



## Ohio Administrative Code

### Rule 1301:8-7-32 Loan processors and underwriters.

Effective: January 4, 2016

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(A) In accordance with 12 U.S.C. 5103(b)(2), as in effect on January 12, 2014, an independent contractor shall not perform the clerical or support duties as defined in 12 U.S.C. 5102(5)(B), as in effect on January 12, 2014, of a loan processor or underwriter for residential mortgage loans involving property in this state without first having obtained a loan originator license issued pursuant to Chapter 1322. of the Revised Code.

(B) An individual who performs only clerical or support duties as defined in 12 U.S.C. 5102(5)(B) is not required to obtain a loan originator license if both of the following apply:

(1) The individual is an employee of a registrant, qualified exempt entity, depository institution, or loan processing or underwriting company that holds a valid letter of exemption issued pursuant to this rule;

(2) The individual performs such clerical or support duties at the direction of and subject to the supervision and instruction of a either a licensee employed by or associated with the same registrant, qualified exempt entity, or loan processing or underwriting company, or a registered loan originator employed by the same depository institution.

(C) The loan processing or underwriting company seeking exemption from registration shall submit an application for a letter of exemption via the NMLS for its main office location before engaging in the activities of a loan processor or underwriter for residential mortgage loans involving property in this state. The applicant shall be responsible for any fee required by the NMLS.

(D) The application shall be in a form prescribed by the superintendent and shall include all of the following:

(1) The loan processing or underwriting company's business name and state of incorporation or business registration;



- (2) The names of the owners, officers, members, or partners having control of the loan processing or underwriting company;
- (3) The names of all licensees employed by the the loan processing or underwriting company;
- (4) An attestation stating all of the following:
  - (a) All employees who perform clerical or support duties are either licensees or they perform only clerical or support duties at the direction of and subject to the supervision and instruction of a licensee employed by the same loan processing or underwriting company.
  - (b) The licensees assign, authorize, and monitor every loan processor or underwriter employee's performance of clerical or support duties.
  - (c) The licensees exercise traditional supervisory responsibilities, including, but not limited to, training, mentoring, and evaluation of every loan processor or underwriter employee.
  - (d) The loan processing or underwriting company always performs clerical or support duties for others pursuant to a written contract.
  - (e) No licensee or employee of the loan processing or underwriting company is also a licensee or employee of any entity for whom it performs clerical or support duties.
- (5) A surety bond for all licensees which may be issued in the same manner as is permitted for registrants;
- (6) An acknowledgment of understanding that the loan processing or underwriting company is subject to the regulatory authority of the division of financial institutions;
- (7) Any further reasonable information that the superintendent may require.
- (E) If the superintendent determines that the loan processing or underwriting company honestly



made the attestation required under paragraph (D)(4) of this rule and otherwise qualifies for exemption, the superintendent shall issue a letter of exemption which shall expire on the thirty-first day of December and may be renewed on or before that date by submitting an application that meets the requirements of paragraph (D) of this rule.

(F) The burden of proving the exemption is on the loan processing or underwriting company.

(G) The loan processing or underwriting company shall keep and maintain records of all residential mortgage loan transactions for the portion of the transaction it conducts in the same manner as is required of registrants.

(H) The superintendent may examine the books and records of the loan processing or underwriting company as often as the superintendent deems necessary for the purpose of substantiating the loan processing or underwriting company's exempt status. Examinations shall be conducted in accordance with rule 1301:8-7-13 of the Administrative Code.

(I) If the superintendent determines that the loan processing or underwriting company does not qualify for the exemption, the loan processing or underwriting company shall immediately cease engaging in loan processing or underwriting activities for residential mortgage loans involving property in this state. Failure to cease engaging in loan processing or underwriting activities without a valid letter of exemption is a violation of Chapter 1322. of the Revised Code and may be subject to administrative, civil or criminal actions.

(J) An employee of a loan processing or underwriting company that holds a valid letter of exemption may perform clerical or support duties from any location provided a licensee of the same loan processing or underwriting company maintains adequate supervision of the loan processor's or underwriter's performance, including, but not limited to, training, mentoring, and evaluation of the loan processor or underwriter.

(K) An employee of loan processing or underwriting company that holds a valid letter of exemption is exempt from having to obtain a loan originator license only with respect to the clerical or support duties performed for such independent contractor or loan processing or underwriting company.



(L) An independent contractor, or a licensee or employee of a loan processing or underwriting company shall not also be employed by or associated with any entity for whom it performs clerical or support duties.

(M) In order to reduce the risk of consumer fraud and related harms, including identity theft, independent contractors and loan processing or underwriting companies performing clerical or support duties shall be required to comply with section 216 of the "Fair and Accurate Credit Transactions Act of 2003," 117 Stat. 1952 (amended 2010), 15 U.S.C. 1681w, as in effect on January 12, 2014, section 501 of the "Gramm Leach Bliley Act," 113 Stat. 1338 (1999) (amended 2010), 15 U.S.C. 6801, as in effect on January 12, 2014, and the rules promulgated pursuant to those federal acts, including 16 C.F.R. part 313 and 16 C.F.R. part 682, as in effect January 12, 2014, pertaining to the maintenance, security, and disposal of consumer information and records.

(N) "At the direction of and subject to the supervision and instruction of" means all of the following:

(1) The individual performing clerical or support duties meets the definition of "employee" set forth in paragraph (O) of this rule.

(2) The supervisory individual directing, supervising and instructing the loan processor or underwriter employee shall be an individual listed in paragraph (P)(1) to (P)(5) of this rule;

(3) The supervisory individual assigns, authorizes, and monitors the loan processor or underwriter employee's performance of clerical or support duties;

(4) The supervisory individual exercises traditional supervisory responsibilities, including, but not limited to, the training, mentoring, and evaluation of the loan processor or underwriter employee.

(O) For purposes of this exemption, "employee" means an individual for whom the loan processing or underwriting company, in addition to providing a wage or salary, pays social security and unemployment taxes, provides workers' compensation coverage, and withholds local, state, and federal income taxes. Nothing herein prohibits a loan processing or underwriting company from entering into an agreement with a professional employer organization as that term is defined in division (D) of section 4125.01 of the Revised Code, provided the loan processing or underwriting



company retains all direction and control over its shared employees' performance of clerical or support duties.

(P) "Independent contractor" means an individual who performs the clerical or support duties as defined in 12 U.S.C. 5102(5)(B), as in effect on January 12, 2014, of a loan processor or underwriter other than at the direction of and subject to the supervision and instruction of any of the following individuals:

(1) An individual licensed as a loan originator pursuant to Chapter 1322. of the Revised Code;

(2) An individual licensed as a mortgage loan originator pursuant to sections 1321.51 to 1321.60 of the Revised Code;

(3) An individual licensed as a registered loan originator as defined in division (I) of section 1322.01 of the Revised Code;

(4) An individual licensed as a registered mortgage loan originator as defined in division (S) of section 1321.51 of the Revised Code;

(5) An individual who is not required to be licensed pursuant to paragraph (I)(2)(a) of this rule 1301:8-7-01 (government employees exclusion) or paragraph (H) of rule 1301:8-7-31 (nonprofit exclusion) of the Administrative Code.

(Q) "Loan processing or underwriting company" means a person, other than an independent contractor, registrant, or qualified exempt entity, who performs only clerical or support duties as defined in 12 U.S.C. 5102(5)(B), as in effect on January 12, 2014, of a loan processor or underwriter for one or more unaffiliated registrants, qualified exempt entities, or entities exempt from registration pursuant to division (G)(2)(b) of section 1322.01 of the Revised Code.