



*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

or

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**5. An explanation of the rule, including the agency's reasons for initiating the rule:**

In 1996 the Arizona Legislature passed House Bill 2516 which mandates that all adults and eligible minor parents applying for or receiving Cash Assistance, Food Stamps, General Assistance, or benefits under the Arizona Works program must provide fingerprint images. This also includes those individuals who are part of the assistance unit but whose needs are not included in the program payment amount due to failing to meet other program requirements.

The bill requires the Department of Economic Security to adopt rules for the implementation of fingerprint imaging. (A.R.S. §§ 46-217 and 218) Accordingly, the Department will adopt a comprehensive set of rules to implement Fingerprint Imaging statewide.

**6. A reference to any study that the agency proposes to rely in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

On November 13, 1995 a feasibility study was presented to the Arizona Department of Economic Security by Ernst & Young (a contracted vendor). The study concluded that implementing an Automated Fingerprint Imaging System (AFIS) in Arizona would reduce multiple enrollment fraud and provide significant savings to the State. The complete fingerprint imaging system feasibility study final report can be made available from the agency personnel at the address listed in paragraph 4.

**7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

The Arizona Fingerprint Imaging Project will not diminish any previous grants of authority.

**8. The preliminary summary of the economic, small business, and consumer impact:**

The Arizona Fingerprint Imaging Project will have a cost neutral economic effect on the administrative costs of the Department of Economic Security. The Project foresees no impact to small businesses or consumers due to the nature of the project. All savings will be derived from the elimination of fraudulent multiple benefit issuance and the deterrent effect of the anti-fraud measure.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business and consumer impact statement.**

Economic, small business and consumer impact statement can be made available from the agency personnel at the address listed in paragraph 4.

**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

The Department does not plan to conduct hearings on these amendments unless a written request for an oral proceeding is submitted to the person named in paragraph 4 within 30 days after the date of this publication. The Department will accept written comments for at least 30 days after the date of this publication to the person named in paragraph 4.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None.

**12. Incorporations by reference and their specific location in the rules:**

A.R.S. §§ 46-231 through 46- 238	R6-16-106
A.R.S. §§ 46-291 through 46- 300.02	R6-16-104
A.R.S. §§ 46-341 through 46- 355	R6-16-107
7 U.S.C. §§ 2011-2029	R6-16-105

**13. The full text of the rules follows:**

**TITLE 6. ECONOMIC SECURITY**

**CHAPTER 16. DEPARTMENT OF ECONOMIC SECURITY**

**ARIZONA FINGERPRINT IMAGING PROJECT**

**ARTICLE 1. GENERAL PROVISIONS**

Section

R6-16-101. Definitions

R6-16-102. Chapter Scope and Application

R6-16-103. Geographic Scope

R6-16-104. Cash Assistance Program

R6-16-105. Food Stamp Program

R6-16-106. General Assistance Program

R6-16-107. Arizona Works Program

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- R6-16-110. Nondiscrimination  
R6-16-111. Confidentiality

**ARTICLE 2. FINGERPRINT IMAGING REQUIREMENTS**

- R6-16-201. Mandatory Participants  
R6-16-202. Frequency of Imaging  
R6-16-203. Failure to Comply with Fingerprint Imaging

**ARTICLE 3. FINGERPRINT IMAGING EXEMPTIONS**

- R6-16-301. Exemptions Due to Impairment or Illness  
R6-16-302. Temporary Exemptions

**ARTICLE 4. APPEALS**

- R6-16-401. Appeal Process

**ARTICLE 1. GENERAL PROVISIONS**

**R6-16-101. Definitions**

The following definitions apply to this Chapter:

1. "Applicant" means a person who has directly, or through an authorized representative or responsible person, filed an application for Cash Assistance, Food Stamps, General Assistance, or Arizona Works with the Department.
2. "Arizona Works" means a pilot program in which a private vendor will provide cash assistance, employment and training services, and Cash Assistance-related child care for eligible participants.
3. "Assistance Unit" means a group of people whose needs, income, resources, and other circumstances are considered as a whole for the purposes of determining eligibility and benefit amount.
4. "Benefit Payment" means a monetary amount which the Department pays to an assistance unit.
5. "Cash Assistance" means the program administered by the Department which provides assistance to needy families with dependent children.
6. "Department" means the Arizona Department of Economic Security.
7. "Fingerprint Image" means a digitally captured impression of the lines, whorls, and ridges formed on a fingertip, which is used as a way of identifying individuals.
8. "Food Stamps" means the program administered by the Department which provides nutritional assistance to persons with financial need.
9. "General Assistance" means the program administered by the Department which provides cash assistance to persons with temporary disabilities.
10. "Office of Special Investigations" means the Department of Economic Security's Office of Special Investigations.
11. "Recipient" means a person who is a member of an assistance unit.
12. "Scanning device" means a non-invasive instrument that digitally captures images and impressions.
13. "Vendor" means the private Non-government Company contracted to provide technical assistance and equipment for the Arizona Fingerprint Imaging Project.

**R6-16-102. Chapter Scope and Application**

- A. The rules in this Chapter apply to persons who are listed in R6-16-201(A) and live in the geographic area described in R6-16-103.
- B. The rules in this Chapter do not apply to individuals listed in R6-16-201(B).

**R6-16-103. Geographic Scope**

The Department shall apply the rules in this Chapter within all counties in the state of Arizona.

**R6-16-104. Cash Assistance Program**

Fingerprint Imaging applies to those listed in R6-16-201(A) who apply for the Cash Assistance program in accordance with the laws, rules, policies and practices prescribed and promulgated in accordance with A.R.S. §§ 46-291 through 46-300.02.

**R6-16-105. Food Stamp Program**

Fingerprint Imaging applies to those listed in R6-16-201(A) who apply for the Food Stamp program in accordance with the laws, rules, policies and practices prescribed and promulgated in accordance with 7 U.S.C. §§ 2011-2029 as it applies to Arizona.

**R6-16-106. General Assistance Program**

Fingerprint Imaging applies to those listed in R6-16-201(A) who apply for the State General Assistance program in accordance with the laws, rules, policies and practices prescribed and promulgated in accordance with A.R.S. §§ 46-231 through 46-238.

**R6-16-107. Arizona Works Program**

Fingerprint Imaging applies to those listed in R6-16-201(A) who apply for the Arizona Works Program in accordance with the laws, rules, policies and practices prescribed and promulgated in accordance with A.R.S. §§ 46-341 through 46-355 and 6 A.A.C. 15.

**R6-16-108. Nondiscrimination**

Arizona Fingerprint Imaging shall administer the project in accordance with the nondiscrimination provisions of R6-1-501.

**R6-16-109. Confidentiality**

**A. Confidentiality of Fingerprint Image Data**

1. The Department shall use the client's fingerprint image only for the purpose of determining eligibility for the programs listed in R6-16-104, R6-16-105, R6-16-106 and R6-16-107, in order to prevent multiple enrollments in assistance programs.
2. The Department shall not release any information regarding the client's fingerprint image to any other Agency, Department, or State.
3. The Department shall maintain a separate database of client fingerprint image information which shall be located with the vendor and not be linked or accessible by any other automated system within the State.

**B. Release of Fingerprint Image Data**

1. The Department shall release the fingerprint imaging information only to the Department of Economic Security's Office of Special Investigations.
2. The Office of Special Investigations shall access this information via a computer workstation, facsimile referral from the vendor central site, or the Department's designated project central site.
3. The Department shall release confidential information to other agencies in accordance with the existing rules in the programs listed in R6-16-104, R6-16-105, R6-16-106 and R6-16-107.

**C. Purging of Fingerprint Imaging Data**

1. The vendor shall set a counter to determine when a record reaches twelve months of inactivity and is eligible for purge.
2. Once the records have been identified the vendor shall:
  - a. Delete the records from the database;
  - b. Produce a purge report listing the deleted records; and
  - c. Provide the purge report the project's central site.

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**ARTICLE 2. FINGERPRINT IMAGING REQUIREMENTS**

**R6-16-201. Mandatory Participants**

**A.** As a condition of eligibility for Cash Assistance, Food Stamps, General Assistance, and Arizona Works, the following individuals are required to provide fingerprint images:

1. All adult applicants;
2. Adult recipients;
3. Eligible minor parents; and
4. Any of the individuals listed above who are required to be included in the assistance unit but are not included in the program payment amount due to their failure to meet other program requirements.

**B.** Individuals not required to provide fingerprint images are:

1. Children under the age of 18 that are not parents; and
2. Adults who are not required to be included in the assistance unit and who are not included in the program benefit amount grant.

**R6-16-202. Frequency of Imaging**

Individuals who are required to provide fingerprint images must do so:

1. At initial application; and
2. Once in every 12-month period thereafter.

**R6-16-203. Failure to Comply with Fingerprint Imaging**

**A.** When an individual fails or refuses to comply with the fingerprint imaging requirements, the Department shall deny or terminate benefits to the assistance unit.

**B.** Any compliance with the fingerprint imaging requirements after an initial noncompliance shall be handled according to the rules set forth by the programs listed in R6-16-104, R6-16-105, R6-16-106 and R6-16-107.

**ARTICLE 3. FINGERPRINT IMAGING EXEMPTIONS**

**R6-16-301. Exemptions Due to Impairment or Illness**

**A.** Exemptions from the fingerprint imaging requirements are limited to individuals with physical impairments or illness.

**B.** Physical impairments or illness include, but are not limited to:

1. Individuals who are missing both index fingers. Individuals meeting this criterion are permanently exempt as

they are physically unable to provide a fingerprint image.

2. Individuals with a physical deformity to both index fingers which prevents the index fingers from being placed on a fingerprint image scanning device. These individuals will be considered to be permanently exempt as they are physically unable to provide a fingerprint image.

3. Individuals with severe physical or mental illness that is debilitating to the point where they will never be able to place their index fingers on the scanning device.

**C.** Verification of impairment or illness will be determined by a licensed physician recognized by the Arizona Revised Statutes and licensed to practice in Arizona. Licensed physicians are currently limited to:

1. Medical Doctors;
2. Doctors of Osteopathy;
3. Doctors of Naturopathic Medicine;
4. Chiropractors;
5. Psychiatrists;
6. Board Certified Psychologists; and
7. Physician's Assistants.

**R6-16-302. Temporary Exemptions**

**A.** Temporary exemptions shall be granted to:

1. Individuals who have an injury to both index fingers that prevent a fingerprint image to be taken.
2. Individuals whose fingerprint images can not be used as determined by the Department.

**B.** Individuals meeting the criteria in subsection (A) above are considered to be temporarily exempt until their next certification or review.

**ARTICLE 4. APPEALS**

**R6-16-401. Appeal Process**

An applicant or recipient who wishes to appeal the Department's decision to deny, reduce, or terminate benefits for a reason directly relating to the fingerprint imaging requirements may do so using the procedures established by the programs listed in R6-16-104, R6-16-105, R6-16-106 and R6-16-107.

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 20. COMMERCE, BANKING, AND INSURANCE**

**CHAPTER 4. BANKING DEPARTMENT**

**PREAMBLE**

**1. Sections Affected**

R20-4-102  
R20-4-901  
R20-4-902  
R20-4-903  
R20-4-904  
R20-4-905  
R20-4-906  
R20-4-908  
R20-4-909  
R20-4-910  
R20-4-913  
R20-4-914  
R20-4-917

**Rulemaking Action**

Amend  
Repeal  
Repeal  
Amend  
Repeal  
Repeal  
Amend  
Repeal  
Repeal  
Repeal  
Repeal  
Repeal  
Amend

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R20-4-918	Repeal
R20-4-921	Amend
R20-4-925	New Section
Article 18	New Section
R20-4-1801	New Section
R20-4-1802	New Section
R20-4-1803	New Section
R20-4-1804	New Section
R20-4-1805	New Section
R20-4-1806	New Section
R20-4-1807	New Section
R20-4-1808	New Section
R20-4-1809	New Section
R20-4-1810	New Section
R20-4-1811	New Section
Article 19	New Section
R20-4-1901	New Section
R20-4-1902	New Section
R20-4-1903	New Section
R20-4-1904	New Section
R20-4-1905	New Section
R20-4-1906	New Section
R20-4-1907	New Section
R20-4-1908	New Section
R20-4-1909	New Section
R20-4-1910	New Section

2. **The specific statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 6-123

Implementing statute: A.R.S. §§ 6-126, 6-901, 6-902, 6-903, 6-906, 6-909, 6-941, 6-942, 6-943, 6-944, 6-946, 6-947, 6-971, 6-972, 6-973, 6-975, 6-976, 6-978, 6-979 and 6-983.
3. **A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Docket Opening, 3 A.A.R. 3424, December 5, 1997

Notice of Docket Opening, 4 A.A.R. 1350, June 12, 1998
4. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: John P. Hudock, Esq.

Address: State Banking Department  
2910 N. 44th Street, Suite 310  
Phoenix, Arizona 85018

Telephone: 602-255-4421 ext. 167

Fax: 602-381-1225
5. **An explanation of the rule, including the agency's reasons for initiating the rule:**

The proposed rules are a joint effort by the Banking Department and all 3 industry associations. The rules will clarify and add further specificity to statutory provisions that have raised questions. This clarification will foster consistency of interpretation of the statutes and make it easier for licensees to comply with the statutes' requirements. In addition, the rules define words and phrases previously undefined. Finally, minor typographical errors are also corrected.
6. **A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

The department does not propose to rely on any study as an evaluator or justification for the proposed rule.
7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.
8. **The preliminary summary of the economic, small business, and consumer impact:**
  - A. The Banking Department  
Income and expenses to this Agency are negligible.
  - B. Other Public Agencies

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The State will incur normal publishing costs incident to rulemaking.

**C. Private Persons and Businesses Directly Affected**

Costs of services will not increase to any measurable degree.

**D. Consumers**

No measurable effect on consumers is expected.

**E. Private and Public Employment**

There is no measurable effect on private and public employment

**F. State Revenues**

This rulemaking will not change state revenues.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: John P. Hudock, Esq.  
Address: State Banking Department  
2910 N. 44th Street, Suite 310  
Phoenix, Arizona 85018  
Telephone: 602-255-4421 ext. 167  
Fax: 602-381-1225

**10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

No oral proceedings are scheduled. The department will schedule an oral proceeding on the proposed rule if it receives a written request for a proceeding within 30 days after the publication date of this notice, pursuant to the provisions of A.R.S. § 41-1023(C). Send requests to the department personnel listed in questions 4 and 9 of this preamble. The department invites and will accept written comments on the proposed rule or the preliminary economic, small business, and consumer impact statement. Submit comments during regular business hours, at the address listed in question 9 of this preamble, until the close of the record for this proposed rulemaking. The record will close on the 31<sup>st</sup> day following publication of this notice, unless the department schedules an oral proceeding.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable.

**12. Incorporations by reference and their location in the rules:**

Not applicable.

**13. The full text of the rules follows:**

**TITLE 20. COMMERCE, BANKING AND INSURANCE**

**CHAPTER 4. BANKING DEPARTMENT**

**ARTICLE 1. GENERAL**

Section

R20-4-102. Definitions

R20-4-913. ~~Reasonable Background Investigation Requirements~~ Repealed

R20-4-914. ~~Branch Offices~~ Repealed

**ARTICLE 9. MORTGAGE BROKERS**

R20-4-901. ~~Compensation~~ Repealed  
R20-4-902. ~~Mortgage Brokering Activities~~ Repealed  
R20-4-903. ~~Exemption for Entities Regulated by an Agency of this State, other States or by the United States~~  
R20-4-904. ~~Engaged in the Business of Making Mortgage Loans~~ Repealed  
R20-4-905. ~~Registered to do Business in this State~~ Repealed  
R20-4-906. ~~Equivalent and Related Experience~~  
R20-4-908. ~~Resident of This State~~ Repealed  
R20-4-909. ~~Active Management~~ Repealed  
R20-4-910. ~~Employees~~ Repealed

R20-4-917. ~~Recordkeeping Requirements~~  
R20-4-918. ~~Generally Accepted Accounting Principles~~ Repealed

R20-4-921. ~~Authorizations to Complete Blank Spaces~~  
R20-4-925. ~~Waiver of Examination and Course of Study~~

**ARTICLE 18. MORTGAGE BANKERS**

R20-4-1801. Exemption for Entities Regulated by an Agency of this State, other States, or by the United States  
R20-4-1802. Equivalent and Related Experience  
R20-4-1803. Restrictions on the Term of a Cash Alternative to a Surety Bond  
R20-4-1804. Requirements for a Person Intended to Oversee a Branch Office

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R20-4-1805. Notification of Change of Address  
R20-4-1806. Recordkeeping Requirements  
R20-4-1807. Providing Copies of Records  
R20-4-1808. Authorizations to Complete Blank Spaces  
R20-4-1809. Determining Loan Amounts  
R20-4-1810. Delay or Cause Delay  
R20-4-1811. Impound Accounts  
Article 19. Commercial Mortgage Bankers  
R20-4-1901. Exemption for Institutional Investors  
R20-4-1902. Exemption for Entities Regulated by an Agency of this State, Other States,

or by the United States  
R20-4-1903. Equivalent and Related Experience  
R20-4-1904. Restrictions on the Term of a Cash Alternative to a Surety Bond  
R20-4-1905. Requirements for a Person Intended to Oversee a Branch Office  
R20-4-1906. Notification of Change of Address  
R20-4-1907. Recordkeeping Requirements  
R20-4-1908. Impound Accounts  
R20-4-1909. Authorization to Complete Blank Spaces  
R20-4-1910. Delay or Cause Delay

**TITLE 20. COMMERCE, BANKING, AND INSURANCE**

**CHAPTER 4. BANKING DEPARTMENT**

**ARTICLE 1. GENERAL**

**R20-4-102. Definitions**

Unless the context otherwise requires or unless a different definition appears in this Chapter Article:

1. "Active Management" means the conduct of the management of the activities of a licensee by the Responsible Individual, as defined in this Section, who:
  - a. Shall be knowledgeable about the Arizona activities of the licensee, and
  - b. Shall supervise compliance with
    - i. A.R.S. Title 6, Chapter. 9 as it relates to the licensee.
    - ii. and other applicable laws and regulations, and
  - c. Shall have sufficient authority to ensure such compliance.
2. "Affiliate" means any Person, other than a natural person, that directly, or indirectly through 1 or more intermediaries, controls or is controlled by, or is under common control with, the Person specified.
3. "Attorney General" means the Attorney General of the State of Arizona or his duly appointed assistant.
4. "Branch Office" means any location within or outside the State of Arizona, including a personal residence, but not including the principal place of business in Arizona, where a licensee holds out to the public that the licensee is available to act as, or is acting as, a mortgage broker, mortgage banker, or commercial mortgage banker.
5. "Business of a savings and loan association or savings bank" means receiving money on deposit subject to payment by check or any other form of order or request or on presentation of a certificate of deposit or other evidence of debt.
6. "Compensation" means, for purposes of applying the definition of that term in A.R.S. §§ 6-901(2), 6-941(2) and 6-971(6), anything received in advance, after repayment, or at any time over the life of a loan. The following fees or payments are not compensation for the direct or indirect making, arranging for, negotiating, or offering to make, arrange for, or negotiate a mortgage banking loan, a mortgage loan, or a commercial mortgage loan:
  - a. Charges or fees customarily received subsequent to the closing of the loan including, but not limited to, prepayment penalties, late fees, default interest, transfer fees, impound account interest and fees, extension fees, and modification fees, except that extension fees and modification fees shall constitute compensa-

tion if additional funds are advanced or an increase is made in credit limit on an open-end mortgage as a part of the extension or modification;

- b. Out of pocket expenses paid to independent 3rd parties including, but not limited to, appraisal fees, credit report fees, legal fees, document preparation fees, title insurance premiums, recording, filing, and statutory fees, collection fees, servicing fees, escrow fees, and trustee's fees;
- c. Insurance commissions;
- d. Contingent or additional interest, including interest based on net operating income; or
- e. Equity participation.
7. "Commercial finance transaction", as that term is used in R20-4-102(13), means a lending transaction undertaken primarily for other than personal, family, or household purposes.
8. "Control of a Licensee" as used in A.R.S. §§ 6-903(O), 6-944(A), or 6-978 does not include the acquisition of additional fractional equity interests in a licensee by any Person who already has the power to vote 51% or more of the outstanding voting equity interests of a licensee. However, the acquiring Person shall deliver written notice of any such acquisition of equity interests to the Superintendent prior to consummation of the acquisition. The acquiring Person shall deliver documentation evidencing the acquisition to the Superintendent within 10 days of consummation of the acquisition.
9. "Correspondent contract", as that term is used in A.R.S. §§ 6-941(6)(b), 6-943(R), 6-971(11)(b), or 6-973(E), means a contractual arrangement between a lender and a funding source under which loans originated by the lender may or must be funded by the funding source.
10. "Cushion", as that term is used in R20-4-1811 or R20-4-1908, means funds that a servicer or lender may require a borrower to pay into an escrow or impound account before the borrower's periodic payments are available in the account to cover unanticipated disbursements.
11. "Directly or indirectly making, negotiating, or offering to make or negotiate", as that phrase is used in A.R.S. §§ 6-901(6), 6-941(5), or 6-971(2)(c) means:
  - a. Providing consulting or advisory services in connection with a mortgage loan transaction, a mortgage banking loan transaction, or a commercial mortgage loan transaction;
    - i. To an investor, concerning the location or identity of potential borrowers, regardless of

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- whether the licensee directly contacts any potential borrowers; or
- ii. To a borrower, concerning the location or identity of potential investors or lenders, or providing assistance in preparing an application for a mortgage loan transaction, a mortgage banking loan transaction, or a commercial mortgage banking loan transaction, regardless of whether the licensee directly contacts any potential investor or lender.
- b. Loan Processing as defined in this Section.
  - c. "Directly or indirectly making, negotiating, or offering to make or negotiate" does not include:
    - i. Providing clerical, mechanical, or word processing services for preparation of papers or documents associated with a mortgage loan transaction, a mortgage banking loan transaction, or a commercial mortgage banking loan transaction, or
    - ii. Purchasing selling, negotiating to purchase or sell, or offering to purchase or sell a mortgage loan, a mortgage banking loan, or a commercial mortgage banking loan that has already been funded, or
    - iii. Making, negotiating, or offering to make additional advances on an existing open-ended mortgage loan, mortgage banking loan, or commercial mortgage loan including, but not limited to, revolving credit lines; or
    - iv. Modifying, renewing, or replacing a mortgage loan, a mortgage banking loan, or a commercial mortgage loan that has already been funded, if the parties to the modified, renewed or replacement loan and the security therefor are the same as the original loan immediately prior to the modification, renewal, or replacement, and if no additional funds are advanced nor is any increase made in the credit limit on an open-ended loan.
  - d. For purposes of R20-4-102 (11)(c)(iv), replacing a loan is the making of a loan simultaneously with the termination of the loan it replaces.
12. "Employee" means a natural person who has an employment relationship acknowledged by both that person and the licensee, and:
- a. The person is entitled to be paid, or is paid, by the licensee; and
  - b. The licensee withholds payroll deductions for Federal Unemployment Tax, Federal Insurance Contributions Act, and other such routine federal and state payroll taxes; and
  - c. The licensee has the right to hire and fire the employee and to hire and fire the employee's assistants; and
  - d. The licensee directs the methods and procedures for performing the employee's job; and
  - e. The licensee supervises the employee in the conduct of business and supervises the employee's compliance with applicable law and rules.
13. "Engaged in the Business of Making Mortgage Loans or Mortgage Banking Loans" means, as that phrase is used in A.R.S. §§ 6-902(A)(2)(d) or in 6-942(A)(2)(d), the direct or indirect making, in the aggregate, of more than 5 mortgage banking loans or mortgage loans, or any combination thereof, in a calendar year. Each loan shall be counted only once as of its closing date. A Person shall not be "engaged in the business of making mortgage loans or mortgage banking loans" if the Person makes those loans solely in Commercial Finance Transactions wherein no more than 35% of the aggregate value of all security taken by the investor on the closing date is in the form of a lien, or liens, on real estate.
14. "Generally Accepted Accounting Principles" means generally accepted accounting principles as that term is used by the Financial Accounting Standards Board or the American Institute of Certified Public Accountants.
  15. "Hold out to the Public" means advertising or otherwise informing the public that mortgage banking loans, commercial mortgage loans, or mortgage loans are made or negotiated at a location. "Hold out to the Public" also includes listing a location on business cards, stationery, brochures, rate lists, or other promotional items. However, a clearly identified home or mobile telephone number included on business cards or stationery is permitted in addition to the telephone number of the licensed place of business.
  16. "Loan", as that term is used in A.R.S. §§ 6-126(C)(6) and 6-126(C)(7), means all loans negotiated or closed, regardless of the location of the real estate collateral or type of loan.
  17. "Loan Processing" means the completion of a loan application and supporting documents for use in underwriting.
  18. "Person" means a natural person an individual, corporation, business trust, estate, trust, partnership, limited partnership, joint venture, association, limited liability company, limited liability partnership, limited liability limited partnership, or any other legal or commercial entity.
  19. "Property insurance", as used in A.R.S. §§ 6-909(P) or 6-947(O), does not include flood insurance as that term is used in the Flood Disaster Protection Act of 1973, as modified by the National Flood Insurance Reform Act of 1994. Both of these federal statutes are found at 42 U.S.C. § 4001, et seq.
  20. "Reasonable Background Investigation", as that term is used in A.R.S. §§ 6-903(N)(1), 6-943(O)(1), or 6-976(C)(1), means the licensee has, at a minimum:
    - a. Collected and reviewed all the documents authorized by the Immigration Reform and Control Act of 1986, § U.S.C. § 1324a; and
    - b. Obtained a completed Employment Eligibility Verification (Form I-9); and
    - c. Obtained a completed and signed employment application; and
    - d. Obtained a signed statement attesting to any felony convictions of the applicant, including detailed information regarding the same; and
    - e. Made inquiry with the applicant's most recent or next most recent employer, if any; and
    - f. Made inquiry regarding the applicant's qualifications and competence for the position; and
    - g. If for a loan officer, loan originator, loan processor, branch manager, supervisor or similar capacity, the licensee has obtained a current credit report from a credit reporting agency; and
    - h. If any information received in the above inquiries raises questions as to the honesty, truthfulness, integrity or competence of the applicant, the lic-

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ensee has undertaken a further investigation. An inquiry shall be deemed sufficient if at least 2 reasonable attempts to contact a Person are made, including at least 1 written inquiry.

21. "Registered to do business in this state" means:
- a. If an Arizona corporation, it has incorporated under A.R.S. Title 10, Chapter 2, Article 1;
  - b. If a foreign corporation, it has either transferred its domicile under A.R.S. Title 10, Chapter 2, Article 2, or obtained authority to transact business in Arizona under A.R.S. Title 10, Chapter 15, Article 1;
  - c. If a business trust, it has obtained authority to transact business in Arizona under A.R.S. Title 10, Chapter 18, Article 4;
  - d. If an estate, it acts through a Personal representative duly appointed by the Superior Court of this state, under the provisions of A.R.S. Title 14, Chapter 3 or 4;
  - e. If a trust, it has delivered to the Superintendent an executed copy of the trust instrument creating the trust together with all the current amendments, or a true copy of the trust instrument certified by a trustee of the trust, before a notary public, to be a true, accurate, and complete copy of the trust instrument;
  - f. If a general partnership, limited partnership, limited liability company, limited liability partnership, or limited liability limited partnership, it has organized under the provisions of A.R.S. Title 29;
  - g. If a foreign general partnership, limited partnership, limited liability company, limited liability partnership, or limited liability limited partnership, it has registered with the Office of the Arizona Secretary of State under the provisions of A.R.S. Title 29;
  - h. If a joint venture, association, or any other legal or commercial entity, it has organized and conducts its business in compliance with Arizona law; or
  - i. It is qualified for an exemption from registration.
22. "Resident of this State" means a natural person domiciled in Arizona.
23. "Responsible Individual" means a Resident of this State, as that term is defined in R20-4-102 (22), who:
- a. Lives in Arizona during the entire period of designation as the Responsible Individual on a license, and
  - b. Is in Active Management of the licensee's affairs, as that term is defined in this Section, and
  - c. Meets the qualifications set out in A.R.S. §§ 6-903(B), or 6-943(C), or 6-973(C) and (D), and
  - d. Is an officer, director, member, partner, Employee as that term is defined in R20-4-102 (12), or trustee of the licensed entity.

**ARTICLE 9. MORTGAGE BROKERS**

**R20-4-901. Compensation**

For the purposes of the definition of compensation at A.R.S. § 6-901(2), "compensation" includes any compensation received at any time over the life of the loan. The following fees or payments are not compensation for the direct or indirect making, arranging for, negotiating, or offering to make, arrange for or negotiate a mortgage loan:

1. ~~Charges or fees customarily received subsequent to the closing of the loan including, but not limited to, prepayment penalties, termination fees, reinvestment fees, late~~

~~fees, default interest, transfer fees, impound account interest and fees, extension fees, and modification fees, except that extension fees and modification fees shall constitute compensation if additional funds are advanced or an increase is made in a credit limit on an open-end mortgage as a part of the extension or modification;~~

- ~~2. Out-of-pocket expenses paid to independent third parties including, but not limited to, appraisal fees, credit report fees, legal fees, document preparation fees, title insurance premiums, recording, filing and statutory fees, collection fees, servicing fees, escrow fees, and trustee's fees;~~
- ~~3. Insurance commissions;~~
- ~~4. Contingent or additional interest, including interest based on net operating income; or~~
- ~~5. Equity participations.~~

**R20-4-902. Mortgage Brokering Activities**

- A. For the purposes of the definition of a mortgage broker at A.R.S. § 6-901(6), the direct or indirect making, negotiating or offering to make or negotiate a mortgage loan shall include consulting or advisory services in connection with a mortgage loan transaction which services are:
1. ~~Provided to an investor, wherein advice is given concerning the location or identity of potential borrowers, regardless of whether the consultant directly contacts any potential borrowers; or~~
  2. ~~Provided to a borrower, wherein advice is given concerning the location or identity of potential investors or lenders, or assistance is provided in preparing an application for a mortgage loan, regardless of whether the consultant directly contacts any potential investor or lender.~~
- B. For the purposes of the definition of a mortgage broker at A.R.S. Section 6-901(6), the following shall not constitute the direct or indirect making, negotiating or offering to make or negotiate a mortgage loan:
1. ~~Purchasing, negotiating to purchase or offering to purchase an existing mortgage loan;~~
  2. ~~Making, negotiating or offering to make additional advances on an existing open-end mortgage loan including, but not limited to, revolving credit lines; or~~
  3. ~~Modifying, renewing or replacing an existing mortgage loan, if the parties to the modified, renewed or replacement loan and the security therefor are the same as the original loan immediately prior to the modification, renewal or replacement and no additional funds are advanced nor is any increase made in the credit limit on an open-end mortgage loan. For the purposes of this rule, replacing a loan is the making of a loan simultaneously with the termination of the loan it replaces.~~

**R20-4-903. Exemption for Entities Regulated by an Agency of this State, other States, or by the United States**

- A. A Person is exempt under pursuant to A.R.S. § 6-902 (A)(1) only if all offers to make or negotiate a "Mortgage Loan", as that term is defined in A.R.S. § 6-901(7) mortgage loan, and all Mortgage Loans made or negotiated, by a such Person person claiming exemption, are subject to regulation directly by an agency of this state, any other state, or the United States.
- B. The required such regulation of all those transactions included in Subsection (A), above, shall must include, at a minimum:

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1. Regulations regulations governing the accounting and record-keeping practices of the claimant such person; and
2. Authority authority to examine the books and records of the claimant such person relating to its mortgage lending activities; and
3. Ability the ability to place the claimant such person in a receivership or conservatorship with regard to the claimant's mortgage lending such activities.

**R20-4-904. Engaged in the Business of Making Mortgage Loans**

- A. "Engaged in the business of making mortgage loans" as used in A.R.S. § 6-902(2)(d) is the direct or indirect making of more than five mortgage loans in a calendar year. Each loan shall be counted only once as of its date of closing.
- B. A person shall not be "engaged in the business of making mortgage loans" if the person makes mortgage loans solely in commercial finance transactions wherein 50 percent or more of the aggregate fair market value of all security taken by the investor is by assignment, purchase or security interest in the accounts receivable of the borrowers.

**R20-4-905. Registered to do Business in this State**

"Registered to do business in this state" means that the person has:

- A. Incorporated under A.R.S. Title 10, Chapter 1, Article 2, or procured authority to transact business under A.R.S. Title 10, Chapter 1, Article 9, if a corporation;
- B. Formed a partnership meeting the requirements of A.R.S. Title 29, Chapter 2, Article 2, if a general partnership;
- C. Registered with the Secretary of State pursuant to A.R.S. Title 29, Chapter 3, if a limited partnership; or
- D. Qualified for an exemption from registration.

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

- A. An applicant who has experience in the following categories shall be given full credit for such experience toward qualifying either for a mortgage broker license or to be Responsible Individual, as defined in R20-4-102 (23):
1. Mortgage broker with an Arizona license, or Responsible Individual responsible individual or branch manager for a licensee;
  2. Mortgage banker with an Arizona license, or Responsible Individual responsible individual or branch manager for a licensee;
  3. Loan officer, with responsibility primarily for loans secured by lien interests on real estate;
  4. Branch manager of lender, with responsibility primarily for loans secured by lien interests interest on real estate;
  5. Mortgage broker with license from another state, or Responsible Individual responsible individual for such mortgage broker;
  6. Mortgage banker with license from another state, or responsible individual for such mortgage banker broker;
  7. Attorney certified by any state as a with state bar real estate specialist specially.
- B. An applicant who has experience in the following categories may receive partial credit for such experience toward qualifying for a mortgage broker's license or to be Responsible Individual. Credit may be given in only 1 one category listed and for not more than 3 three years actual experience. Credit given shall be in the ratios of actual years of experience to equivalent years credited toward qualification for a license, as set forth below. The remaining years of experience required to qualify for a license shall be obtained from experience in categories listed in Subsection (A). The categories

of possible alternative experience for which partial credit is available are:

1. Attorney without state bar certified real estate specialty specially 3:2
2. Paralegal with demonstrated experience in real estate matters 3:2
3. Loan underwriter 3:2
4. Mortgage broker or mortgage banker from another state without license 3:2
5. Real estate broker with an Arizona license or license from a state with substantially equivalent licensing requirements 3:2
6. Escrow officer 3:2
7. Trust officer with a title company 3:2
8. Executive, supervisor, or policy maker involved in the administration or operation of a mortgage related business 3:1.5
9. Title officer with a title company 3:1.5
10. Realestatebroker, not within Subsection (5) of this list, above. 3:1.5
11. Loan processor with responsibility primarily for loans secured by lien interests on real estate 3:1.5
12. Branch manager of lender with responsibility primarily for loans not secured by lien interests on real estate 3:1.5
13. Real estate salesperson, with an Arizona license or a license from a state with substantially equivalent licensing requirements 3:1
14. Loan officer, with responsibility primarily for loans not secured by lien interests on real estate 3:1

**R20-4-908. Resident of this State**

A resident of this state is a person domiciled in Arizona during the term of the license or during the term as responsible individual.

**R20-4-909. Active Management**

To qualify as being in active management of the activities of a licensee, the responsible individual shall be knowledgeable about the Arizona activities of the licensee, shall supervise compliance with applicable law and rules, and shall have sufficient authority to ensure such compliance.

**R20-4-910. Employees**

An employee is any individual who has an employment relationship acknowledged by both the employee and the licensee which meets all of the following conditions:

1. The employee receives payment or is paid by the licensee in a manner wherein deductions for Federal Unemployment Tax, Federal Insurance Contributions Act, and other such federal and state taxes have been taken by the licensee;
2. The licensee has the right to hire and fire the employee and hire and fire the employee's assistants;
3. The licensee provides the methods and procedures for performing the employee's services; and
4. The licensee supervises the employee in the conduct of the employee's business and supervises the employee's compliance with applicable law and rules.

**R20-4-913. Reasonable Background Investigation Requirements**

- A. A reasonable investigation pursuant to A.R.S. § 6-903(N) shall consist of, at a minimum, all of the following:
1. A review of the documents as required by the Immigration Reform and Control Act of 1986, 8 U.S.C. 1325, and the completion of the Employment Eligibility Verification (Form I-9);
  2. Completed and signed employment application;

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3. Signed statement attesting to any felony convictions and detailed information regarding the same;
  4. Inquiry with the applicant's most recent or next most recent employer, if any;
  5. Inquiry regarding the applicant's qualifications as to the applicant's competence for the position; and
  6. If for a loan officer, loan originator, loan processor, branch manager, supervisor, or similar capacity, a credit report from a credit reporting agency.
- B.** If any information received raises questions as to the honesty, truthfulness, integrity or competence of the applicant, further investigation shall be undertaken.
- C.** An inquiry shall be deemed sufficient if at least two reasonable attempts to contact a person are made, including at least one written inquiry.

**R20-4-914. Branch Offices**

A branch office is any location, including a personal residence, but not the principal place of business, where a licensee holds itself out to the public as acting as a mortgage broker. "Hold out to the public" means advertising or otherwise informing the public that mortgage loans are made or negotiated at that location, or listing that location on business cards, stationery, brochures, rate lists or other promotional items, but does not include listing a home or mobile telephone number on business cards or stationery in addition to listing the telephone number of a licensed place of business.

**R20-4-917. Recordkeeping Requirements**

**A.** With the approval of the Superintendent, a licensee may use a computer or mechanical record keeping system. A licensee using such an approved system is not required to keep a written copy of the records if the licensee is able to generate all information required by this Section in a timely manner for examination or for other purposes. A licensee may later add, delete, modify, or customize any hardware or software component of an approved computer or mechanical record keeping system. When requested, a licensee shall report to the Superintendent any later material alteration of the fundamental character, medium, or function of its approved system if the alteration changes:

1. Any approved computer or mechanical system back to a paper-based system; or
2. An approved mechanical system to a computer system; or
3. An approved computer system to a mechanical system.

**BA.** In addition to any statutory requirements regarding records, the records maintained by a mortgage broker shall include, at a minimum, the following.

1. A list of all executed loan applications or executed fee agreements containing at least the following information:
  - a. Name of applicant;
  - b. Date of application;
  - c. Amount of initial loan request;
  - d. Date of final disposition;
  - e. Disposition (funded, denied, etc.); and
  - f. Compensation received; and g. Name of loan Loan officer.
2. A record, such as a cash receipts journal, of all money received in connection with mortgage loans showing at least:
  - a. Name of payor;
  - b. Date received;
  - c. Amount; and

- d. Purpose of receipt, including identification of the loans to which it relates, if any.
3. A sequential listing of checks written for each bank account relating to the mortgage broker business, such as cash disbursements journal, showing at least:
    - a. Payee;
    - b. Amount;
    - c. Date; and
    - d. Purpose of payment including identification of the loan to which it relates, if any.
  4. Bank account activity source documents for the mortgage broker business such as receipted deposit tickets, numbered receipts for cash, bank account statements, paid checks, and bank advices.
  5. A trust subsidiary ledger for each borrower from whom trust funds are accepted showing at least:
    - a. Borrower's name or names;
    - b. Loan number, if any;
    - c. Amount received;
    - d. Purpose for the amount received;
    - e. Date received;
    - f. Date deposited to trust account;
    - g. Amount disbursed;
    - h. Date disbursed;
    - i. Payee and purpose of the disbursement; and
    - j. Balance.
65. A file for each application for a mortgage loan containing:
    - a. The agreement Agreement with the customer concerning the broker's services, whether in the form of the loan application, fee agreement, or both;
    - b. The documents Documents showing the final disposition of the application, such as settlement statements, letter of denial or withdrawal letter;
    - c. Correspondence sent or received by the licensee broker;
    - d. All contracts, agreements and escrow instructions to or with any depository;
    - e. Documents showing compliance with the disclosure requirements of the Consumer Credit Protection Act and the Real Estate Settlement Procedures Act, to the extent applicable; and
    - f. If the loan is funded by an investor that is not a financial institution, an enterprise, a licensed real estate broker or salesman, a profit sharing or pension trust or an insurance company, the documents required to be provided to the investor pursuant to A.R.S. § 6-907, and a copy of the note and deed of trust or mortgage, and any assignments by the broker to the investor; and -
    - g. If the loan is closed in the mortgage broker's name, a copy of all closing documents including: closing instructions, any applicable rescission notice, HUD-1 settlement statement, final truth in lending disclosure, executed note, executed deed of trust or mortgage, and each assignment of beneficial interest by the licensee.
    - h. Itemized list of all fees taken in advance including, but not limited to, appraisal fees, credit report fees, and application fees;
  76. Samples of every each piece of advertising relating to the mortgage broker business in Arizona.
  87. Copies of governmental or regulatory compliance reviews.

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98. If the licensee is not a natural person, a corporation, partnership, or joint venture, a file containing:
- a. Organizational documents for the entity, i.e., incorporation or partnership documents;
  - b. Minutes Corporate or partnership minutes;
  - c. A record, such as a stock or ownership transfer ledger, of the ownership of all proportional equity interests in the licensee, ascertainable as of any given record date; and
  - de. Annual reports, if required by law.

109. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has been convicted of a felony, a copy of the judgment or other record of conviction.

114. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has, in the previous 7 years, been named as a defendant in any civil suit, a copy of the complaint, any answer filed by the licensee, and any judgment, dismissal or other final order disposing of the action.

124. If the Superintendent has ~~has~~ granted approval to maintain records outside of the state, the specific address of the place the records are maintained off-site, and the name of the Person to contact for them.

C. All records specified in R20-4-917 (B) Records shall be reconciled and updated at least once each calendar quarter quarterly if 10 ten or fewer transactions have occurred during the prior calendar quarter and shall be reconciled and updated monthly if more than 10 ten transactions occurred during the prior calendar quarter. In addition to the reconciliation of trust bank accounts, the balance shall be verified to the trust subsidiary ledger at the time of each reconciliation.

D. Documents described in Subsections (B)(1) and (6) subsection (A)(1) and (5), above, are mortgage loan transaction records and shall be retained as provided in A.R.S. § 6-906(A). For the purposes of A.R.S. § 6-906(A), the date of the mortgage loan closing on a loan application that which did not result in the making of a loan is either:

1. The the date the licensee receives written notice of cancellation from application was canceled by the applicant, borrower or
2. The the date the licensee mails written notice to the applicant that the application has been denied, as required by federal law.

E. All other records described in this Section rule shall be maintained for not less than 2 two years.

**R20-4-918. Generally Accepted Accounting Principles**  
Generally accepted accounting principles means generally accepted accounting principles as used by the Financial Accounting Standards Board or the American Institute of Certified Public Accountants.

**R20-4-921. Authorizations to Complete Blank Spaces**  
An authorization, under A.R.S. § 6-909(A), by a party allowing the licensee or escrow agent to complete certain blank spaces in a document after it is signed by that party to the transaction shall:

1. specifically identify the document and the blank spaces authorized to be completed, and
2. shall be in writing, dated and signed by that party, the authorizing parties, and
3. Such written authorization shall contain the following notice language, conspicuously printed on its face placed on the authorization:

YOUR SIGNATURE BELOW AUTHORIZES YOUR MORTGAGE BROKER OR ESCROW AGENT TO

FILL IN SPACES YOU LEFT BLANK IN SPECIFIED LOAN DOCUMENTS YOU ARE ABOUT TO SIGN OR MAY HAVE ALREADY SIGNED. UNDER STATE LAW YOU CAN GIVE THIS AUTHORITY, BUT YOU CANNOT BE REQUIRED TO DO SO. YOU CAN REFUSE TO SIGN ANY DOCUMENTS UNTIL ALL BLANKS ARE COMPLETELY FILLED IN. "EXCEPT FOR EMPLOYMENT VERIFICATIONS, VERIFICATIONS OF MORTGAGES AND LOANS AND DEPOSITS OR ACCOUNT VERIFICATIONS, A PERSON, IN CONNECTION WITH OR INCIDENTAL TO THE MAKING OF ANY MORTGAGE LOAN, SHALL NOT INDUCE, REQUIRE OR PERMIT ANY DOCUMENT TO BE SIGNED BY A PARTY TO THE TRANSACTION IF SUCH DOCUMENT CONTAINS ANY BLANK SPACES TO BE FILLED IN AFTER IT HAS BEEN SIGNED, EXCEPT THAT THE PARTY MAY SPECIFICALLY AUTHORIZE THE LICENSEE OR ESCROW AGENT HANDLING THE TRANSACTION, IN WRITING, TO COMPLETE CERTAIN BLANK SPACES."

**R20-4-925. Waiver of Examination and Course of Study**  
The Superintendent's waiver of the examination and course of study as required in A.R.S. § 6-903(R) shall extend to any Person designated to be the Responsible Individual by an applicant or licensee pursuant to A.R.S. § 6-903(E).

**ARTICLE 18. MORTGAGE BANKERS**

**R20-4-1801. Exemption for Entities Regulated by an Agency of this State, other States, or by the United States**

A. A Person is exempt under A.R.S. § 6-942(A)(1) only if all offers to make or negotiate a "Mortgage Banking Loan" or a "Mortgage Loan", as those terms are defined in A.R.S. § 6-941, and all Mortgage Banking Loans and Mortgage Loans made or negotiated by a Person claiming exemption, are subject to regulation directly by an agency of this state, any other state, or the United States.

B. The required regulation of all those transactions included in Subsection (A), above, shall include, at a minimum:

1. Regulations governing the accounting and record-keeping practices of the claimant; and
2. Authority to examine the books and records of the claimant relating to its mortgage banking activities or mortgage lending activities, or both; and
3. Ability to place the claimant in a receivership or conservatorship with regard to the claimant's mortgage banking activities, or mortgage lending activities, or both.

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

A. An applicant who has experience in any of the following categories shall be given full credit for such experience toward qualifying for a mortgage banker license or to be Responsible Individual, as defined in R20-4-102 (23):

1. Mortgage banker with Arizona license, or Responsible Individual or branch manager for a licensee;
2. Mortgage broker with Arizona license, or Responsible Individual or branch manager for a licensee;
3. Loan officer, with responsibility primarily for loans secured by lien interests on real estate;
4. Branch manager of lender, with responsibility primarily for loans secured by lien interests on real estate.
5. Mortgage banker with license from another state, or Responsible Individual for such mortgage banker;
6. Mortgage broker with license from another state, or Responsible Individual for such mortgage broker;

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7. Attorney certified by any state as a real estate specialist.
- B.** An applicant who has experience in any of the following categories may receive partial credit for such experience toward qualifying for a Mortgage Banker license or as a Responsible Individual. Credit may be given in only 1 category listed, and for not more than 3 years actual experience. Credit given shall be in the ratios of actual years of experience to equivalent years credited toward qualification for a license, as set forth below. The remaining years of experience required to qualify for a license shall be obtained from experience in categories listed in Subsection (A). The categories of possible alternative experience for which partial credit is available are:
1. Attorney without state bar certified real estate specialty 3:2
  2. Paralegal with demonstrated experience in real estate matters 3:2
  3. Loan underwriter 3:2
  4. Mortgage banker or mortgage broker from another state without license 3:2
  5. Real estate broker with an Arizona license or license from a state with substantially equivalent licensing requirements 3:2
  6. Escrow officer 3:2
  7. Trust officer with a title company 3:2
  8. Executive, supervisor, or policy maker involved in the administration or operation of a mortgage related business 3:1.5
  9. Title officer with a title company 3:1.5
  10. Real estate broker, not within Subsection (5) of this list, above 3:1.5
  11. Loan processor, with responsibility for loans secured by lien interests on real estate 3:1.5
  12. Branch manager of lender with responsibility primarily for loans not secured by lien interests on real estate 3:1.5
  13. Real estate salesperson, with an Arizona license or a license from a state with substantially equivalent licensing requirements 3:1
  14. Loan officer, with responsibility for loans not secured by lien interests on real estate 3:1

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

A certificate of deposit or investment certificate that any licensee or applicant places with the Superintendent shall not be renewable, nor expire, earlier than 12 months from the date of issuance.

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

A Person designated to oversee the operations of a branch office shall be knowledgeable about the branch activities of the licensee, shall supervise compliance by the branch with applicable law and rules, and shall have sufficient authority to ensure such compliance. One Person may oversee more than 1 branch.

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

If the address of the principal place of business or of any branch office is changed, the licensee shall notify the Superintendent of the change within 5 business days after the occurrence of the change of location. Together with such notice, the licensee shall provide to the department the license for the office changing its address together with the fee required by A.R.S. § 6-126 for changing the address of an office. A copy of such license shall continue to be displayed at the place of business until a new license is issued.

**R20-4-1806. Recordkeeping Requirements**

- A.** With the approval of the Superintendent, a licensee may use a computer or mechanical record keeping system. A licensee using such an approved system is not required to keep a written copy of the records if the licensee is able to generate all information required by this Section in a timely manner for examination or for other purposes. A licensee may later add, delete, modify, or customize any hardware or software component of an approved computer or mechanical record keeping system. When requested, a licensee shall report to the Superintendent any later material alteration of the fundamental character, medium, or function of its approved system if the alteration changes:
1. Any approved computer or mechanical system back to a paper-based system; or
  2. An approved mechanical system to a computer system; or
  3. An approved computer system to a mechanical system.
- B.** In addition to any statutory requirements regarding records, the records maintained by a mortgage banker shall include, at a minimum, the following:
1. A list of all executed loan applications or executed fee agreements containing the following information:
    - a. Name of applicant;
    - b. Date of application;
    - c. Amount of initial loan request;
    - d. Date of final disposition;
    - e. Disposition (funded, denied, etc.);
    - f. Name of loan officer.
  2. A record, such as a cash receipts journal, of all money received in connection with mortgage banking loans or mortgage loans showing:
    - a. Name of payor;
    - b. Date received;
    - c. Amount; and
    - d. Purpose of receipt including identification of the loan to which it relates, if any.
  3. A sequential listing of checks written for each bank account relating to the mortgage banker business, such as a cash disbursements journal, showing
    - a. Payee;
    - b. Amount;
    - c. Date; and
    - d. Purpose of payment including identification of the loan to which it relates, if any.
  4. Bank account activity source documents for the mortgage banker business such as receipted deposit tickets, numbered receipts for cash, bank account statements, paid checks, and bank advices.
  5. A trust subsidiary ledger for each borrower from whom trust funds are accepted showing at least:
    - a. Borrower's name or names;
    - b. Loan number, if any;
    - c. Amount received;
    - d. Purpose for the amount received;
    - e. Date received;
    - f. Date deposited to trust account;
    - g. Amount disbursed;
    - h. Date disbursed;
    - i. Payee and purpose of the disbursement; and
    - j. Balance.
  6. A file for each application for a mortgage banking loan or mortgage loan containing:

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- a. The agreement with the customer concerning the mortgage banker's services, whether in the form of the loan application, fee agreement, or both;
- b. The documents showing the final disposition of the application, such as settlement statements, letters of denial, or withdrawal letters;
- c. Correspondence sent or received by the licensee;
- d. All contracts, agreements and escrow instructions to or with any depository;
- e. Documents showing compliance with the disclosure requirements of the Consumer Credit Protection Act and the Real Estate Settlement Procedures Act, to the extent applicable; and
- f. If the loan is closed in the licensee's name, and funded by a lender that is not an Institutional Investor as defined at A.R.S. § 6-943(J)(1), a photocopy of the executed note, executed deed of trust or mortgage, and each assignment of beneficial interest by the licensee, if any. If any of the foregoing documents have been recorded, the file shall also contain legible copies of the recorded documents.
- g. Itemized list of all fees taken in advance including, but not limited to, appraisal fees, credit report fees, and application fees;
7. Samples of every piece of advertising relating to the mortgage banker business in Arizona.
8. Copies of governmental or regulatory compliance reviews.
9. If the licensee is not a natural person, a file containing:
- a. Organizational documents for the entity;
- b. Minutes; and
- c. A record, such as a stock or ownership transfer ledger, of the ownership of all proportional equity interests in the licensee, ascertainable as of any given record date; and
- d. Annual reports, if required by law.
10. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has been convicted of a felony, a copy of the judgment or other record of conviction.
11. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has, in the previous 7 years, been named as a defendant in any civil suit, a copy of the complaint, any answer filed by the licensee, and any judgment, dismissal or other final order disposing of the action.
12. If the Superintendent has granted approval to maintain records outside of the state, the specific address of the place the records are maintained, and the name of the Person to contact for them.
13. If the licensee does business in other states, it must be able to separate Arizona loan information from information relating to other states to enable the Superintendent to conduct an examination.
14. A monthly balance of the general ledger to evidence the mortgage banker's net worth.
- C. All records specified in R20-4-1802 (B) shall be reconciled and updated at least once each calendar quarter if 10 or fewer transactions have occurred during the prior calendar quarter and shall be reconciled and updated monthly if more than 10 transactions occurred during the prior calendar quarter. In addition to the reconciliation of trust bank accounts, the balance shall be verified to the trust subsidiary ledger at the time of each reconciliation.
- D. Documents described in Subsections (B)(1) and (6), above, are mortgage banking loan or mortgage loan transaction records and shall be retained as provided in A.R.S. § 6-946(A). For the purposes of A.R.S. § 6-946(A), the date of the mortgage banking loan closing on a loan application that did not result in the making of a loan is either:
1. The date the licensee receives written notice of cancellation from the applicant; or
  2. The date the licensee mails written notice to the applicant that the application has been denied, as required by federal law.
- E. All other records described in this Section shall be maintained for not less than 2 years.
- R20-4-1807. Providing Copies of Records**  
For each loan closed in an Arizona Mortgage Broker's name with a concurrent assignment of beneficial interest to the Mortgage Banker, the Mortgage Banker licensee shall provide to the Mortgage Broker in whose name the loan closed a copy of:
1. The closing instructions; and
  2. Any applicable rescission notice; and
  3. The HUD-1 settlement statement; and
  4. The final truth in lending disclosure; and
  5. The note; and
  6. The executed deed of trust or mortgage; and
  7. Each assignment of beneficial interest by the Mortgage Banker licensee.
- R20-4-1808. Authorizations to Complete Blank Spaces**  
An authorization, under A.R.S. § 6-947(A), allowing the licensee or escrow agent to complete certain blank spaces in a document after it is signed by a party to the transaction shall:
1. Specifically identify the document and the blank spaces to be completed, and
  2. Be in writing, dated and signed by the authorizing parties, and
  3. Contain the following notice, conspicuously printed on its face:  
YOUR SIGNATURE BELOW AUTHORIZES YOUR MORTGAGE BANKER OR ESCROW AGENT TO FILL IN SPACES YOU LEFT BLANK IN SPECIFIED LOAN DOCUMENTS YOU ARE ABOUT TO SIGN OR MAY HAVE ALREADY SIGNED. UNDER STATE LAW YOU CAN GIVE THIS AUTHORITY, BUT YOU CANNOT BE REQUIRED TO DO SO. YOU CAN REFUSE TO SIGN ANY DOCUMENTS UNTIL ALL BLANKS ARE COMPLETELY FILLED IN.
- R20-4-1809. Determining Loan Amounts**  
In determining the amount of a mortgage banking loan or a mortgage loan pursuant to A.R.S. § 6-947(E) or 6-947(K), only the principal amount of the loan shall be considered and not any points, interest, finance charges, insurance premiums of any kind, compensation paid to 3rd parties or compensation retained by the mortgage banker or its agents.
- R20-4-1810. Delay or Cause Delay**  
A mortgage banker shall not be deemed to have delayed or caused delay if such delay occurred due to events outside the control of the mortgage banker.
- R20-4-1811. Impound Accounts**  
The sum total of all funds retained by the mortgage banker from all periodic payments made by the borrower to maintain the Cushion, as that term is defined in R20-4-102 (10), shall be no greater

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than 1/6<sup>th</sup> of the estimated total annual payments from the escrow or impound account.

**ARTICLE 19. COMMERCIAL MORTGAGE BANKER**

**R20-4-1901. Exemption for Institutional Investors**

**A.** The exemption from the licensure requirement for an Institutional Investor, solely as that term is used in A.R.S. §§ 6-971(7), and in 6-972(1), and in this Article, applies only if a Person claiming the exemption meets all of the following criteria:

1. The claimant originates or directly or indirectly makes, negotiates, or offers to make, or to negotiate commercial mortgage loans that are all solely and exclusively funded by the claimant's own resources, as defined in A.R.S. § 6-971(11); and
2. The claimant does so in the regular course of business; and
3. The claimant makes only commercial mortgage loans, as that term is defined in A.R.S. § 6-971(3); and
4. The claimant makes each and every loan on the security of commercial property, as that term is defined in A.R.S. § 6-971(5); and
5. The claimant makes only loans of more than \$250,000.

**B.** If a claimant makes even 1 commercial mortgage loan that does not satisfy all the above criteria, any claim of exemption shall be invalid, and that Person shall not engage in any lending activity before obtaining a license.

**R20-4-1902. Exemptions for Entities Regulated by an Agency of this State, other States, or by the United States**

**A.** A Person is exempt under A.R.S. § 6-972(9) only if all offers to make or negotiate a "Commercial Mortgage Loan", as that term is defined in A.R.S. § 6-971, and all Commercial Mortgage Loans made or negotiated by a Person claiming exemption, are subject to regulation directly by an agency of this state, any other state, or the United States.

**B.** The required regulation of all those transactions included in Subsection (A), above, shall include, at a minimum:

1. Regulations governing the accounting and record-keeping practices of the claimant; and
2. Authority to examine the books and records of the claimant relating to its commercial mortgage lending activities; and
3. Ability to place the claimant in a receivership or conservatorship with regard to its commercial mortgage lending activities.

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

**A.** An applicant who has experience in the following categories shall be given full credit for such experience toward qualifying for a commercial mortgage banker license or to be Responsible Individual, as defined in R20-4-102 (23):

1. Commercial mortgage banker with an Arizona license, or Responsible Individual or branch manager for a licensee;
2. Mortgage broker with an Arizona license, or Responsible Individual or branch manager for a licensee;
3. Mortgage banker with an Arizona license, or Responsible Individual or branch manager for a licensee;
4. Loan officer, with responsibility primarily for loans secured by lien interests on commercial real property;
5. Branch manager of lender, with responsibility primarily for loans secured by lien interests on commercial real property;

6. Commercial mortgage banker with license from another state, or Responsible Individual for such commercial mortgage banker;
  7. Mortgage broker with license from another state, or Responsible Individual for such mortgage broker;
  8. Mortgage banker with license from another state, or responsible individual for such mortgage banker;
  9. Attorney certified by any state as a real estate specialist.
- B.** For the applicant whose experience is not from 1 of the categories in Subsection (A), above, the determination of the experience will be reviewed on a case by case basis.

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

If an applicant or a licensee elects to place with the Superintendent a deposit in the form of a certificate of deposit or investment certificate, in addition to the requirements of A.R.S. § 6-975(D), the certificate of deposit or investment certificate shall not be renewable, nor expire earlier than 12 months from the date of issuance.

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

A Person designated to oversee the operations of a branch office shall be knowledgeable about the branch activities of the licensee, shall supervise compliance by the branch with applicable law and rules, and shall have sufficient authority to ensure such compliance. One Person may oversee more than 1 branch.

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

If the address of the principal place of business or of any branch office is changed, the licensee shall notify the Superintendent of the change within 5 business days after the occurrence of the change of location. Together with such notice, the licensee shall provide to the department the license for the office changing its address together with the fee required by A.R.S. § 6-126 for changing the address of an office. A copy of such license shall continue to be displayed at the place of business until a new license is issued.

**R20-4-1907. Recordkeeping Requirements**

**A.** With the approval of the Superintendent, a licensee may use a computer or mechanical record keeping system. A licensee using such an approved system is not required to keep a written copy of the records if the licensee is able to generate all information required by this Section in a timely manner for examination or for other purposes. A licensee may later add, delete, modify, or customize any hardware or software component of an approved computer or mechanical record keeping system. When requested, a licensee shall report to the Superintendent any later material alteration of the fundamental character, medium, or function of its approved system if the alteration changes:

1. Any approved computer or mechanical system back to a paper-based system; or
2. An approved mechanical system to a computer system; or
3. An approved computer system to a mechanical system.

**B.** In addition to any statutory requirements regarding records, the records maintained by a commercial mortgage banker shall include, at a minimum, the following:

1. A list of all executed loan applications or executed fee agreements containing at least the following information:
  - a. Name of applicant;
  - b. Date of application;
  - c. Amount of initial loan request;
  - d. Date of final disposition;

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- e. Disposition (funded, denied, etc.); and
  - f. Name of loan officer.
  2. A record, such as cash receipts journal, of all money received in connection with commercial mortgage loans showing at least:
    - a. Name of payer;
    - b. Date received;
    - c. Amount; and
    - d. Purpose of receipt including identification of the loan to which it relates, if any.
  3. A sequential listing of checks written for each bank account relating to the commercial mortgage banker business, such as cash disbursement journal, showing at least:
    - a. Payee;
    - b. Amount;
    - c. Date; and
    - d. Purpose of payment including identification of the loan to which it relates, if any.
  4. Bank account activity source documents for the commercial mortgage banker business such as receipted deposit tickets, numbered receipts for cash, bank account statements, paid checks, and bank advices.
  5. If trust funds are received by the commercial mortgage banker, a trust subsidiary ledger for each borrower from whom trust funds are accepted showing at least:
    - a. Borrower's name or names;
    - b. Loan number, if any;
    - c. Amount received;
    - d. Purpose for the amount received;
    - e. Date received;
    - f. Date deposited into trust account;
    - g. Amount disbursed;
    - h. Date disbursed;
    - i. Payee and purpose of disbursement, and
    - j. Balance.
  6. A file for each application for a commercial mortgage loan containing:
    - a. The agreement with the customer concerning the commercial mortgage banker's services, whether in the form of the loan application, fee agreement, or both;
    - b. The documents showing the final disposition of the application, such as settlement statements, letters of denial, withdrawal letters, or internal memoranda;
    - c. Correspondence sent or received by the licensee;
    - d. All contracts, agreements and escrow instructions to or with any depository;
    - e. If the loan is closed in the licensee's name, a copy of all closing documents including: closing instructions, executed note, executed deed of trust or mortgage, and each assignment of beneficial interest by the licensee, if any. If any of the foregoing documents have been recorded, the file shall also contain legible copies of the recorded documents.
    - f. Itemized list of all fees taken in advance including, but not limited to, appraisal fees, credit report fees, and application fees.
  7. Samples of every piece of advertising relating to the commercial mortgage banker business in Arizona.
  8. Copies of governmental or regulatory reviews;
  9. If the licensee is a not a natural person, a file containing:
    - a. Organizational documents for the entity;
    - b. Minutes; and
    - c. A record, such as a stock or ownership transfer ledger, of the ownership of all proportional equity interests in the licensee, ascertainable as of any given record date; and
    - d. Annual reports, if required by law.
  10. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has been convicted of a felony, a copy of the judgment or other record of conviction.
  11. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has, in the previous 7 years, been named as a defendant in any civil suit, a copy of the complaint, any answer filed by the licensee, and any judgment, dismissal or the final order disposing of the action.
  12. If the Superintendent has granted approval to maintain records outside of the state, the specific address of the place the records are maintained, and the name of the Person to contact for same.
  13. If the licensee does business in other states it must be able to separate Arizona loan information from information relating to other states to enable the Superintendent to conduct an examination.
  14. A trial balance of the general ledger shall be produced monthly to evidence the commercial mortgage banker's net worth.
- C. All records specified in R20-4-1907 (B) shall be reconciled and updated at least once each calendar quarter if 10 or fewer transactions have occurred during the prior calendar quarter and shall be reconciled and updated monthly if more than 10 transactions occurred during the prior calendar quarter. In addition to the reconciliation of trust bank accounts, the balance shall be verified to the trust subsidiary ledger at the time of each reconciliation.
- D. Documents described in Subsections (B)(1) and (6), above, are commercial mortgage loan transaction records and shall be retained as provided in A.R.S. § 6-983(A). For the purposes of A.R.S. § 6-983(A), the date of the commercial mortgage loan closing for a loan application that did not result in the making of a loan is either:
  1. The date the licensee receives written notice of cancellation from the applicant; or
  2. The date the licensee mails written notice to the applicant that the application has been denied; or
  3. The date of the licensee's internal memorandum closing the loan file.
- E. All other records described in this Section shall be maintained for not less than 2 years.
- R20-4-1908. Impound Accounts**  
In the case of any commercial mortgage loan the sum total of all funds, if any, retained by the commercial mortgage banker from all periodic payments made by the borrower to maintain a Cushion, as that term is defined in R20-4-102 (10), shall be limited only by the written agreement of the parties.
- R20-4-1909. Authorization to Complete Blank Spaces**  
An authorization, under A.R.S. § 6-984(A), allowing the licensee or escrow agent to complete certain blank spaces in a document after it is signed by a party to the transaction shall:
  1. Specifically identify the document and the blank spaces to be completed, and
  2. Be in writing, dated and signed by the authorizing parties, and
  3. Contain the following notice, conspicuously printed on its face:

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YOUR SIGNATURE BELOW AUTHORIZES YOUR COMMERCIAL MORTGAGE BANKER OR ESCROW AGENT TO FILL IN SPACES YOU LEFT BLANK IN SPECIFIED LOAN DOCUMENTS YOU ARE ABOUT TO SIGN OR MAY HAVE ALREADY SIGNED. UNDER STATE LAW YOU CAN GIVE THIS AUTHORITY. BUT YOU CANNOT BE REQUIRED TO DO SO. YOU CAN REFUSE TO

SIGN ANY DOCUMENTS UNTIL ALL BLANKS ARE COMPLETELY FILLED IN.

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

A commercial mortgage banker shall not be deemed to have delayed or caused delay if such delay occurred due to events outside the control of the commercial mortgage banker.