear and concise as there are inconsistencies (as noted above) relating to the statutory language.

10. **Completion of the Previous Five-Year-Rule Report Process.** The previous five-year review report proposed to make the abovementioned change for clarification. The Department did not take action because of the Governor’s Moratorium on Rule Making.

14. **Proposed Course of Action.** The Department will propose to Council for approval to amend the rule within one year after the moratorium expires as it currently slated to do on December 31, 2015.

#### **R20-4-1503 Reports**

1. **Authorization.** The Department’s general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule. This Section implements A.R.S. §§ 32-1023 and 32-1055.

2. **Objective.** The objective of the rule is to specify the reporting duties of Collection Agencies under this article.

3. **Effectiveness in Achieving Objectives.** The Department feels that Subsection (B) is ineffective in achieving its objective since it is duplicative of A.R.S. § 32-1055(D)(4) and should be amended to remove it.

4. **Consistency with Statutes and Other Rules Made by the Agency.** There is inconsistency with the statute and section “A” of this rule. Section “A” states that a collection agency shall notify the Superintendent in writing within ten days of a change in the Active Manager. It further states that with that notice, the collection agency shall provide a Statement of Personal History for the new Active Manager. The statute, A.R.S. 32-1023(C) provides the collection agency 90 days from the termination of the Active Manager to replace and notify the superintendent with a new qualified person.

10. **Completion of the Previous Five-Year-Rule Report Process.** The previous five-year review report proposed to make the abovementioned change for clarification. The Department did not take action because of the Governor’s Moratorium on Rule Making.

14. **Proposed Course of Action.** The Department will propose to Council for approval to amend the rule within one year after the moratorium expires as it currently slated to do on December 31, 2015.

## **R20-4-1504    Records**

1.     **Authorization.** The Department’s general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule. This Section implements A.R.S. § 32-1055.
  
2.     **Objective.** The objective of the rule is to require maintenance of records that allow the Department to examine the Collection Agencies and determine if their business is conducted in compliance with applicable law and regulations.
  
6.     **Clarity, Conciseness, and Understandability of the Rule.** Subsection (A) of the rule requires a licensee to give advanced notice to the Superintendent if the licensee wants to use a computer recordkeeping system. The statutory reference to advanced written notice for a computer recordkeeping system is outdated.
  
10.    **Completion of the Previous Five-Year-Rule Report Process.** The previous five-year review report proposed to clarify the discrepancy between a “timely manner” and “three working days” for clarification. The Department did not take action because of the Governor’s Moratorium on Rule Making. The Department no longer feels this rule change is necessary.
  
11.    **Probable Benefits Outweigh Probable costs/Rules Impose Least Burden on Persons.** Other than the burden of providing the Department written notice of the use of a computer recordkeeping system, this rule imposes the least burden and costs to the entity as it provides clarification to the collection industry.
  
14.    **Proposed Course of Action.** The Department proposes to clarify and update this rule to eliminate the requirement to give an advanced written notice to the Department prior to using a computer recordkeeping system. Subsection (A) should read, “The Department shall require a licensee to keep and maintain at all times correct and complete books, accounts, and records.” The Department will propose to Council for approval to amend the rule within one year after the moratorium expires as it currently slated to do on December 31, 2015.

## **R20-4-1505    Trust Account**

1.     **Authorization.** The Department’s general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule. This Section implements A.R.S. § 32-1055.
  
2.     **Objective.** The objective of the rule is to require that Collection Agencies keep funds collected for creditor clients segregated from the Collection Agencies’ money and, thereby, to protect the interests of both creditor clients and debtors.

6. **Clarity, Conciseness, and Understandability of the Rule.** The rule is clear and concise with the exception of two items. In subsection (C), in the first sentence after the word "client", should be amended by adding, "except as required, and with specificity, to adhere or uphold provisions of said contract". This amendment would provide clarity to the "Licensee." Also, subsection (D) has an incorrect citation to A.R.S. § 44-317, the current reference is A.R.S. § 44-307.

10. **Completion of the Previous Five-Year-Rule Report Process.** The previous five-year review report proposed to clarify the incorrect statutory reference in subsection (D). The Department did not take action because of the Governor's Moratorium on Rule Making.

14. **Proposed Course of Action.** The Department proposes to clarify the incorrect statutory reference. The Department will also propose to add to Subsection (C), "except as required, and with specificity, to adhere or uphold provisions of said contract" after the word "client" to provide clarity to the Licensee." The Department will propose to Council for approval to amend the rule within one year after the moratorium expires as it currently slated to do on December 31, 2015.

#### **R20-4-1506 Articles of Incorporation; Bylaws; Organizing Documents**

1. **Authorization.**

The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule. This Section implements A.R.S. § 32-1021.

2. **Objective.**

The objective of the rule is to specify what documentation is required and how long the licensee has to provide it to the Department after amending articles of incorporation or bylaws.

#### **R20-4-1507 Representations of Collection Agency's Identity**

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule. This Section implements A.R.S. § 32-1051.

2. **Objective.** The objective of the rule is to specifically limit the content of representations a Collection Agency may make about its identity in its contacts with debtors.

#### **R20-4-1508 Representations of the Law**

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule. This Section implements A.R.S. § 32-1051.

2. **Objective.** The objective of the rule is to specifically limit the content of representations a Collection Agency may make about the state of the law in its contacts with debtors.

#### **R20-4-1509 Representations as to Fees, Costs and Legal Proceedings; Disinterested Counsel Required**

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule. This Section implements A.R.S. § 32-1051.

2. **Objective.** The objective of the rule is to specifically limit the content of representations a Collection Agency may make about collection of attorney's fees, collection costs, or the imminence of legal proceedings in its contacts with debtors.

#### **R20-4-1510 Representations as to as to Rights Waived or Remedies Available**

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule. This Section implements A.R.S. § 32-1051.

2. **Objective.** The objective of the rule is to specifically limit the content of representations a Collection Agency may make about the debtor's rights and remedies in its contacts with debtors.

#### **R20-4-1511 Prohibition of Harassment**

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule. This Section implements A.R.S. § 32-1051.

2. **Objective.** The objective of the rule is to specifically limit the content of persuasive communications a Collection Agency may employ in its contacts with debtors.

#### **R20-4-1512 Contacts with Debtors and Others**

1. **Authorization.** The Department’s general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule. This Section implements A.R.S. § 32-1051.

2. **Objective.** The objective of the rule is to specifically limit the content of, and the parties to, telephonic communications a Collection Agency may employ in its efforts to collect a debt.

6. **Clarity, Conciseness, and Understandability of the Rule.** There is some question about the reason for separating Subsection (B) and Subsection (C). It seems like it would make more sense to indicate in subsection (B) that “a collection agency shall not threaten to contact or contact a third party...” and then remove Subsection (C). Also, there is no definition for “reasonable hours” provided in this Rule. It would help clarify the rule by defining “reasonable hours” as “after 8 o’clock antemeridian and before 9 o’clock postmeridian, local time at the consumer’s location” to align the Fair Debt Collection Practices Act (15 U.S.C. §§ 1692-1692p).

10. **Completion of the Previous Five-Year-Rule Report Process.**

The previous five-year review report proposed to make the abovementioned change for clarification. The Department did not take action because of the Governor’s Moratorium on Rule Making. The Department will propose to Council for approval to amend the rule after the moratorium expires as it currently slated to do on December 31, 2015.

12. **Stringency Compared with Corresponding Federal Law.** Federal law does apply to this rule as the Fair Debt Collection Practices Act (15 U.S.C. §§ 1692-1692p) defines when a consumer may be called. The federal law provides that “a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o’clock antemeridian and before 9 o’clock postmeridian, local time at the consumer’s location.” Subsection (A) of this rule does not specifically define when a consumer may be called and so it is less stringent than and not consistent with federal law.

14. **Proposed Course of Action.** The Department proposes to amend the Rule to clarify the two issues raised above. The Department will propose to Council for approval to amend the rule within one year after the moratorium expires as it currently slated to do on December 31, 2015.

**R20-4-1513 Cessation of Communication with the Debtor**

1. **Authorization.** The Department’s general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule. This Section implements A.R.S. § 32-1051.

2. **Objective.** The objective of the rule is to cut off contacts by a Collection Agency with a debtor who is represented by a lawyer. This section also specifies the duties of a Collection

Agency notified in writing by a debtor that the debtor either refuses to pay a debt or that the debtor no longer wants to communicate with the Collection Agency.

#### **R20-4-1514 Disclosure of Information to Debtor**

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule. This Section implements A.R.S. § 32-1051.
2. **Objective.** The objective of the rule is to require disclosure by a Collection Agency of specified factual information to debtors from whom it attempts to collect debts.

#### **R20-4-1515 Aiding and Abetting**

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule. This Section implements A.R.S. § 32-1055.
2. **Objective.** The objective of the rule is to prohibit a Collection Agency's use of an unlicensed party using prohibited practices to collect debts in violation of these rules and statutory law.

#### **R20-4-1516 Advertising**

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule. This Section implements A.R.S. § 32-1051.
2. **Objective.** The objective of the rule is to prohibit a Collection Agency's use of certain specified deceptive advertising practices.

#### **R-20-4-1518 Agreements with Clients**

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule.

2. **Objective.** The objective of the rule is to state the requirement of a written agreement or acknowledgement between a Collection Agency and a creditor client. The Section also specifies the minimum contents of the agreement or acknowledgement.

#### **R20-4-1519 Licensee Names and Control**

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule.

2. **Objective.** The objective of the rule is to describe the criteria used by the Department to decide the propriety of a Collection Agency's proposed name.

#### **R20-4-1520 Representations of Collection Agency Employees' Identity or Position**

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule. This Section implements A.R.S. § 32-1051.

2. **Objective.** The objective of the rule is to specify the means by which a Collection Agency can protect the identity and personal safety of its employees, and ensure the truthfulness of communications with debtors, while preserving the Department's ability to discipline Collection Agencies and employees of Collection Agencies.

#### **R20-4-1521 Duty of Investigation**

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides the specific authority of the Superintendent to make this rule. This Section implements A.R.S. §§ 32-1051 and 32-1055.

2. **Objective.** The objective of the rule is to specify the defensive claims of a debtor that a Collection Agency has an affirmative duty to investigate.

### **Article 16. Acquiring Control of Financial Institutions**

#### **R20-4-1601 Definitions**

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-145(A) provides the specific authority of the Superintendent to make this rule.

2. **Objective.** The objective of the rule is to provide definitions for the terms used in Article 16, and in the application package.

12. **Stringency Compared with Corresponding Federal Law.** An inconsistency is noted in the A.R.S. definition of “Control”. The A.R.S. 6-141(2) is more stringent in defining control as 15 percent as compared with the federal banking regulations under the Federal Deposit Insurance Act [Codified 12 U.S.C. 1817(j)] 1817(j)(8)(B) and the Federal Reserve Bank Holding Company Act [Regulation Y; 12 C.F.R 225.2 (e)(1)(i)] where control is defined as 25 percent.

14. **Proposed Course of Action.** The Department proposes to amend the statutory reference in the definition of “control” to align more closely with the definition in the Federal Deposit Insurance Act and the Federal Reserve Bank Holding Company Act, as mentioned above. The Department will propose to Council for approval to amend the rule within one year after the moratorium expires as it currently slated to do on December 31, 2015.

#### **R20-4-1602 Application for Approval to Acquire Control of Financial Institution**

1. **Authorization.** The Department’s general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. This Section implements A.R.S. § 6-145(A), which provides the specific authority of the Superintendent to make this rule.

2. **Objective.** The objective of the rule is to provide the form of application required by A.R.S. § 6-145(A), and to prescribe the form and the information, data or records which may be required in the application package.

12. **Stringency Compared with Corresponding Federal Law.** The rule imposes a more stringent requirement for persons who make an initial application for control over a financial institutions in section (B)(4), in that the rule requires audited financial statements from applicants and under the Federal Deposit Insurance Act, the requirement for financial statements is that the financial statements are prepared in accordance with generally accepted accounting principles. The requirement for audited statements may cause additional cost for each the applicant; however, the Federal Deposit Insurance Act is more stringent with regard to the number of years of financial statements that are required (i.e., “for each of the five fiscal years preceding the date of notice...and interim statement[s]..., as of a date not more than ninety days prior to the date of the filing...”) *12 U.S.C. 1817(j) (6) (B)*. The Department knows of no statutory authority that would allow this rule to be more stringent than Federal Law.

14. **Proposed Course of Action.** The Department proposes to adjust the requirements for financial statement information so that it is no more stringent than the Federal Deposit Insurance Act by changing the requirement of “audited financial statements” to correspond with the federal law requiring financial statements are prepared in accordance with generally accepted accounting principles.

The Department will propose to Council for approval to amend the rule after the moratorium expires as it currently slated to do on December 31, 2015.

## **Article 17. Arizona Interstate Bank and Savings and Loan Association Act**

### **R20-4-1701 Definitions**

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules.
12. **Stringency Compared with Corresponding Federal Law.** A.R.S. § 6-141(2) is more stringent in defining control as 15 percent as compared with the federal banking regulations under the Federal Deposit Insurance Act and the Federal Reserve Bank Holding Company Act [Regulation Y; 12 C.F.R 225.2 (e)(1)(i)] where control is defined as 25 percent. The Department knows of no statutory authority that would allow this rule to be more stringent than Federal Law.
14. **Proposed Course of Action.** The Department proposes to amend the statutory reference in the definition of "control" to align more closely with the definition in the Federal Deposit Insurance Act and the Federal Reserve Bank Holding Company Act, as mentioned above. The Department will propose to Council for approval to amend the rule within one year after the moratorium expires as it currently slated to do on December 31, 2015.

### **R20-4-1702 Notice to the Superintendent of Intent to Acquire Control of an In-state Financial Institution; Surrender of an Acquired Financial Institution's Charter.**

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules.
2. **Objective.** The objective of the rule is to provide clarity for the process of notification, timing and documents that are required to be submitted to the Department for the acquisition of an Arizona financial institution and also the requirements for surrender of an acquired financial institution's charter.

### **R20-4-1704 Public Notice**

1. **Authorization.** The Department's general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules.
2. **Objective.** The objective of the rule is to indicate what is to be provided to the Superintendent with regard to public notice in order to keep the Superintendent advised.
6. **Clarity, Conciseness, and Understandability of the Rule.** This rule was drafted prior to the agency's name change. "Superintendent of Banks" is inconsistent with the current statutory name, "Department of Financial Institutions."

**10. Completion of the Previous Five-Year-Rule Report Process.** The previous five-year review report proposed to make the abovementioned change for clarification. The Department did not take action because of the Governor's Moratorium on Rule Making.

**11. Probable Benefits Outweigh Probable costs/Rules Impose Least Burden on Persons.** Subsection (A) requires the applicant to transmit to the Superintendent two copies of each notice and the publisher's affidavit of publication. This imposes a greater burden on the applicant than what is needed by the Department. The Rule has been determined to impose a greater burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

**12. Stringency Compared with Corresponding Federal Law.** The rule is more stringent than the Federal Deposit Insurance Act and Federal Reserve Regulation Y, because the Rule requires a duplicate copy which is no longer required.

**14. Proposed Course of Action.** The Department proposes to amend the rule to be consistent with the agency's new name and also to reduce the delivery of notice of publication to one from two. The Department will propose to Council for approval to amend the rule within one year after the moratorium expires as it currently slated to do on December 31, 2015.

### **Information That Is Identical Within Groups of Rules**

The following information is identical for each group of rules listed. Because this information is the same for each rule in the groups listed it is not included in the analysis of each individual rule within the group.

**C. Effectiveness:** The objectives of the following rules are effectively met. Effectiveness was determined by analyzing the rules contained in this report against the applicable Department governing statutes. There have been no substantive changes to rule or statute since the previous five year rule review, and the Department has determined effectiveness through analysis and practice that the rules achieve their regulatory purpose. With the exception of the rules in Article 3 as discussed in the individual rules section, the rules in Articles 1, 2, 4, and 5 are effectively met.

**D. Consistency:** With the exception of R20-4-103, R20-4-214, R20-4-327 and R20-4-328, which are discussed in the individual analysis for these rules, the remaining rules in Articles 1-5 are consistent. The rules are consistent with the Department's governing statutes. Analysis of applicable federal laws including the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Gramm-Leach-Bliley Act of 1999, USA Patriot Act of 2001, Federal Deposit Insurance Act of 1950, Federal Reserve Act of 1933, Federal Credit Union Act of 1934, the regulations of the Federal Reserve Board, and the State's governing statutes under Title 6 was conducted. Applicable State statutes to determine consistency of individual rules are noted in the individual rules section and are listed in the attached document, "Exhibit A". The Department consulted with its field examiners and staff which did not find inconsistencies with the rules subject to this report.

**E. Enforcement:** With the exception of the rules in Article 3, which are discussed separately in the individual analysis for these rules, the remaining rules in Articles 1, 2, 4, and 5 are enforced. The following rules are enforced through the established policies and procedures as prescribed by the rules and statutes. All rules are consistently and fairly enforced. There have been no substantive problems with enforcing the rules as written.

**G. Clarity, Conciseness, and Understandability of the Rule:** The rules are clear, concise, and understandable. In the previous five-year rule report, the Department stated that rules contained in Title 20, Chapter 4, Article 3 could be made more clear, concise, and understandable by amending the language to be more easily read. While that may have been the opinion of the Department at that time, based on further review for clarity, conciseness, and their complexity the Department has determined that it is satisfied with the clarity, conciseness, and understandability of Article 3.

**H. Criticisms Received within the Last Five Years:** The Department has not received any written criticisms of any of the rules in Articles 1-5 within the past five years immediately preceding the five-year review report.

- I. Estimated Economic, Small Business and Consumer Impact:** No substantive change in the economic impact of the following group of rules on small business or consumers has occurred since their currently effective text was approved by GRRC.

**Article 1. General**

The Department was unable to locate the Economic, Small Business and Consumer Impact Statement (“EIS”) that was submitted with the last five-year rule review. The EIS for adopted amendments to Article 1 made in September 2012 are included. It should be noted that there has been no adverse economic impact because of these Rules on the Department, the regulated community or the public.

**Article 2. Bank Organization and Regulation**

The Department was unable to locate the Economic, Small Business and Consumer Impact Statement (“EIS”) that was submitted with the last five-year rule review. However, it should be noted that there has been no adverse economic impact of these Rules on the Department, the regulated community or the public.

**Article 3. Savings and Loan Associations**

There is no current economic impact because these rules are not regulating any savings and loan associations at this time. The Department remains prepared to enforce these rules if necessary. The rules in Article three are necessary even during times when the savings and loan industry is dormant because of the laws that permit credit unions to convert to associations. A.R.S. § 6-588 (C) allows state chartered credit unions to convert into an association.

**Article 4. Credit Unions**

The Department was unable to locate the Economic, Small Business and Consumer Impact Statement (“EIS”) that was submitted with the last five-year rule review. It should be noted that there has been no adverse economic impact of this Rule on the Department, the regulated community or the public. The rule in this Article is necessary because the National Credit Union Association (“NCUA”) depends on state laws and rules to impose bond coverage.

**Article 5. Small Loans**

There has been no substantive change in Economic, Small Business, and Consumer Impact of the Rules contained in Article 5. It should be noted that there has been no adverse economic impact because of these Rules on the Department, the regulated community or the public.

- J. Analysis Submitted to the Agency:** There has not been any analysis submitted to the Department in the past five years by another person regarding the rules impact on this state’s business competitiveness as compared to the business competitiveness in other states regarding this group of rules.

- K. Completed Previous Five Year Rule Review:** This group of rules was the subject of a normal five-year rule review in 2008. The Department proposed changes to three rules in the

previous report approved by GRRC in March 2009. The Department completed the rulemaking process through the GRRC in September 2012 and amended R20-4-102 by adding the following definitions, “Exclusive contract” and “Registered Exempt Person” as evidenced in the Arizona Administrative Register, Volume 18, Issue 42, October 19, 2012. Additionally the Department numbered all definitions within this rule for the purpose of referencing definitions, and amended Table A to reflect legislative changes. The Department has not amended R20-4-103 as indicated in the March 2009 report. The Department has not amended R20-4-214 as indicated in the March 2009 report, and has not received any inquiries regarding the rule’s consistency. The Department sought advice from its legal counsel on this rule which stated that a bank may comply with this Section by complying with the preemptive federal regulation under the USA Patriot Act of 2001.

**L. Probable Benefits of the Rule:** The benefits of the rules in Articles 1-5, outweighs the probable costs of the rule, and imposes the least burden and cost on the persons regulated necessary to achieve the regulatory objective of ensure safety and soundness in state chartered institutions. The rules covering the subject matter are necessary to fulfill the agency’s mission.

**M. Stringency of the Rule:** No rule in this report was considered to be more stringent than related federal rules or statutes. This was determined by analyzing Title 6, Arizona Revised Statutes, applicable federal law including the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Gramm-Leach-Bliley Act of 1999, USA Patriot Act of 2001, Federal Deposit Insurance Act of 1950, Federal Reserve Act of 1933, Federal Credit Union Act of 1934, the regulations of the Federal Reserve Board. There have been no substantive changes to related state law in Title 6 that would affect Articles 1-5 since the previous five year rule review.

**N. Compliance with A.R.S. § 41-1037:** Although R20-4-102 and Table A were amended after July 29, 2010, the general permit requirements of A.R.S. § 41-1037 are not applicable to these rules because the rules do not require issuance of a permit. Therefore, no such analysis is required for these rules.

**O. Course of Action:** The Department of Financial Institutions has no course of action planned for rulemaking on the articles in this five-year rule review with the possible exception of R20-4-103 and R20-4-214 which is discussed further in the individual rule analysis. The Department intends to submit a revised Section of R20-4-103 to the Council by July 2015. Lastly, with guidance from our legal counsel that banks can remain in compliance with R20-4-214 because of preemptive federal law under the USA Patriot Act of 2001 the Department will not pursue amending this Section at this time, but will continue to consider its necessity.

## Analysis of Individual Rules

### R20-4-101 Scope of Article

**A. Authorization:** The Department of Financial Institutions' general authority derives from Arizona Revised Statutes (hereinafter, "A.R.S.") § 6-123(2), which provides general authority to the Superintendent to make rules.

**B. Objective:** The objective of the rule is to explicitly clarify the scope of Title 20, Chapter 4, Article 1 of the Arizona Administrative Code (hereinafter, the "Code"). This will help the public and the regulated communities understand that: 1) all the rules in Article 1 apply to all activities of the Superintendent and of the Department and that 2) the rules in Article 1 are not limited in their application to a specific chapter of A.R.S. or to a specific article of Chapter 4 of the Code.

### R20-4-102 Definitions

**A. Authorization:** The Department of Financial Institutions' general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules.

**B. Objective:** The objective of the rule is to provide definitions of terms used in the rules that are not defined in the statutes or elsewhere in the rules. This helps to prevent confusion by providing clarification of referenced definitions and further explanation.

### R20-4-103 Fingerprints

**A. Authorization:** The Department of Financial Institutions' general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. In addition, A.R.S. § 6-123(4) allows the Superintendent to provide fingerprints of certain applicants to Arizona's Department of Public Safety. This Section also implements the provisions of A.R.S. § 6-123.01.

**B. Objective:** The objective of the rule is to ensure applicants know how to supply fingerprints in acceptable form and format whenever the Department's rules require them. The rule also clarifies that fingerprints must be supplied at the expense of the applicant or licensee. This rule helps to provide guidance to on fingerprinting requirements.

**D. Consistency:** Pursuant to A.R.S. § 6-123.01 the Department may require an applicant, licensee, active manager or responsible individual or an organizer, director or officer of any corporate applicant or licensee to submit a full set of fingerprints and fees to the Department. If the Department does require the submission of fingerprints, the Department shall submit those fingerprints to obtain a Federal and State criminal background check.

The Department began utilizing the services of Lexis Nexis to conduct background checks in place of fingerprinting in some instances as permissible by statute. Pursuant to R20-4-103(B) the licensee shall bear any costs incurred in obtaining or submitting fingerprints.

Currently, licensees are not required to reimburse the Department for background checks from Lexis Nexis. The Department believes the statute intends for this reimbursement of costs to the Department for criminal background checks. Therefore, the rule may not be consistent with A.R.S. § 6-123.01.

**O. Course of Action:** The Department is proposing to amend this rule in the future to reflect that licensees shall bear costs for fingerprints and criminal background checks. The Department intends to submit a revised Section to the Council in July 2015.

#### **R20-4-104 Acceptance of Other Forms**

**A. Authorization:** The Department of Financial Institutions' general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. In addition, A.R.S. § 6-123(1) requires the Superintendent to exercise "...all powers necessary..." in enforcing and administering these rules.

**B. Objective:** The objective of the rule is to reduce the cost burden imposed on applicants and licensees. This addresses many members of the regulated community that either do business across state lines, or are regulated both by the federal government and one or more State governments. The purpose of this rule is to make one set of forms and thus reduce the administrative expenses of preparing multiple sets of forms.

#### **R20-4-105 Claims Against a Deposit in Place of Bond**

**A. Authorization:** The Department of Financial Institutions' general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. The Department takes the position that A.R.S. § 6-123(1) provides sufficiently specific authority for the Superintendent to enforce and administer these rules.

**B. Objective:** The objective of the rule is to establish a fair and equitable procedure to resolve claims against licensees' cash deposits. This rule establishes guidelines that assist a person filing a claim against a deposit.

#### **R20-4-106 Bankruptcy**

**A. Authorization:** The Department of Financial Institutions' general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides sufficiently specific authority for the Superintendent to enforce and administer these rules.

**B. Objective:** The objective of the rule is to ensure the classes of licensees named in the rule give the Department immediate and detailed notice of the filing of any bankruptcy naming the licensee as a debtor. This rule provides guidance on when a licensee shall deliver notice of bankruptcy to the Superintendent.

**R20-4-107      Licensing Time-frames**

**A.      Authorization:** The Department of Financial Institutions' general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides sufficiently specific authority for the Superintendent to enforce and administer these rules. Also, this Section implements A.R.S. § 41-1073.

**B.      Objective:** The objective of the rule is to specify time-frames during which the agency will grant or deny each type of license it issues. This rule provides guidance to licensees and applicants of timeframe requirements.

**Table A.    Licensing Time-frames**

**A.      Authorization:** The Department of Financial Institutions' general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-123(1) provides sufficiently specific authority for the Superintendent. Also, this Section implements A.R.S. § 41-1073.

**B.      Objective:** The objective of the Table is efficiently to display the specific time-frames in a way that is easily understood. This rule provides guidance to licensees and applicants of timeframe requirements.

**R20-4-201      Articles of Incorporation**

**A.      Authorization:** The Department of Financial Institutions' general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. §§ 6-123(1) and 6-123(3) provide specific authority for the Superintendent.

**B.      Objective:** The objective of the rule is to ensure the Superintendent has timely and accurate information on the current text of each bank licensee's articles of incorporation. This rule provides guidance of how and when a licensee shall provide articles of incorporation to the Superintendent.

**R20-4-202      Bylaws**

**A.      Authorization:** The Department of Financial Institutions' general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. §§ 6-123(1) and 6-123(3) provide specific authority for the Superintendent.

**B.      Objective:** The objective of the rule is to ensure the Superintendent has timely and accurate information on the current text of each bank licensee's bylaws. This rule provides guidance of how and when a licensee shall provide bylaws to the Superintendent.

**R20-4-206 Bankers Blanket Bond Coverage – A.R.S. § 6-188**

**A. Authorization:** The Department of Financial Institutions’ general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. §§ 6-123(1), 6-181(3), 6-181(4), 6-181(9), and 6-188 provide specific authority for the Superintendent.

**B. Objective:** The objective of the rule is to ensure protection for licensee banks, for their shareholders, and for their depositors against the risks of losses caused by embezzlement, forgery, theft, and other similar and foreseeable injuries. This rule provides guidance on the levels of blanket bond coverage required for each bank based on deposits.

**R20-4-207 Capital Obligations**

**A. Authorization:** The Department of Financial Institutions’ general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. §§ 6-181(1), 6-181(4), 6-181(7), 6-181(9), and 6-189 provide specific authority for the Superintendent to implement and execute the provisions of this chapter.

**B. Objective:** The objective of the rule is twofold. First, it specifies documentation required in support of a request for the Superintendent’s approval for the issuance of capital obligations by state-chartered banks. Second, it regulates the substance of the contractual rights of investors in capital obligations. This rule provides guidance to the bank on documentation and reporting requirements to the Superintendent on capital obligations.

**R20-4-209 Notice of Permanent Closing of Banking Office**

**A. Authorization:** The Department of Financial Institutions’ general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-190(D) provides specific authority for the Superintendent to establish notice requirements for the permanent closure of a banking office.

**B. Objective:** The objective of the rule is to specify the notice requirements imposed by the Superintendent and to inform the regulated community of the licensure consequences of closure. This rule provides guidance of notification of permanent closing of a banking office to the Superintendent.

**R20-4-211 Application for a Banking Permit**

**A. Authorization:** The Department of Financial Institutions’ general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-203 provides specific authority for the Superintendent to make this rule.

**B. Objective:** The objective of the rule is to provide the Superintendent with information in support of the required application, in a standardized format, and in sufficient detail to permit a

rational decision on whether to issue or amend the subject permit. This rule provides guidance to an individual, group, or representative(s) thereof on the procedures to applying for a bank permit.

#### **R20-4-214      Preservation of Records**

**A.      Authorization:** The Department of Financial Institutions' general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-242 provides specific authority for the Superintendent to make this rule.

**B.      Objective:** The objective of the rule is to comply with A.R.S. § 6-242, and to provide a detailed record retention schedule for banks licensed by the Department. The rule provides guidance to banks on bank records retention and preservation requirements.

**D.      Consistency:** The current Section's record retention schedule has a minor inconsistency with federal rules governing the retention of certain transaction reports. Federal rules require creation, filing, and retention of Suspicious Activity ("SARs") for all suspicious financial activities, regardless of amount. This Section implies that State chartered banks only need retain SARs for transactions that are less than \$10,000. Second, this Section does not clearly indicate that the retention period for all SARs is a period of five years. However, a bank may comply with this Section by complying with the preemptive federal regulation under the USA Patriot Act of 2001.

#### **R20-4-215      Trust Business**

**A.      Authorization:** The Department of Financial Institutions general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. §§ 6-123(1) and 6-123(3) provide specific authority for the Superintendent to exercise all powers that are necessary for the administration and enforcement of the laws and rules relating to financial institutions and enterprises.

**B.      Objective:** The objective of the rule is to subject banks engaged in the trust business to the same substantive administrative rules as other licensees engaged in the trust business. This rule provides guidance to banks that are engaged in the trust business that they are subject to the same administrative rules as licensees engaged in the trust business.

#### **R20-4-301      Fidelity Bond – A.R.S. § 6-420**

**A.      Authorization:** The Department of Financial Institutions' general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-420(A) provides specific authority for the Superintendent to prescribe forms and the bond amount as the board of directors shall fix and approve.

**B.      Objective:** The objective of the rule is to provide the standard of sufficiency for the bond required by statute, and to advise of requirements imposed on licensees to report changes in liabilities or defaults under the bond. This rule provides guidance on the process and requirements for fidelity bonds for officers and employees.

C. **Effectiveness:** This rule is no longer effective in achieving its objective because there are no state-chartered savings and loan industry in Arizona. However, the Department feels it is unwise to take any action on this Section because institutions that fit the criteria of these regulations could form in Arizona.

E. **Enforcement:** The Department does not currently enforce this Section because there are no savings and loan institutions in Arizona. The rule would be enforceable if there was a savings and loan institution in Arizona.

#### **R20-4-303 Separate Trust Account – A.R.S. § 6-449(C)(3)**

A. **Authorization:** The Department of Financial Institutions' general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A licensee's compliance with A.R.S. § 6-449(C)(3) requires the specificity set out in this rule under authority of the Superintendent granted in A.R.S. §§ 6-123(1) and 6-123(3).

B. **Objective:** The objective of the rule is to provide specific details about the permissible number of depository banks, accounting treatment of trust account funds, frequency of deposits to trust accounts, and reflection of individual customers' equity in the trust account required by statute. This rule helps clarify A.R.S. § 6-449(C)(3) by providing further guidance to licensees on separate trust bank accounts.

C. **Effectiveness:** This rule is no longer effective in achieving its objective because there are no state-chartered savings and loan industry in Arizona. However, the Department feels it is unwise to take any action on this Section because institutions that fit the criteria of these regulations could form in Arizona.

E. **Enforcement:** The Department does not currently enforce this Section because there are no savings and loan institutions in Arizona. The rule would be enforceable if there was a savings and loan institution in Arizona.

#### **R20-4-304 Publication of Intent to Organize – A.R.S. § 6-123**

A. **Authorization:** The Department of Financial Institutions' general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-409 provides the specific authority of the Superintendent to prescribe the form for the notice of intent to organize.

B. **Objective:** The objective of the rule is to provide specific details about the number of publications, frequency, content, language and permissible newspaper to be used for the publication of intent required by statute. This rule provides information that is necessary for an applicant to fulfill the intent to organize requirement of A.R.S. §6-123.

C. **Effectiveness:** This rule is no longer effective in achieving its objective because there are no state-chartered savings and loan industry in Arizona. However, the Department feels it is unwise to

take any action on this Section because institutions that fit the criteria of these regulations could form in Arizona.

**E. Enforcement:** The Department does not currently enforce this Section because there are no savings and loan institutions in Arizona. The rule would be enforceable if there was a savings and loan institution in Arizona.

**R20-4-309 Sale and Servicing of Loans – A.R.S. §§ 6-451, 6-402**

**A. Authorization:** The Department of Financial Institutions' general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-451 provides the specific authority of the Superintendent to make this rule.

**B. Objective:** The Section provides licensees with specific details about the fraction of its loan portfolio available for sale without the Superintendent's approval, terms and conditions of sale, requirements for service agreements governing contracts for the licensee to service the sold loans, and the timing and content of required reports concerning any sale of loans. This rule fulfills its purpose by providing necessary guidance on the requirements of an association in the sale and servicing of loans.

**C. Effectiveness:** This rule is no longer effective in achieving its objective because there are no state-chartered savings and loan industry in Arizona. However, the Department feels it is unwise to take any action on this Section because institutions that fit the criteria of these regulations could form in Arizona.

**E. Enforcement:** The Department does not currently enforce this Section because there are no savings and loan institutions in Arizona. The rule would be enforceable if there was a savings and loan institution in Arizona.

**R20-4-318 Service Corporations – A.R.S. § 6-446(5)**

**A. Authorization:** The Department of Financial Institutions' general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-446(A)(5) provides the specific authority of the Superintendent to make this rule.

**B. Objective:** The objective of the rule is to provide licensees with specific details about the nature and qualifications of service corporations in which they may invest under state law. This rule provides necessary guidance on A.R.S. § 6-446(5).

**C. Effectiveness:** This rule is no longer effective in achieving its objective because there are no state-chartered savings and loan industry in Arizona. However, the Department feels it is unwise to take any action on this Section because institutions that fit the criteria of these regulations could form in Arizona.

**E. Enforcement:** The Department does not currently enforce this Section because there are no savings and loan institutions in Arizona. The rule would be enforceable if there was a savings and loan institution in Arizona.

**R20-4-324 Give-aways – A.R.S. § 6-444**

**A. Authorization:** The Department of Financial Institutions' general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-444 provides the specific authority of the Superintendent to establish the rules setting the fixed sum for the limit of monetary value.

**B. Objective:** The objective of the rule is to provide licensees with specific details about the monetary value of give-aways. This rule further clarifies A.R.S. §6-444 and provides specific guidelines on give-aways that are required by statute.

**C. Effectiveness:** This rule is no longer effective in achieving its objective because there are no state-chartered savings and loan industry in Arizona. However, the Department feels it is unwise to take any action on this Section because institutions that fit the criteria of these regulations could form in Arizona.

**E. Enforcement:** The Department does not currently enforce this Section because there are no savings and loan institutions in Arizona. The rule would be enforceable if there was a savings and loan institution in Arizona.

**R20-4-325 Appraisal Requirements – A.R.S. § 6-457**

**A. Authorization:** The Department of Financial Institutions' general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-457 provides the specific authority of the Superintendent when good cause exists; cause an independent appraisal to be made of any property upon which a loan has been made.

**B. Objective:** The objective of the rule is to provide licensees with specific details about the required qualifications of appraisers, the required form and certification of appraisal documents, and the form and source of alternative appraisal information. This rule provides necessary guidance to appraisers on required forms and other information that is necessary to an appraiser.

**C. Effectiveness:** This rule is no longer effective in achieving its objective because there are no state-chartered savings and loan industry in Arizona. However, the Department feels it is unwise to take any action on this Section because institutions that fit the criteria of these regulations could form in Arizona.

**E. Enforcement:** The Department does not currently enforce this Section because there are no savings and loan institutions in Arizona. The rule would be enforceable if there was a savings and loan institution in Arizona.

**R20-4-326 Capital Notes and Debentures – A.R.S. § 6-405.01**

**A. Authorization:** The Department of Financial Institutions' general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-405.01 provides the specific authority of the Superintendent to provide approval to an association to issue and sell its capital notes or debentures.

**B. Objective:** The objective of the rule is to provide licensees with specific details about the required documentation to support any request for approval of capital notes or debentures, the mandatory terms and conditions of any such obligation, and the mandatory restrictions on the use of such a security in the hands of a purchaser. This rule assists licensees by providing guidance on capital notes and debentures as specified in A.R.S. §6-405.01.

**C. Effectiveness:** This rule is no longer effective in achieving its objective because there are no state-chartered savings and loan industry in Arizona. However, the Department feels it is unwise to take any action on this Section because institutions that fit the criteria of these regulations could form in Arizona.

**E. Enforcement:** The Department does not currently enforce this Section because there are no savings and loan institutions in Arizona. The rule would be enforceable if there was a savings and loan institution in Arizona.

**R20-4-327 Application for Permit to Organize a New Association – A.R.S. § 6-408**

**A. Authorization:** The Department of Financial Institutions' general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-408 provides the specific authority of the Superintendent to provide the application form to organize a new association.

**B. Objective:** The objective of the rule is to provide standardized application forms and uniform information submission requirements. This rule provides guidance on the necessary process to complete an application for a permit to organize a new association.

**C. Effectiveness:** This rule is no longer effective in achieving its objective because there are no state-chartered savings and loan industry in Arizona. However, the Department feels it is unwise to take any action on this Section because institutions that fit the criteria of these regulations could form in Arizona.

**D. Consistency:** The current rule may not be consistent with state practice and procedure. As a result of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, effective September 29, 1994, Pub. L. 103-328 § 101(e), 12 U.S.C. § 1828, federal regulators have adopted universal application forms. However, the Department has not taken action to amend this Section because there is not currently an active industry regulated by this Section.

**E. Enforcement:** The Department does not currently enforce this Section because there are no savings and loan institutions in Arizona. The rule would be enforceable if there was a savings and loan institution in Arizona.

**R20-4-328 Application for Approval to Establish a Branch Office – A.R.S. § 6-475**

**A. Authorization:** The Department of Financial Institutions' general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-475 provides the specific authority of the Superintendent to approve the establishment of a branch office.

**B. Objective:** The objective of the rule is to provide standardized application forms and uniform information submission requirements. This rule provides guidance on the necessary process to complete an application for approval to establish a branch office.

**C. Effectiveness:** This rule is no longer effective in achieving its objective because there are no state-chartered savings and loan industry in Arizona. However, the Department feels it is unwise to take any action on this Section because institutions that fit the criteria of these regulations could form in Arizona.

**D. Consistency:** The current rule is inconsistent with state practice and procedure. As a result of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, effective September 29, 1994, Pub. L. 103-328 § 101(e), 12 U.S.C. § 1828, federal regulators have adopted universal application forms. However, because there is no industry regulated by this Section, and because of Departmental resource issues, it is unwise to take any action on this Section.

**E. Enforcement:** The Department does not currently enforce this Section because there are no savings and loan institutions in Arizona. The rule would be enforceable if there was a savings and loan institution in Arizona.

**R20-4-330 First Payment Date on Loans – A.R.S. § 6-449(E)**

**A. Authorization:** The Department of Financial Institutions' general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-449(E) provides the specific authority of the Superintendent to create rules and regulations for first payment dates on any regular installment loan, a construction loan, insured loan, or guaranteed loan.

**B. Objective:** The objective of the rule is to determine the latest date permissible for a first payment on a loan of a specified kind or class. This rule provides guidance on the payment date of loans and clarifies A.R.S. § 6-449(E) as required.

**C. Effectiveness:** This rule is no longer effective in achieving its objective because there are no state-chartered savings and loan industry in Arizona. However, the Department feels it is unwise to

take any action on this Section because institutions that fit the criteria of these regulations could form in Arizona.

**E. Enforcement:** The Department does not currently enforce this Section because there are no savings and loan institutions in Arizona. The rule would be enforceable if there was a savings and loan institution in Arizona.

#### **R20-4-401 Fidelity Bond Coverage**

**A. Authorization:** The Department of Financial Institutions' general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-506 provide the specific authority of the Superintendent to approve the application for organization of a credit union before any business is transacted in its name.

**B. Objective:** The objective of the rule is to provide a set of specific criteria for the guidance of the licensees' directors in the conduct of their duties specified in the enabling statutes. The rule provides guidance on fidelity bond coverage as prescribed in statute. The rule in this Article is necessary because the National Credit Union Association ("NCUA") depends on state laws and rules to impose bond coverage.

#### **R20-4-503 Adjustments in Precomputed Charges**

**A. Authorization:** The Department of Financial Institutions' general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. This Section implements A.R.S. § 6-634(A).

**B. Objective:** The objective of the rule is to provide a list of alternative ways to account for, and collect, adjustments in the total precomputed charges made necessary by the timing of the first installment. The rule provides guidance to a licensee on adjustments in precomputed charges.

#### **R20-4-508 Cut-off Date for Computing Refunds upon Early Repayment in Full**

**A. Authorization:** The Department of Financial Institutions' general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. This Section implements A.R.S. § 6-634(B).

**B. Objective:** The objective of the rule is to provide dates for the licensees' use in calculating refunds or credits when loans are prepaid in full. This rule provides guidance to a licensee on calculating loans if a payoff is received on or before the 15<sup>th</sup> of a month or if received on or after the 16<sup>th</sup>.

#### **R20-4-518 Deferral Fee**

**A. Authorization:** The Department of Financial Institutions' general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-612 gives the Superintendent specific authority to adopt rules that are necessary to regulate the proper conduct of a licensee under this section.

**B. Objective:** The objective of this rule is to provide regulations for the collection and application of deferral fees. The rule provides guidance to a licensee on calculating payoff the collection of a deferral fee.

#### **R20-4-519 Deferment Statement**

**A. Authorization:** The Department of Financial Institutions' general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-612 gives the Superintendent specific authority to adopt rules that are necessary to regulate the proper conduct of a licensee under this section.

**B. Objective:** The objective of the rule is to provide regulation of the documentation and record keeping required when a licensee agrees to extend the due date of unpaid installments under the authority of the statute. The rule provides guidance to the licensee on requirements to give the borrower a statement at the time a deferment is made.

#### **R20-4-524 Books, Accounts, and Records**

**A. Authorization:** The Department of Financial Institutions' general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. A.R.S. § 6-607(A) provides the specific authority of the Superintendent to examine the records of a licensee under this chapter.

**B. Objective:** The objective of the rule is to require separate books and records for the licensee's consumer loan business. The rule provides guidance on the requirements on books, accounts, and records.

#### **R20-4-534 Insurance**

**A. Authorization:** The Department of Financial Institutions' general authority derives from A.R.S. § 6-123(2), which provides general authority to the Superintendent to make rules. This Section implements A.R.S. § 6-636.

**B. Objective:** The objective of the rule is to specify required documentation evidencing compliance with A.R.S. § 6-636. The rule further describes how a licensee shall obtain written evidence of the borrower's voluntary election to purchase insurance.

# ARIZONA BOARD OF APPRAISAL

4 A.A.C. 46, Articles 1 and 3 through 6

January 2014

## INTRODUCTION

Established in 1990 by A.R.S. § 32-3604(A), the purpose of the Arizona Board of Appraisal (Board) is to implement the provisions of Title XI of the congressional Financial Institution Reform, Recovery, and Enforcement Act of 1989. The Board accomplishes this by licensing and certifying appraisers, registering appraisal management companies (AMCs) and property tax agents, establishing standards for qualification criteria for appraisers and qualifying and continuing education, investigating complaints, and issuing discipline for violations of board statutes and rules.

On November 21, 2013, the Board completed an exempt rulemaking that substantially revised all of the rules in Article 2, Registration, Licensure, and Certification as an Appraiser. The rulemaking also amended R4-46-106, Fees, and repealed Article 7, General Provisions Fees. As a result of this rulemaking, the Council rescheduled the review of Article 2. This report addresses the review of all rules in Articles 1 and 3 through 6.

The collapse of the housing bubble in 2008 and the ensuing economic downturn had a substantial economic impact on the profession of real estate appraising. There are currently 2,191 appraisers in Arizona (267 licensed; 1,130 certified residential; and 794 certified general). This number has stabilized in the last year but is down 28 percent since 2008. The average age of an appraiser in Arizona is more than 50. Recently enacted laws, while designed to protect the public, make entry into the field more difficult. As of January 1, 2015, an Associate's degree will be required to obtain the lowest level of licensure, a level that allows the appraiser to work on nothing but the least complex assignment. Most lenders will not order an appraisal from someone with this level of licensure. A four-year college degree will be required to become certified as an appraiser. Additionally, the cost of professional liability insurance has increased for appraisers since 2008.

There are additional pressures discouraging entry to the profession of real estate appraising. The Home Valuation Code of Conduct Act of 2008 limited contact between lenders and appraisers by establishing appraisal management companies to act as a middle entity between the lender and appraiser. Because of the economic circumstances existing when these entities were created, it was not possible to increase appraisal fees. This meant the appraisal fees had to be shared

between the appraiser and the AMC resulting in less income for the appraiser. As a result of these pressures, only 16 individuals who had not previously been licensed as an appraiser applied to the Board for licensure during FY2013.

During FY2013, the Board collected \$735,700 in fees and was appropriated \$725,200.

Statute that generally authorizes the agency to make rules: A.R.S. § 32-3605(A)

1. Specific statute authorizing the rule:

- R4-46-101. Definitions: A.R.S. § 32-3605(A)
- R4-46-102. Powers of Board: A.R.S. § 32-3605(B)(18)
- R4-46-103. Board Records; Public Access; Copying Fees: A.R.S. §§ 32-3605(B)(11) and (B)(18), 39-121.01, 39-121.03, and 39-122
- R4-46-106. Fees: A.R.S. §§ 32-3605(B)(16), 32-3607, 32-3619, 32-3652, and 32-3667
- R4-46-301. Investigations; Informal Proceedings; Summary Suspensions; Refusal to Appear: A.R.S. §§ 32-3605(B)(10) through (B)(12) and 32-3631
- R4-46-302. Formal Hearing Procedures: A.R.S. §§ 32-3605(B)(10) through (B)(12) and 32-3632
- R4-46-303. Rehearing or Review of the Board's Decision: A.R.S. §§ 32-3632, 41-1092.08(H), and 41-1092.09
- R4-46-304. Conviction and Judgment Disclosure: A.R.S. §§ 32-3605(B)(18) and 32-3631
- R4-46-305. Terms and Conditions of Reapplication after Revocation: A.R.S. §§ 32-3605(B)(7) and 32-3625(H)
- R4-46-306. Complaint Information Availability: A.R.S. §§ 32-3605(B)(11) and (B)(18)
- R4-46-401. Standards of Appraisal Practice: A.R.S. §§ 32-3605(B)(1), 32-3610, and 32-3635
- R4-46-501. Course Approval: A.R.S. §§ 32-3601(11) and 32-3625
- R4-46-503. Hearing on Denial of Course Approval: A.R.S. § 32-3605(B)(18)
- R4-46-601. Standards of Practice: A.R.S. §§ 32-3654 and 32-3655

R4-46-602. Disciplinary Proceedings; Board Action; Notice Requirements: A.R.S. § 32-3654

2. Objective of the rule including the purpose for the existence of the rule:

R4-46-101. Definitions: The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition. The definitions are designed to facilitate understanding by those who use the rules.

R4-46-102. Powers of Board: The objective of the rule is to inform the public that the Board may inform its decisions by seeking recommendations from an advisory committee. This is to avoid surprise regarding the Board's decision-making process.

R4-46-103. Board Records; Public Access; Copying Fees: The objective of the rule is to specify records the Board maintains and the way the Board makes the records open for public inspection and copying. This enables interested persons to know what can be expected from the Board regarding records.

R4-46-106. Fees: The objective of the rule is to specify the fees that the Board charges for its licensing activities. This enables an applicant to submit the correct amount.

R4-46-301. Investigations; Informal Proceedings; Summary Suspensions; Refusal to Appear: The objective of the rule is to specify the Board's procedure for handling a complaint against a licensee and taking disciplinary action. This avoids surprise by enabling a licensee to know what to expect from the Board if a complaint is made against the licensee and to prepare to participate in the Board's procedure.

R4-46-302. Formal Hearing Procedures: The objective of the rule is to specify the circumstances under which a complaint against a licensee leads to a formal hearing and the Board's procedure for conducting a formal hearing. This avoids surprise by enabling a licensee to know what to expect if a complaint against the licensee leads to a formal hearing.

R4-46-303. Rehearing or Review of the Board's Decision: The objective of this rule is to specify the procedures and standards for requesting a rehearing or review of a Board decision. This enables a licensee to know how to exhaust the licensee's administrative remedies before making application for judicial review under A.R.S. § 12-901.

R4-46-304. Conviction and Judgment Disclosure: The objective of the rule is to protect the public by requiring that a licensee notify the Board if the licensee is convicted of certain crimes or if a judgment related to making an appraisal is entered against the licensee. This enables the Board to fulfill its obligation to protect the public.

R4-46-305. Terms and Conditions of Reapplication after Revocation: The objective of the rule is to protect the public by requiring that an individual whose license, certificate, or approval has been revoked reapply and provide evidence that issuing a new license, certificate, or approval is consistent with public safety and welfare. This enables the Board to fulfill its obligation to protect the public.

R4-46-306. Complaint Information Availability: The objective of the rule is to assist the Board to operate in a transparent manner by specifying the information that the Board makes public regarding complaints against licensees. This enables licensees and the public to understand the kinds of behavior that lead to Board disciplinary action.

R4-46-401. Standards of Appraisal Practice: The objective of the rule is to protect the public by holding licensees to the national standard regarding professional appraisal practice. This ensures that licensees have notice of the required standards and enables the Board to fulfill its obligation to protect the public.

R4-46-501. Course Approval: The objective of the rule is to specify the requirements and procedures for obtaining the Board's approval of a qualifying or continuing education course. This enables applicants and licensees to know that a Board-approved course meets certain minimum standards and will be accepted for licensing or license-renewal purposes.

R4-46-503. Hearing on Denial of Course Approval: The objective of the rule is to inform a course provider of the right to a hearing if the Board denies or withdraws approval of a course. This enables the course provider exercise due process rights.

R4-46-601. Standards of Practice: The objective of the rule is to specify the acts and omissions that may lead to disciplinary action against a property tax agent. This enables a registered property tax agent to avoid discipline by avoiding the specified acts and omissions.

R4-46-602. Disciplinary Proceedings; Board Action; Notice Requirements: The objective of the rule is to inform registered property tax agents of the Board's disciplinary procedures. This enables a registered property tax agent to be prepared for a disciplinary hearing.

3. Effectiveness of the rule in achieving the objective including a summary of any available data supporting the conclusion:

The Board concluded that in spite of some inconsistencies with state or federal law, the rules are generally effective in achieving their objectives. This conclusion is supported by the fact the Board remains able to protect the public by issuing licenses, certificates, and approvals and taking disciplinary action.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency:

In response to the housing crisis and resulting economic disruption that occurred in 2008, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act on July 21, 2010. The Act amends Title XI of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 regarding federally related transactions.

The Act mandates that real estate appraisals be performed in accordance with generally accepted appraisal standards as evidenced by the standards made by the Appraisal Standards Board of the Appraisal Foundation. In Laws 2013, Chapter 184, the legislature significantly amended the organic statutes of the Board of Appraisal to conform to the Act. This includes a provision that the uniform standards of professional appraisal practice as published by the Appraisal Standards Board are the standards for this state (See A.R.S. § 32-3610).

As a result of these legislative actions, some of the Board's rules were inconsistent with state and federal law. Most of these inconsistencies were addressed in the exempt rulemaking of Article 2, which was completed in November 2013.

The following inconsistencies remain:

- R4-46-401, which incorporates by reference The Uniform Standards of Professional Appraisal Practice published by the Appraisal Foundation, is no longer needed because the state legislature enacted A.R.S. § 32-3610, which makes the standards the law in Arizona.
  - The Board has not made the rules regarding appraisal management companies that are required under A.R.S. § 32-3680. AMCs are entities created after 2008 to ensure the integrity of appraisals by providing a buffer between the person requesting an appraisal and the appraiser performing the appraisal.
  - R4-46-101 and R4-46-301(D)(4)(d) reference probation as a form of discipline that the Board may impose. The Board's statutes do not provide specific authority to impose probation on a licensee. During the 2014 legislative session, the Board is seeking statutory authority to allow probation as a form of discipline.
  - Contrary to A.R.S. § 41-1008(A)(1), the Board does not have specific authority to charge the fee established in R4-46-106 for renewal of an approved course to change an approved instructor. The Board no longer charges the fee and will delete it in the rulemaking the Board will complete before the end of 2014.
5. Agency enforcement policy including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement:

When the rules are inconsistent with state or federal law, the Board enforces the state or federal law. There are no other enforcement issues.

6. Clarity, conciseness, and understandability of the rule:

The rules are generally clear, concise, and understandable and consistent with current rule writing standards.

7. Summary of written criticisms of the rule received by the agency with the past five years, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods, and, written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute or beyond the authority of the agency to enact, and the result of the litigation of administrative proceedings:

In April 2012, the Appraisal Subcommittee issued a compliance review report and cited R4-46-501(I)(7)(h), regarding qualifications of instructors of the national USPAP course, as inconsistent with the requirements of the Appraiser Qualifications Board. The rule fails to reference the requirement that at least one instructor of the national USPAP course be a state-certified appraiser. The Board enforces this requirement and is putting the requirement into the rulemaking that the Board intends to complete by the end of 2014.

In July 2013, in response to the fact that the Board is planning to amend its rules, several course providers submitted a list of suggestions designed to streamline the course approval process and save time and money for course providers and the Board. They asked the Board to change the supervisor: trainee ratio in a manner that would make practicum courses possible for entry-level trainees. The Board intends to consider all the suggestions when working on the rulemaking that the Board intends to complete by the end of 2014.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule:

1995 and 1998 Rulemakings:

R4-46-102, Powers of the Board, is the only rule in this rulemaking not amended since 1995. R4-46-103, Public Records; Public Access; Copying Fees, is the only rule in this rulemaking not amended since 1998. An economic, small business, and consumer impact statement is not available for either rulemaking. Both of these rules deal with ministerial aspects of the Board's function and have minimal economic impact.

July 2005 Rulemaking:

R4-46-303, Rehearing or Review of the Board's Decisions, is the only rule in this rulemaking not amended since 2005. The rule, which simply provides procedures for a party to exhaust administrative remedies, has minimal economic impact. During FY2013, the Board received one request for a rehearing or review of one of its decisions. Another request has been received in FY2014. There were several complainants who were unhappy with a Board decision and requested a rehearing or review but a complainant is not entitled to a rehearing or review because a complainant is not a party to the proceedings.

2007 Rulemakings:

Most the of the rules in Article 3, Hearing and Disciplinary Proceedings, and all of the rules in Articles 5, Course Approval, and 6, Property Tax Agents, were last amended in 2007.

The rules in Article 3 are designed to afford due process to an appraiser subject to a disciplinary proceeding. The rules have minimal economic impact and are necessary to afford due process. During FY2013, 129 complaints were filed against appraisers. Almost half of the complaints against appraisers were filed by homeowners unhappy with the value established by the appraiser. Nineteen percent of complaints against appraisers were filed by other appraisers and 15 percent by lenders. During FY2013, 45 complaints were filed against AMCs and almost all were filed by appraisers complaining that they had not been paid within the statutorily required 45 days of assignment completion. No complaints were filed against course providers or property tax agents.

Since January 2013, the Board made a decision in 188 complaint cases. Most were dismissed because no violation was found. However, discipline was imposed in 38 percent of the cases.

Complaints against AMCs are generally settled before Board action is required because the AMC pays the complaining appraiser.

The rules in Article 5 were extensively rewritten to provide needed guidance regarding standards for qualifying and continuing education courses. The standards impose some economic costs on course providers who must ensure that course offerings comply with the standards. However, the standards are necessary to protect the public by ensuring highly trained appraisers and to comply with the standards established by the Appraiser Qualifications Board. A course provider is in position to assess whether incurring the cost of complying with the standards is offset by the benefit of being able to provide educational courses to appraisers. There are currently 251 approved courses in Arizona. A course approval needs to be renewed annually. Approximately 30 percent of course providers are small businesses.

The rules in Article 6 outline the acts and omissions for which a property tax agent will be subject to discipline and establish disciplinary procedures. The cost of being disciplined can be quite high but can be avoided by not engaging in the specified acts and omissions. There are currently 344 property tax agents in Arizona. None was subject to discipline in FY2013.

2008 Rulemaking:

R4-46-101, Definitions, is the only rule in this rulemaking not amended since 2008. The rule, which simply facilitates understanding of the rules, has minimal economic impact.

2010 Rulemaking:

R4-46-401, Standards of Appraisal Practice, is the only rule in this rulemaking not amended since 2010. In the wake of the savings and loan collapse, Congress passed the Financial Reform, Recovery, and Enforcement Act of 1989. Among other things, the law required that an appraiser meet minimum qualifications and standards if the appraiser wanted to appraise for a federally related transaction. Adoption of the standards was voluntary for the states but states that did not adopt the standards could not sell a loan to a government-sponsored entity such as Fannie Mae and Freddie Mac and could not make a loan from a bank that was FDIC

insured. The standards for an appraiser are established by the Appraisal Standards Board, which is an independent board of the Appraisal Foundation. The standards, which are updated frequently, have been adopted by the legislature into law (See A.R.S. § 32-3610). As a result, and as indicated previously, R4-46-401 is no longer needed.

2013 Rulemaking:

In November 2013, the Board completed an exempt rulemaking. Because the rulemaking was made under an exemption from the Administrative Procedure Act, no economic, small business, and consumer impact statement was prepared. The rulemaking amended R4-46-106 by establishing two new fees: for initial and renewal registration as a trainee appraiser and licensure by reciprocity. The fee for licensure by reciprocity is the same as that for initial licensure in Arizona. The fee for initial and renewal registration as a trainee appraiser is less than the fee for initial licensure. Paying a licensing fee is a cost of doing business that the licensee determines is offset by the benefit of being able to provide appraisal services. Licensing fees probably are passed to the consumers of appraisal services. The fees are necessary to enable the Board to fulfill its statutory obligation to protect the public.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states:

No analysis has been submitted.

10. How the agency completed the course of action indicated in the agency's previous 5YRR:

The Board's previous 5YRR was approved by Council on April 7, 2009. In the report, the Board indicated it intended to amend the following rules: R4-46-201, R4-46-203, R4-46-301, R4-46-303, R4-46-401, R4-46-501, R4-46-503, and R4-46-602. In the recently completed exempt rulemaking of Article 2, the Board amended R4-46-201 and repealed R4-46-203<sup>1</sup>. The Board did not complete the other rulemaking actions. This was due, in part, to the Governor's moratorium on rulemaking actions and, in part, to the illness and eventual death

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<sup>1</sup> R4-46-203 was the Board's time-frame rule. It will be included in the rulemaking that will be completed by the end of 2014.

of the Board's executive director. The Board is currently working on a rulemaking that amends all rules in Articles 1 and 3 through 6. That rulemaking will be completed by the end of 2014.

11. A determination after analysis that the probable benefits of the rule outweigh within this state the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

All of the costs of these rules, including paperwork and other compliance costs, to persons regulated by the rules result from statutory directives provided by the legislature. For example, statute requires that an appraiser, appraisal management company, and property tax agent submit an application for licensure to the Board (See A.R.S. §§ 32-3614, 32-3652, and 32-3662). Indeed, for appraisal management companies, statute specifies the information the Board must include on the application form. Statute requires that materials be submitted by a provider seeking approval of a course (A.R.S. § 32-3601(11)).

It is statute that requires the Board to establish minimum qualifications for licensure that are at least equal to the minimum qualifications established by the Appraisal Qualifications Board (A.R.S. § 32-3605). It is statute that requires the Board to charge and collect fees that are sufficient to fund its necessary activities (A.R.S. §§ 32-3607, 32-3652, and 32-3667). Statute does provide the Board with limited discretion regarding the amount of fees to charge.

It is statute that indicates a license issued by the Board expires and must be renewed to continue in business in this state (A.R.S. §§ 32-3619, 32-3652, and 32-3665). And, it is statute that specifies acts and omissions that will cause an individual licensed by the Board to be subject to disciplinary action (A.R.S. §§ 32-3631, 32-3654, and 32-3678).

The rules simply provide guidance to an applicant or licensee regarding the procedure for complying with the statutory requirements for being qualified and making application for licensure and maintaining licensure. The rules also inform an applicant or licensee of the

procedure used in the event disciplinary action is necessary. Because the rules simply implement statutory requirements, it is presumed the legislature determined the benefits of the requirements outweighed the costs and the requirements were the minimum necessary to protect the public, which is the underlying regulatory objective.

12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law:

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act became law. The Act amends Title XI of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 regarding federally related transactions. A federally related transaction includes an appraisal completed for FHA or loans that may be sold to Fannie Mae or Freddie Mac, or those completed for lenders with FDIC insurance or under the control of the Office of the Comptroller of the Currency.

The Act mandates that real estate appraisals be performed in accordance with generally accepted appraisal standards as evidenced by the standards made by the Appraisal Standards Board of the Appraisal Foundation. In Laws 2013, Chapter 184, the legislature significantly amended the organic statutes of the Board of Appraisal to conform to the Act. This includes a provision that the uniform standards of professional appraisal practice as published by the Appraisal Standards Board are the standards for this state (See A.R.S. § 32-3610). The rules are not more stringent than federal law.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:

Two rules in this report were made after July 29, 2010. Neither of them requires issuance of a regulatory permit, license, or agency authorization. R4-46-106, which was made in an exempt rulemaking that took effect on November 21, 2013, deals with fees and R4-46-401 deals with Standards of Appraisal Practice.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule or to make a new rule. If no

issues are identified for a rule in the report, the agency may indicate that no action is necessary for the rule:

The Board intends to amend all the rules in Articles 1 and 3 through 6 to address the issues identified in this report and will submit the rulemaking package to Council no later than December 31, 2014.

### **Information That Is Identical Within Groups of Rules**

The following information is identical for each group of rules listed. Because this information is the same for each rule in the groups listed it is not included in the analysis of each individual rule within the group.

**C. Effectiveness:** The objectives of the following rules are effectively met with the exception of R20-4-917, R20-4-1804, R20-4-1806, R20-4-1905, R20-4-1907 noted in the individual rules section of this review. Effectiveness was determined by analyzing the rules contained in this report against the applicable Department governing statutes. Legislative changes may be necessary before any amendments to the rules noted by the practitioners of the rules in this section may be offered. There have been no substantive changes to the rules since the previous five year rule review, and the Department has determined effectiveness through analysis and practice that the rules achieve their regulatory purpose. A Notice of Final Rulemaking was published in the Arizona Administrative Register, Volume 18, Issue 42, October 19, 2012 for R20-4-927, R20-4-928, and R20-4-1813.

**D. Consistency:** The rules are consistent with the Department's governing statutes found in Title 6, Arizona Revised Statutes. Analysis of applicable federal laws including the Real Estate Settlement Procedures Act (RESPA), Consumer Credit Protection Act, Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act). The Department noted in the previous five year rule review that the specific citations in R20-4-907 and R20-4-917 to the Real Estate Settlement Procedures Act (RESPA) and the Consumer Credit Protection Act (CCPA) are too detailed, dated, and do not include some modern amendments to the federal legislation that are relevant to mortgage lending. The Department will pursue clarification to update the references to federal law within the rule.

**E. Enforcement:** The following rules are enforced through the established policies and procedures as prescribed by the rules and statutes. All rules are consistently and fairly enforced. There have been no substantive problems with enforcing the rules as written.

**F. Clarity, Conciseness, and Understandability:** The rules are clear, concise, and understandable. In the previous five-year rule report, the Department stated that rules R20-4-911, R20-4-912, R20-4-915, R20-4-916, R20-4-917, R20-4-919, R20-4-920, R20-4-922, R20-4-923, R20-4-925, R20-4-1804, R20-4-1805, R20-4-1905, and R20-4-1906 could be made more clear, concise, and understandable by amending the language to be more easily read, removing passive language, or streamlining language. Due to the Moratorium of Rulemaking, the Department has not pursued these amendments. After further analysis and review of the complexity of the rules, the Department has determined that it is satisfied with the clarity, conciseness, and understandability within the Rules. Future amendments to the rules would be sought if legislative changes demand a course of action.

**G. Criticisms Received within the Last Five Years:** The Department has not received any written criticisms of any of the rules in Articles 9, 18, and 19 within the past five years immediately preceding the previous five year review report.

**H. Estimated Economic, Small Business and Consumer Impact:** No substantive change in the economic impact of the following group of rules on small business or consumers has occurred since their currently effective text was approved by GRRC.

#### **Article 9. Mortgage Brokers**

The following sections originally took legal effect on August 14, 1991. As indicated in the previous report there was no readily available count of the number of mortgage broker licensees at that time. Any changed economic impact of these Sections is caused by the increase of mortgage brokers in Arizona. In June 2009 the Department's License Activity Summary reflected 1,117 mortgage brokers and 371 branches licensed through the Department. In June 2010 the number of licensed mortgage brokers decreased to 310 and branches to 216 most likely due to the enactment of loan originator license requirements mandated by the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act). Laws 2008, Chapter 310, Forty-eighth Legislature, Second Regular Session amended state law to require loan originator licensing in Arizona. As of June 1, 2014 there were 343 mortgage brokers and 311 branches licensed through DFI. Since 2010 the license counts have remained stable and reflect modest growth in this market. The Department was unable to locate the Economic, Small Business and Consumer Impact Statement ("EIS") that was submitted with the last five-year rule review. The EIS for adopted rules in Article 9 made in September 2012 is included. It should be noted that there has been no adverse economic impact because of these rules on the Department, the regulated community or the public.

#### **Article 18. Mortgage Bankers**

The Department was unable to locate the Economic, Small Business and Consumer Impact Statement ("EIS") that was submitted with the last five-year rule review. However, it should be noted that there has been no adverse economic impact of these rules on the Department, the regulated community or the public. In June 2009 the Department's Licensing Activity Report reflected 363 licensed mortgage bankers and 737 branches licensed through the Department. In June 2011 there were 273 mortgage bankers and 753 branches licensed through the Department. As of June 2, 2014 there were 335 mortgage bankers and 1,247 branches licensed through the Department. The EIS for adopted rules in Article 18 made in September 2012 is included. The modest increase in license count demonstrates possible market recovery and economic growth indicators.

#### **Article 19. Commercial Mortgage Brokers**

The Department was unable to locate the Economic, Small Business and Consumer Impact Statement ("EIS") that was submitted with the last five-year rule review. However, it should be noted that there has been no adverse economic impact of these Rules on the Department, the regulated community or the public. In June 2010 the Department's Licensing

Activity Report reflected 311 commercial mortgage brokers. In 2011 this count increased to 10, and was at 55 as of June 2, 2014. The modest increase in license count demonstrates possible market recovery and economic growth indicators.

**I. Analysis Submitted to the Agency:** There has not been any analysis submitted to the Department in the past five years by another person regarding the rules impact on this state's business competitiveness as compared to the business competitiveness in other states regarding this group of rules.

**J. Completed Previous Five Year Rule Review:** This group of rules was the subject of a normal five-year rule review submitted to G.R.R.C in June 2009. With the exceptions of R20-4-907 and R20-4-917 noted in the previous five year rule review, the majority of 15 rule amendments noted in the previous course of action were not substantive changes and related in large part to the original grammatical construction of the rules. The specific citations in R20-4-907 and R20-4-917 to the Real Estate Settlement Procedures Act (RESPA) and the Consumer Credit Protection Act (CCPA) do not include modern amendments to the federal laws that are relevant to mortgage lending. Due to the Moratorium on rulemaking the Department has not pursued this course of action further. The Department will pursue clarification to update the references to federal law within the rule. The Department completed the rulemaking process through GRRC in September 2012 and added R20-4-927, R20-4-928 and R20-4-1813 as evidenced in the Arizona Administrative Register, Volume 18, Issue 42, October 19, 2012. R20-927 established the process in rule that allows for mortgage brokers to convert their license to a commercial mortgage broker license pursuant to Laws 2011, Chapter 11, Fiftieth Legislature, First Regular Session. R20-4-928 implemented the fees the Department was authorized to charge in response to legislative action to A.R.S. § 6-912, as well as provide the process for applying for and renewing a certificate of exemption pursuant to Laws 2011, Chapter 172, Fiftieth Legislature, First Regular Session. R20-4-1813 established the process in rule for converting a mortgage banker license to a mortgage broker license pursuant to Laws 2009, Chapter 139, Forty-Ninth Legislature, First Regular Session.

**K. Probable Benefits of the Rule:** The benefits of the rules in Articles 9, 18, and 19 outweigh the probable costs of the rules and impose the least burden and cost on the persons regulated necessary to achieve the regulatory objective of ensure safety and soundness of state licensed institutions and individuals. The rules covering the subject matter are necessary to fulfill the agency's mission.

**L. Stringency of the Rule:** No rule in this report was considered to be more stringent than related federal rules or statutes. This was determined by analyzing Title 6, Arizona Revised Statutes, applicable federal law including the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Real Estate Settlement Procedures Act (RESPA), Consumer Credit Protection Act (CCPA). The rules added or amended in Articles 9, 18, and 19 since the previous five year rule review were implemented to fulfill legislative action and are not more stringent than state and federal law.

**M. Compliance with A.R.S. § 41-1037:** R20-4-927, R20-4-928 and R20-4-1813 were adopted after July 29, 2010, however R20-4-927 and R20-4-1813 are not governed by A.R.S. § 41-1037 because the rules only address the conversion process between designated license types. The designated license types in the rules arguably fall within the definition of general permit. Further, the Department is addressing R20-4-928 under A.R.S. § 41-1037(A)(2) which allows for the issuance of an alternative type of permit, license or authorization if specifically authorized in state statute. R20-4-927 was established pursuant to Laws 2011, Chapter 11, Fiftieth Legislature, First Regular Session. R20-4-928 was implemented pursuant to Laws 2011, Chapter 172, Fiftieth Legislature, First Regular Session. R20-4-1813 was established pursuant to Laws 2009, Chapter 139, Forty-Ninth Legislature, First Regular Session.

**N. Course of Action:** The Department of Financial Institutions has no course of action planned for rulemaking on the articles in this five-year rule review with the exception of R20-4-907, R20-4-915, R20-4-917, R20-4-1804, R20-4-1806, R20-4-1905, and R20-4-1907 which are discussed further in the individual rule analysis. The Department intends to submit revisions of these rules to the Council by January 2016. The Department is also aware of statutory citations in the A.A.C within these articles that are no longer accurate because of legislative changes. These changes have caused subsections to be moved for example “A” to “B”. These changes are non-substantive and will be amended by submitting a letter to the Secretary of State.

### Analysis of Individual Rules

#### **R20-4-903 Exemption for an Entity Regulated by an Agency of this State, Other States, or by the United States**

- A. **Authorization:** The Department of Financial Institutions’ general authority derives from Arizona Revised Statutes (hereinafter, “A.R.S.”) § 6-123(2), which provides general authority to the Superintendent to make rules. Specifically, the statutory authority for the rule derives from A.R.S. § 6-902(A)(1).
- B. **Objective:** The objective of the rule is to clarify the persons exempted under A.R.S. § 6-902(A)(1) and the level of regulation required to qualify those persons for the exemption.

#### **R20-4-906 Equivalent and Related Experience**

- A. **Authorization:** The Department’s general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-903(C)(1).
- B. **Objective:** The objective of the rule is to clarify the types and duration of experience allowed by statute to substitute for the requirement of three years’ experience as a mortgage broker pursuant to A.R.S. § 6-903(C)(1).

**R20-4-907 Course of Study**

- A. **Authorization:** The Department's general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-903(C)(2).
- B. **Objective:** The objective of the rule is to specify the subject matter included in a course of study that satisfies the statute, and to clarify the manner vendors shall use to obtain the Superintendent's approval of a course of study.
- F. **Clarity, Conciseness, and Understandability:** As noted in the previous five year rule review, the specific citations to the Real Estate Settlement Procedures Act (RESPA) and the Consumer Credit Protection Act (CCPA) do not include some modern amendments to the federal legislation that are relevant to mortgage lending.
- N. **Course of Action:** The Department plans on amending this rule to update necessary citations to federal law after further advisement from legal counsel. The Department will submit revisions to the Council by January 2016.

**R20-4-911 Qualified Replacement Responsible Individual**

- A. **Authorization:** The Department's general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-903(H) and (I).
- B. **Objective:** The objective of the rule is to specify time limits imposed on a licensee to fully qualify its replacement responsible individual. The Section is also intended to clarify the time period within which a licensee shall cure the failure of its replacement responsible individual to qualify.

**R20-4-912 Restrictions on the Term of a Cash Alternative**

- A. **Authorization:** The Department's general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-903(O).
- B. **Objective:** The objective of the rule is to specify the minimum term of a certificate of deposit or investment certificate placed with the Superintendent as an alternative to a surety bond.

**R20-4-915 Requirements for a Person Intended to Oversee a Branch Office**

- A. **Authorization:** The Department's general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-904(H).

- B. **Objective:** The objective of the rule is to clarify the language of the statute requiring a licensee to designate a person to oversee the operations of each licensed branch office.
- E. **Effectiveness:** Department staff noted that the rule could be made more effective by establishing a timeframe for a change in the designation of branch oversight when a change occurs. The Department will continue to evaluate the appropriateness of pursuing this approach.
- N. **Course of Action:** The Department plans on amending this rule to establish effective timeframes for designating a change in branch oversight designation after further advisement from legal counsel. If amendments are necessary, the Department will submit revisions to the Council by January 2016.

#### **R20-4-916 Notification of Change of Address**

- A. **Authorization:** The Department's general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-904(H).
- B. **Objective:** The objective of the rule is to specify the form and timing of the notice required by statute.

#### **R20-4-917 Recordkeeping Requirements**

- A. **Authorization:** The Department's general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-906(A).
- B. **Objective:** The objective of the rule is to specify the records a licensee is required to have available.
- E. **Effectiveness:** Department staff noted that the rule could be made more effective by clarifying that copies of records are to be generated by the licensee for the examiner in a timely manner. The rule is clear in stating this expectation, but staff has found that licensees struggle to follow the rule. Furthermore, the rule could be made more effective by amending (B)(2) to remove "cash" to ensure a complete receipts journal is submitted; (B)(5)(g) to "Amount disbursed from the trust account" and (B)(5)(h) to "Date disbursed from the trust account". The rule could be made more effective by adding further guidance in (B)(7) by adding "including paper, electronic advertisements, URL(s), and website information". Subsection (B)(9)(c) could be made more effective by clarifying that the records requested are from the inception of ownership. Subsection (B)(12) could be made more effective by adding further guidance that records storage inside the state, but not at the Arizona principal place of business must receive approval from the Superintendent. Currently, this subsection specifies that a mortgage broker may maintain records outside the state if granted permission from the Superintendent. The Department has found that companies are maintaining records somewhere other than their principal

place of business. The Department will continue to evaluate the appropriateness of pursuing this approach.

- F. **Clarity, Conciseness, and Understandability:** As noted in the previous five year rule review, the specific citations to the Real Estate Settlement Procedures Act (RESPA) and the Consumer Credit Protection Act (CCPA) do not include some modern amendments to the federal legislation that are relevant to mortgage lending.
- N. **Course of Action:** The Department plans on amending this rule to update necessary citations to federal law after further advisement from legal counsel. The Department will submit revisions to the Council by January 2016.

#### **R20-4-919     Deposit of Monies Received by a Mortgage Broker**

- A. **Authorization:** The Department's general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-906(C).
- B. **Objective:** The objective of the rule is to specify the time frame allowed by the statute's requirement that escrow funds be deposited "immediately."

#### **R20-4-920     Requirements for the Testing Committee**

- A. **Authorization:** The Department's general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-908.
- B. **Objective:** The objective of the rule is to specify the methods used to appoint and administer the statutory testing committee.

#### **R20-4-921     Authorizations to Complete Blank Spaces**

- A. **Authorization:** The Department's general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-909(A).
- B. **Objective:** The objective of the rule is to specify a legally sufficient form of notice that may be used to advise a borrower of its rights when asked to sign a lending document containing blank spaces.

#### **R20-4-922     Determining Loan Amounts**

- A. **Authorization:** The Department's general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-909(D) or (G).

- B. **Objective:** The objective of the rule is to specify the manner of calculating loan amounts to determine statutory compliance.

**R20-4-923 Delay or Cause Delay**

- A. **Authorization:** The Department's general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-909(E).
- B. **Objective:** The objective of the rule is to clarify the scope of the statutory prohibition on delaying or causing delay in the closing of a loan.

**R20-4-924 Receipt and Disbursement of Monies**

- A. **Authorization:** The Department's general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-909(K).
- B. **Objective:** The objective of the rule is to clarify the scope of the statutory prohibition on receiving or disbursing monies other than as allowed under A.R.S. § 6-906(C).

**R20-4-925 Waiver of Examination and Course of Study**

- A. **Authorization:** The Department's general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-903(U).
- B. **Objective:** The objective of the rule is to clarify that the Superintendent's statutory waiver extends to the applicant's or licensee's responsible individual.

**R20-4-926 Acquisition of Additional Interest in Licensee by Majority Owner**

- A. **Authorization:** The Department's general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-903(R).
- B. **Objective:** The objective of the rule is to clarify the circumstances under which mere notice to the Superintendent will satisfy the Department, in spite of statutory criteria required for consent to an acquisition of an interest.

**R20-4-927 Conversion to Commercial Mortgage Broker License**

- A. **Authorization:** The Department's general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-913.
- B. **Objective:** The objective of the rule is to establish the process that allows for a mortgage brokers to convert their license to a commercial mortgage broker license.

**R20-4-928 Certificate of Exemption Application and Renewal**

- A. **Authorization:** The Department's general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-912.
- B. **Objective:** The objective of the rule is to establish the fees that the Department will charge in response to enacted legislation as well as provide the process for applying for and renewing a certificate of exemption.

**R20-4-1801 Exemption for an Entity Regulated by an Agency of this State, Other States, or by the United States**

- A. **Authorization:** The Department's general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-942.
- B. **Objective:** The objective of the rule is to clarify the persons exempted under A.R.S. § 6-942(A)(1) and the level of regulation required to qualify those persons for the exemption.

**R20-4-1802 Equivalent and Related Experience**

- A. **Authorization:** The Department's general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-943.
- B. **Objective:** The objective of the rule is to clarify the types and duration of experience allowed by statute to substitute for A.R.S. § 6-943(C)(1)'s requirement of three years' experience in the business of making mortgage banking loans.

**R20-4-1803 Restrictions on the Term of a Cash Alternative to a Surety Bond**

- A. **Authorization:** The Department's general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-943(M).
- B. **Objective:** The objective of the rule is to specify the minimum term of a certificate of deposit or investment certificate placed with the Superintendent as an alternative to a surety bond.

**R20-4-1804 Requirements for a Person Intended to Oversee a Branch Office**

- A. **Authorization:** The Department's general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-944(E).

- B. **Objective:** The objective of the rule is to clarify the language of the statute requiring a licensee to designate a person to oversee the operations of each licensed branch office.
- E. **Effectiveness:** Department staff noted that the rule could be made more effective by establishing a timeframe for a change in the designation of branch oversight when a change occurs. The Department will continue to evaluate the appropriateness of pursuing this approach.
- N. **Course of Action:** The Department plans on amending this rule to establish effective timeframes for designating a change in branch oversight designation after further advisement from legal counsel. If amendments are necessary, the Department will submit revisions to the Council by January 2016.

#### **R20-4-1805 Notification of Change of Address**

- A. **Authorization:** The Department's general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-944(E).
- B. **Objective:** The objective of the rule is to specify the form and timing of the notice required by statute.

#### **R20-4-1806 Recordkeeping Requirements**

- A. **Authorization:** The Department's general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-946(A).
- B. **Objective:** The objective of the rule is to specify the records a licensee is required to have available.
- E. **Effectiveness:** Department staff noted that the rule could be made more effective by clarifying that copies of records are to be generated by the licensee for the examiner in a timely manner. The rule is clear in stating this expectation, but staff has found that licensees struggle to follow the rule. Furthermore, the rule could be made more effective by amending (B)(2) to remove "cash" to ensure a complete receipts journal is submitted; (B)(5)(g) to "Amount disbursed from the trust account" and (B)(5)(h) to "Date disbursed from the trust account". The rule could be made more effective by adding further guidance in (B)(7) by adding "including paper, electronic advertisements, URL(s), and website information". Subsection (B)(9)(c) could be made more effective by clarifying that the records requested are from the inception of ownership. Subsection (B)(12) could be made more effective by adding further guidance that records stored inside the state, but not maintained at the Arizona principal place of business must receive approval from the Superintendent. Currently, this subsection specifies that a mortgage broker may maintain records outside the state if granted permission from the Superintendent. The Department has found that companies are maintaining records somewhere other than

their principal place of business. The Department will continue to evaluate the appropriateness of pursuing this approach.

- F. **Clarity, Conciseness, and Understandability:** As noted in the previous five year rule review, the specific citations to the Real Estate Settlement Procedures Act (RESPA) and the Consumer Credit Protection Act (CCPA) do not include some modern amendments to the federal legislation that are relevant to mortgage lending.
- N. **Course of Action:** The Department plans on amending this rule to update necessary citations to federal law after further advisement from legal counsel. The Department will submit revisions to the Council by January 2016.

#### **R20-4-1807 Providing Copies of Records**

- A. **Authorization:** The Department's general authority derives from A.R.S. § 6-123. Specifically, this Section implements the language of A.R.S. §§ 6-906 & 6-946.
- B. **Objective:** The objective of the rule is to specify the Mortgage Banker's obligation to supply copies to a Mortgage Broker so it can comply with recordkeeping requirements imposed on Mortgage Brokers by this Chapter.

#### **R20-4-1808 Authorization to Complete Blank Spaces**

- A. **Authorization:** The Department's general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-947(A).
- B. **Objective:** The objective of the rule is to specify a legally sufficient form of notice that may be used to advise a borrower of its rights when asked to sign a lending document containing blank spaces.

#### **R20-4-1809 Determining Loan Amounts**

- A. **Authorization:** The Department's general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-947(E) or (K).
- B. **Objective:** The objective of the rule is to specify the manner of calculating loan amounts to determine statutory compliance.

#### **R20-4-1810 Delay or Cause Delay**

- A. **Authorization:** The Department's general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-947(F).

- B. **Objective:** The objective of the rule is to clarify the scope of the statutory prohibition on delaying or causing delay in the closing of a loan.

**R20-4-1811 Impound Accounts**

- A. **Authorization:** The Department’s general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-946(D).
- B. **Objective:** The objective of the rule is to limit the maximum amount of money retained by a Mortgage Banker as a “cushion” against unanticipated payments from the impound account.

**R20-4-1812 Acquisition of Additional Interest in Licensee by Majority Owner**

- A. **Authorization:** The Department’s general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-944(A).
- B. **Objective:** The objective of the rule is to clarify the circumstances under which mere notice to the Superintendent will satisfy the Department, in spite of statutory criteria required for consent to an acquisition of an interest.

**R20-4-1813 Conversion to Mortgage Broker License**

- A. **Authorization:** The Department’s general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-949.
- B. **Objective:** The objective of the rule is to establish the application process for converting a mortgage banker license to a mortgage broker license.

**R20-4-1901 Exemption for an Institutional Investor**

- A. **Authorization:** The Department’s general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-972(1).
- B. **Objective:** The objective of the rule is to clarify the individuals exempted under A.R.S. § 6-972 and the Department’s criteria for granting the exemption.

**R20-4-1902 Exemption for an Entity Regulated by an Agency of this State, Other States, or by the United States**

- A. **Authorization:** The Department’s general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-972(9).

- B. **Objective:** The objective of the rule is to clarify the individuals exempted under A.R.S. § 6-972 and the Department's criteria for granting the exemption.

#### **R20-4-1903 Equivalent and Related Experience**

- A. **Authorization:** The Department's general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-973.
- B. **Objective:** The objective of the rule is to clarify the types and duration of experience allowed by statute to substitute for A.R.S. § 6-973(D)(1)'s requirement of three years' experience in the commercial mortgage business.

#### **R20-4-1904 Restrictions on the Term of a Cash Alternative to a Surety Bond**

- A. **Authorization:** The Department's general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-975(F).
- B. **Objective:** The objective of the rule is to specify the minimum term of a certificate of deposit or investment certificate placed with the Superintendent as an alternative to a surety bond.

#### **R20-4-1905 Requirements for a Person Intended to Oversee a Branch Office**

- A. **Authorization:** The Department's general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-979(C).
- B. **Objective:** The objective of the rule is to clarify the language of the statute requiring a licensee to designate a person to oversee the operations of each licensed branch office.
- E. **Effectiveness:** Department staff noted that the rule could be made more effective by establishing a timeframe for a change in the designation of branch oversight when a change occurs. The Department will continue to evaluate the appropriateness of pursuing this approach.
- N. **Course of Action:** The Department plans on amending this rule to establish effective timeframes for designating a change in branch oversight designation after further advisement from legal counsel. If amendments are necessary, the Department will submit revisions to the Council by January 2016.

#### **R20-4-1906 Notification of Change of Address**

- A. **Authorization:** The Department's general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-979(D).

- B. **Objective:** The objective of the rule is to specify the form and timing of the notice required by statute.

#### **R20-4-1907 Recordkeeping Requirements**

- A. **Authorization:** The Department’s general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-983(A).
- B. **Objective:** The objective of the rule is to specify the records a licensee is required to have available.
- E. **Effectiveness:** Department staff noted that the rule could be made more effective by clarifying that copies of records are to be generated by the licensee for the examiner in a timely manner. The rule is clear in stating this expectation, but staff has found that licensees struggle to follow the rule. Furthermore, the rule could be made more effective by amending (B)(2) to remove “cash” to ensure a complete receipts journal is submitted; (B)(5)(g) to “Amount disbursed from the trust account” and (B)(5)(h) to “Date disbursed from the trust account”. The rule could be made more effective by adding further guidance in (B)(7) by adding “including paper, electronic advertisements, URL(s), and website information”. Subsection (B)(9)(c) could be made more effective by clarifying that the records requested are from the inception of ownership. Subsection (B)(12) could be made more effective by adding further guidance that records stored inside the state, but not maintained at the Arizona principal place of business must receive approval from the Superintendent. Currently, this subsection specifies that a mortgage broker may maintain records outside the state if granted permission from the Superintendent. The Department has found that companies are maintaining records somewhere other than their principal place of business. The Department will continue to evaluate the appropriateness of pursuing this approach.
- N. **Course of Action:** The Department plans on amending this rule to update necessary citations to federal law after further advisement from legal counsel. The Department will submit revisions to the Council by January 2016.

#### **R20-4-1908 Impound Accounts**

- A. **Authorization:** The Department’s general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-983(D).
- B. **Objective:** The objective of the rule is to establish that the limit on the maximum amount of money retained by a Commercial Mortgage Banker as a “cushion” against unanticipated payments from the impound account is regulated solely by the agreement of the parties.

**R20-4-1909 Authorization to Complete Blank Spaces**

- A. **Authorization:** The Department's general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-984(A).
- B. **Objective:** This Section's objective is to specify a legally sufficient form of notice that may be used to advise a borrower of its rights when asked to sign a lending document containing blank spaces.

**R20-4- 1910 Delay or Cause Delay**

- A. **Authorization:** The Department's general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-984(E).
- B. **Objective:** The objective of the rule is to clarify the scope of the statutory prohibition on delaying or causing delay in the closing of a loan.

**R20-4-1911 Acquisition of Additional Interest in Licensee by Majority Owner**

- A. **Authorization:** The Department's general authority derives from A.R.S. § 6-123. Specifically, the statutory authority for the rule derives from A.R.S. § 6-978.
- B. **Objective:** The objective of the rule is to clarify the circumstances under which mere notice to the Superintendent will satisfy the Department, in spite of statutory criteria required for consent to an acquisition of an interest.