

## Chapter 441 Dept. of Consumer and Business Services, Division of Finance and Corporate Securities

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<b>441-860-0090</b>	Corporate Surety Bond or Irrevocable Letter of Credit for Mortgage Bankers Not Employing Mortgage Loan Originators
<b>441-860-0101</b>	Fees Payable to the Director
<b>441-860-0110</b>	Audit Charges Mortgage Bankers or Mortgage Brokers Pay to the Director
<b>441-860-0130</b>	Private Money Loans

## DIVISION 865

### RECORDS AND REPORTS

<b>441-865-0010</b>	General Provisions
<b>441-865-0020</b>	Financial Records
<b>441-865-0025</b>	Residential Mortgage Lending Reports
<b>441-865-0030</b>	Advertising
<b>441-865-0040</b>	Borrower and Investor Complaints
<b>441-865-0050</b>	Personnel Records

### Additional Borrower Files

<b>441-865-0060</b>	Residential Borrower Files
<b>441-865-0080</b>	Investor Files

### Client Funds

<b>441-865-0090</b>	Trust Account and Escrow Depository
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## DIVISION 870

### DISHONEST, FRAUDULENT, UNFAIR AND UNETHICAL PRACTICES

### General Provisions

<b>441-870-0010</b>	Dishonest, Fraudulent, Unfair and Unethical Practices
<b>441-870-0020</b>	General Definition
<b>441-870-0030</b>	Borrower Transactions
<b>441-870-0040</b>	Legend Requirements
<b>441-870-0050</b>	Investor Transactions
<b>441-870-0060</b>	Delivery of Additional Documentation
<b>441-870-0070</b>	Servicing Transactions
<b>441-870-0080</b>	Advertising
<b>441-870-0081</b>	Use of Certification or Professional Designations by Mortgage Banker, Mortgage Broker, or Mortgage Loan Originator

## DIVISION 875

### CUSTODY AND POSSESSION OF CLIENT FUNDS

<b>441-875-0020</b>	Branch Office Trust Accounts
<b>441-875-0030</b>	Manner of Deposit
<b>441-875-0040</b>	Financial Practices; Manner of Disbursement

## DIVISION 880

### LICENSING OF MORTGAGE LOAN ORIGINATORS

<b>441-880-0005</b>	Application of ORS 86A.200 to 86A.239 to Employees of Agencies of the United States, State Agencies, Local Governments and Housing Authorities
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## Chapter 441 Dept. of Consumer and Business Services, Division of Finance and Corporate Securities

<b>441-880-0006</b>	Application of ORS 86A.200 to 86A.239 to Employees of Bona Fide Nonprofit Organizations
<b>441-880-0007</b>	Process for Determining if Nonprofit Organization is Bona Fide
<b>441-880-0008</b>	Criteria for Determining if Nonprofit Organization is Bona Fide
<b>441-880-0200</b>	Application Process; Correcting Deficiencies in Application; Abandonment
<b>441-880-0205</b>	Interim Licenses
<b>441-880-0210</b>	Financial Responsibility Criteria
<b>441-880-0215</b>	Oregon Examination For Mortgage Loan Originators
<b>441-880-0300</b>	License Renewal; Reinstatement Process
<b>441-880-0310</b>	Mortgage Loan Originator Continuing Education Requirements; Curing Deficiencies; License Sanctions for Failure to Maintain Continuing Education
<b>441-880-0315</b>	Notice of Employment Status by Employer of Mortgage Loan Originator; Prohibition on Origination Activities Before Sponsorship
<b>441-880-0320</b>	Notice of Significant Events by Mortgage Loan Originator
<b>441-880-0400</b>	Fees Payable to the Director

### DIVISION 885

#### CANCELLATION OF LICENSE

<b>441-885-0010</b>	Cancellation License for Mortgage Bankers and Mortgage Brokers
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### DIVISION 910

#### DEBT MANAGEMENT

<b>441-910-0000</b>	Definitions
<b>Registration</b>	
<b>441-910-0005</b>	Exemptions from Debt Management Service Provider Registration
<b>441-910-0010</b>	Registration Requirements
<b>441-910-0030</b>	Renewal
<b>441-910-0050</b>	Update Filings
<b>441-910-0055</b>	Fees Payable to the Director

#### Business Activities

<b>441-910-0080</b>	Joint Trust Accounts
<b>441-910-0091</b>	Initial Counseling Fees
<b>441-910-0094</b>	Contracts for Debt Management Services
<b>441-910-0099</b>	Fee Schedules
<b>441-910-0135</b>	Loan Modifications
<b>441-910-0145</b>	Budget Analysis
<b>441-910-0150</b>	Disclosure of Pass-Through Charges by Debt Management Service Providers
<b>441-910-0151</b>	Advertisements
<b>441-910-0200</b>	Records Retained by Registrants

### DIVISION 930

#### PREARRANGEMENT AND PRECONSTRUCTION PLANS

<b>441-930-0010</b>	Definitions
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#### Master Trustees

<b>441-930-0030</b>	Applications for Registration of Master Trustees
<b>441-930-0035</b>	Renewal Procedure
<b>441-930-0045</b>	Material Changes, Notice of Civil and Criminal Actions
<b>441-930-0065</b>	When Application Deemed Abandoned
<b>441-930-0068</b>	Annual Report
<b>441-930-0070</b>	Examination of Master Trustee
<b>441-930-0080</b>	Master Trustee Rules of Conduct
<b>441-930-0085</b>	Calculation of Trust Fund Deposit Earnings

#### Certified Providers

<b>441-930-0210</b>	Application for Certification
<b>441-930-0220</b>	Renewal Procedure
<b>441-930-0230</b>	Material Changes, Notice of Civil and Criminal Actions
<b>441-930-0240</b>	When Application Deemed Abandoned
<b>441-930-0250</b>	Annual Report
<b>441-930-0255</b>	Reporting by Limited Operations Certified Provider
<b>441-930-0260</b>	Examination of Certified Providers
<b>441-930-0267</b>	Irrevocable Prearrangement Sales Contracts

#### Certified Providers and Registered Master Trustees

<b>441-930-0270</b>	Fees Assessed to Certified Providers and Registered Master Trustees
<b>441-930-0290</b>	Unprofessional Conduct
<b>441-930-0300</b>	Notice of Complaint
<b>441-930-0310</b>	Revocation, Suspension and Denial of Certificate or Registration
<b>441-930-0320</b>	Notice Requirements
<b>441-930-0330</b>	Records to be Retained

#### Funeral and Cemetery Consumer Protection Trust Fund

<b>441-930-0350</b>	Funeral and Cemetery Consumer Protection Trust Fund
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#### Endowment Care Cemeteries

<b>441-930-0360</b>	Surety Bond Requirements for Endowment Care Cemeteries
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### DIVISION 1

#### PROCEDURAL RULES

#### 441-001-0005

##### Model Rules of Procedure

The Director adopts by reference, for all programs administered by the Division of Finance and Corporate Securities, the Attorney General's Model Rules of Procedure as published in the Oregon Attorney General's Administrative Law Manual dated January 1, 2006.

Stat. Auth.: ORS 59.285, 59.900, 192.845, 645.205, 646.396, 650.050, 697.085, 697.632, 705.730, 706.790, 717.310, 723.102, 725.505, 725.625 & 726.260

Stats. Implemented: ORS 183.341

Hist.: FCS 3-2003, f. 12-30-03 cert. ef. 1-1-04; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 4-2006, f. & cert. ef. 5-17-06

#### 441-001-0010

##### Notice of Rulemaking

(1) Except when acting in an emergency to adopt a temporary rule in accordance with ORS 183.335(5), before any proposed adoption, amendment, or repeal of an administrative rule in this chapter or in chapter 440, division 35, 200 or 300, the Director will give prior notice as required in ORS 183.335(1).

(2) In addition to the notice described in section (1) of this rule, depending upon the subject matter of the proposal, notice may be given to licensed entities, organizations affiliated with regulated industries, publishers of industry publications, and the media.

(3) Any person receiving notice of rulemaking under this rule may request notice be sent to that person electronically.

Stat. Auth.: ORS 59.285, 59.900, 192.845, 645.205, 646.396, 650.050, 697.085, 697.632, 705.730, 706.790, 717.310, 723.102, 725.505, 725.625 & 726.260

Stats. Implemented: ORS 183.335

Hist.: FCS 3-2003, f. 12-30-03 cert. ef. 1-1-04

#### 441-001-0020

##### Mailing List

(1) The following documents will be mailed to persons who request placement on the mailing list for the Division of Finance and Corporate Securities and pay an initial fee of \$30 and a biennial renewal fee of \$30 on or before January 1 of each odd-numbered year thereafter:

(a) Proposals to adopt, amend, or repeal rules;

(b) Adopted rules;

(c) Legislation initiated by the Director (initial bill only); and  
(d) Enacted legislation affecting the statutes administered by the Director.

(2) All persons who have not paid the renewal fee by the due date shall be removed from the mailing list.

(3) The fee provisions of this rule shall not apply to:

(a) Persons described in OAR 441-001-0010(2);

(b) Governmental agencies;

(c) Persons requesting placement on the mailing list who elect to receive documents electronically only; or

(e) Persons who establish to the satisfaction of the Director that extreme financial hardship would result from the payment required by section (1) of this rule.

Stat. Auth.: ORS 59.285, 59.900, 192.845, 645.205, 646.396, 650.050, 697.085, 697.632, 705.730, 706.790, 717.310, 723.102, 725.505, 725.625 & 726.260

Stats. Implemented: ORS 183.335

Hist.: FCS 3-2003, f. 12-30-03 cert. ef. 1-1-04

#### **441-001-0030**

##### **Contested Case Proceedings**

(1) Except for appeals to courts of appropriate jurisdiction from decisions of the Director under ORS 707.080, 707.150 or 707.180, a person shall be considered as timely requesting a contested case hearing for any program administered by the Division of Finance and Corporate Securities if the written request for hearing is received by the Director within the time specified in the notice or proposed order served on the person. The time specified in the notice or proposed order shall be as stated in the applicable program's statutes or if none, in ORS Chapter 183.

(2) A contested case notice, in addition to the notice requirements of ORS 183.415(2), may include a statement that the record of the proceeding to date including information in the division file automatically becomes part of the contested case record upon default for the purpose of proving a prima facie case.

(3) No later than 60 days after the expiration of the time for requesting a hearing, a party may request a hearing by filing a request and an affidavit which:

(a) Shows the failure to request a hearing was due to mistake, inadvertence, surprise, or excusable neglect; and

(b) Sets forth a meritorious defense to the matters contained in the order.

(4) If the Director allows the late request, the Director shall refer the matter to the Office of Administrative Hearings. This referral does not stay the order which became final on the default. If the late request is denied, the Director shall enter an order setting forth the reasons for such denial.

Stat. Auth.: ORS 59.285, 59.900, 192.845, 645.205, 646.396, 650.050, 697.085, 697.632, 705.730, 706.790, 717.310, 723.102, 725.505, 725.625 & 726.260

Stats. Implemented: ORS 59.295, 59.905, 97.948, 183.090, 183.430, 183.435, 192.845, 706.580, 707.080, 707.150, 707.180, 717.235, 717.265 & 725.235

Hist.: FCS 3-2003, f. 12-30-03 cert. ef. 1-1-04

#### **441-001-0040**

##### **Requests for Opinions and Interpretations**

(1) For the purpose of this rule, a "request for opinion or interpretation" is defined as an informal inquiry requesting confirmation of the existence of an exemption, or requesting interpretation or advice on the applicability of any law administered by the Division of Finance and Corporate Securities.

(2) The intent of this rule is to formalize the opinion procedures so requests for opinions can be handled expeditiously.

(3) All requests for opinions and interpretations must:

(a) Be in writing, mailed or delivered to the Department of Consumer and Business Services, Division of Finance and Corporate Securities, 350 Winter Street N.E., Room 410, PO Box 14480, Salem, Oregon 97309-0405 or faxed to 503-947-7862;

(b) Concisely state the question or show all operative facts including the reason why the opinion or interpretation is requested; and

(c) Contain an analysis of the law applicable to the facts.

(4) Responses to requests for opinion will be limited to:

(a) Notice that the Director takes the position that further action is not required;

(b) Notice that the Director takes the position that further action is required;

(c) Notice that the Director declines to take a position; or

(d) A modification of the foregoing where necessary for clarity.

(5) Responses of the Director, which do not constitute a rule or order, and are not binding on any court or third party:

(a) Will only be in writing and will be based upon representations made.

(b) May be revised if additional facts or circumstances exist which warrant a change.

(c) Will be declined where litigation is pending or is threatened.

(d) Will be declined where the questions are asked after the fact.

(e) Will be declined where significant additional research is required.

(f) Are binding on the Director and the requester on the state of facts presented unless altered or set aside by a court.

(6) Any party dissatisfied with an opinion or interpretation may petition the Director for a declaratory ruling pursuant to ORS 183.410.

Stat. Auth.: ORS 59.285, 59.900, 192.845, 645.205, 646.396, 650.050, 697.085, 697.632, 705.730, 706.790, 717.310, 723.102, 725.505, 725.625 & 726.260

Stats. Implemented: ORS 183.310

Hist.: FCS 3-2003, f. 12-30-03 cert. ef. 1-1-04

#### **441-001-0050**

##### **Refund of Monies Paid**

(1) This rule pursuant to ORS 293.445 provides for the refund of monies paid to the Department of Consumer and Business Services to which the Department has no legal interest, or in excess of the amount legally due when paid for any program administered by the Division of Finance and Corporate Securities.

(2) Refunds exceeding \$25 shall be made without a written request. If the refund owed is \$25 or less, within 3 years of making the payment the person who paid the money or that person's legal representative must make a written request for the refund.

(3) Fees paid for an application that is subsequently withdrawn, abandoned, or denied shall not be refunded.

Stat. Auth.: ORS 59.285, 59.900, 192.845, 645.205, 646.396, 650.050, 697.085, 697.632, 705.730, 706.790, 717.310, 723.102, 725.505, 725.625 & 726.260

Stats. Implemented: ORS 293.445

Hist.: FCS 3-2003, f. 12-30-03 cert. ef. 1-1-04

## **DIVISION 5**

### **APPLICATION FOR CERTIFICATE OF COMPLIANCE**

#### **441-005-0010**

##### **Application For Certificate Of Compliance**

(1) To apply for a certificate from the Director to indicate that use of a requested name or intended activity is in compliance with the Bank Act and ORS chapters 59, 645, 705, 717, 725 and 726, a company shall submit:

(a) A letter request to the Director describing the company's business,

(b) The names, dates of birth and home addresses of all executive officers, directors and principals of the company, or persons holding similar positions; and

(c) Supporting documentation evidencing the company's organization as a financial institution, including but not limited to:

(A) The company's business plan;

(B) A copy of the charter or comparable documents from the jurisdiction where the company is organized, if applicable; and

(C) The articles of incorporation or proposed articles of incorporation or similar documents of organization.

(2) Within 10 business days from the receipt of the written request, the Director will review the request. Upon review, the Director will either issue a certificate to the Secretary of State and company authorizing the registration of the name for the company, request additional information from the company, or send a written denial of the request to the company.

(3) If the Director requests additional information from the company, the company shall have 30 days to submit additional information. If the company fails to submit the additional information within 30 days, the Director may deny the request for certification.

(4) If the Director denies a request for certification, the company shall have the right to request a hearing, which will be conducted pursuant to ORS Chapter 183.

(5) In lieu of the requirements under section (1)(b) and (c) of this rule, state or federally chartered financial institutions may comply with

section (1)(a) and supporting documentation required under section (1)(c)(B) unless the Director determines after receiving this documentation that full compliance with section (1)(a) through (c) is required.

Stat. Auth.: ORS 705.635  
Stats. Implemented: ORS 705.635  
Hist.: DO 5-2001, f. 12-24-01, cert. ef. 1-1-02; Renumbered from 440-200-0020, FCS 3-2004, f. & cert. ef. 9-30-04; FCS 9-2009, f. 9-15-09, cert. ef. 9-25-09

## **DIVISION 11**

### **GENERAL PROVISIONS**

#### **441-011-0010**

##### **Definitions**

(1) The words and phrases used in divisions 011 through 325 have the meaning given them in ORS 183.310.

(2) "Director" means the director of the Department of Consumer and Business Services.

(3) "Department" means the Department of Consumer and Business Services.

(4) "Person" includes individuals, partnerships, corporations, associations, firms, and joint stock companies.

Stat. Auth.: ORS 69.285 & 183  
Stats. Implemented: ORS 59.015  
Hist.: CC 13-1986, f. & ef. 7-8-86; Renumbered from 815-001-0010; FCS 4-1990, f. & cert. ef. 8-21-90

#### **441-011-0020**

##### **Waiver by the Director**

The Director may, either upon request or upon the Director's motion, waive or modify the application of any particular rule to a particular person when, in the Director's opinion just and reasonable cause exists for such action and the waiving or modifying of such rule would not be contrary to the provisions of the Oregon Securities Law, Oregon Commodities Law, Oregon Franchise Law or to the public interest.

Stat. Auth.: ORS 59.285  
Stats. Implemented: ORS 59.285  
Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0206; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0210; FCS 4-1990, f. & cert. ef. 8-21-90

#### **441-011-0040**

##### **Financial Statements**

(1) All financial statements required by any rule or official form of the Department of Consumer and Business Services, Division of Finance and Corporate Securities, shall be prepared in accordance with generally accepted accounting principles. Financial statements prepared in accordance with the requirements of the Securities and Exchange Commission shall satisfy this requirement.

(2) Unless otherwise accepted by the Director or specified by rule, order, or form, the financial statements shall include a current Statement of Financial Position (Balance Sheet); current Statement of Operations (Profit and Loss Statement); and a current Statement of Changes in Financial Position (Source and Application of Funds Statement) for each of the two fiscal years preceding the date of the balance sheet, and for the period, if any, between the close of the last fiscal year and the date of the balance sheet. As a general guideline, financial statements as of a date within 90 days prior to the date of filing shall be deemed to be current.

(3) An application for registration of securities pursuant to ORS 59.065, other than interests in a limited partnership, shall include audited financial statements in the following cases:

(a) All offerings of securities in which the aggregate offering price exceeds \$500,000;

(b) All offerings of bonds, notes, evidence of indebtedness, preferred stock or other securities requiring fixed or contingent periodic payments or amortization, where the aggregate offering price exceeds \$100,000.

(4) In the case of an application for registration of interest in a limited partnership pursuant to ORS 59.065, the following requirements shall apply:

(a) If one or more of the general partners is a corporation, audited financial statements of such corporate general partner(s) will be required if the aggregate offering price of the subject application

exceeds \$100,000 and such corporation has been the general partner of three or more registered limited partnerships;

(b) If one or more of the general partners is an individual, the application for registration shall include a statement by an independent public accountant as to the net worth of such general partner(s) in a form acceptable to the Director;

(c) Where the limited partnership has both a corporate general partner and an individual general partner the corporate general partner(s) must comply with subsection (a) of this section and the individual general partner(s) must comply with subsection (b) of this section.

(5) In the case of limited partnerships, the financial statements required by these rules or any other rule or order of the Director shall state in detail the terms of the following arrangements, if applicable:

(a) If the issuer contemplates transacting or has transacted business with any person in an amount equaling twenty percent of the total dollar value of securities offered;

(b) If a general partner is permitted to or contemplates that the general partner will sell services, supplies, equipment, furnishings or other property to the issuer or an affiliate;

(A) The financial statements should disclose the gross expenditures by the issuer or its affiliates to each person in connection with the arrangements described above;

(B) The prospectus or offering circular for the current offering of the issuer must disclose the gross receipts by each person involved in the arrangements described above from all prior limited partnership offerings.

(6) The Director may require or waive the requirement for audited financial statements under these rules if the Director finds such requirement or waiver is consistent with carrying out the provisions of the Oregon Securities Law and in the public interest.

Stat. Auth.: ORS 69.285  
Stats. Implemented: ORS 59.285  
Hist.: CC 29, f. 4-13-76, ef. 4-16-76; Renumbered from 815-030-0215; FCS 4-1990, f. & cert. ef. 8-21-90; FCS 7-2000; f. & cert. ef. 6-2-00

## **DIVISION 25**

### **SECURITIES EXEMPT FROM REGISTRATION**

#### **441-025-0005**

##### **Self-Executing Registration Exemptions**

(1) The securities listed in ORS 59.025 are exempt from registration or notice filing requirements. Sales of securities listed in 59.025 may only be effected through licensed persons, unless a person is otherwise exempted by statute or rule. No filing or fee is required to utilize any registration exemption in 59.025.

(2) Persons relying on exemptions from registration have the burden of proof, pursuant to ORS 59.275, in establishing the availability of an exemption.

Stat. Auth.: ORS 59.285  
Stats. Implemented: ORS 59.025, 59.195 & 59.275  
Hist.: FCS 7-2000; f. & cert. ef. 6-2-00

#### **441-025-0010**

##### **Exchange Exemption**

The following exchanges are recognized by the Director for the purpose of the exemption from registration in section (4) of ORS 59.025:

(1) Chicago Board Options Exchange.

(2) Philadelphia Stock Exchange, Inc. only to the extent of securities of issuers who qualify under Tier 1 listing and maintenance requirements of the Exchange

Stat. Auth.: ORS 59.025(4) & 59.285  
Stats. Implemented: ORS 59.025(4)  
Hist.: CC 32, f. & ef. 9-1-76; Renumbered from 815-030-0021; FCS 10-1994, f. & cert. ef. 10-3-94; FCS 7-2000; f. & cert. ef. 6-2-00

#### **441-025-0020**

##### **Manual Exemption**

Securities maintaining the following ratings by publishers of securities manuals are approved for the purpose of the exemption from registration in subsection (5) of ORS 59.025:

(1) Ratings of BBB or better for debt securities, and ratings of F-3 or better for commercial paper by Fitch Investors Service, Inc.

(2) Ratings of Baa or better for debt securities and ratings of P-3 or better for commercial paper by Moody's Investors Service.

(3) Ratings of BBB or better for debt securities and ratings of A-3 or better for commercial paper by Standard and Poor's Corporation.  
Stat. Auth.: ORS 59.285  
Stats. Implemented: ORS 59.025(5)  
Hist.: CC 13, f. 9-19-73, ef. 10-1-73; Renumbered from 815-030-0025.5; CC 1-1978, f. & ef. 1-4-78; Renumbered from 815-030-0020; FCS 4-1990, f. & cert. ef. 8-21-90; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01

#### **441-025-0030**

##### **Employee Benefit Plans**

The terms of an employee benefit plan are fair, just, and equitable for the purposes of ORS 59.025(12)(b) if it is a plan of an employee-owned enterprise.

Stat. Auth.: ORS 59.285  
Stats. Implemented: ORS 59.025(12)  
Hist.: FSC 3-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 5-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0021.1; FCS 7-2000, f. & cert. ef. 6-2-00

#### **441-025-0040**

##### **Charitable Securities**

(1) A person may offer and sell Charitable Remainder Annuity Trusts, Charitable Remainder Unitrusts, and Pooled Income Funds and be exempt from the provisions of ORS 59.055 if:

(a) The person is exempt from federal taxation under the provisions of **Section 501(c)(3)** of the **Internal Revenue Code**; and

(b) The Charitable Remainder Trusts and the Pooled Income Funds qualify under the requirements of **Section 664** or **Section 642** of the **Internal Revenue Code** and all other applicable provisions and regulations thereof.

(2) The Director may by rule or order deny, condition, or withdraw this exemption if, in the Director's opinion, the availability of this exemption to a person would work a fraud or imposition upon the purchaser.

Stat. Auth.: ORS 59.285  
Stats. Implemented: ORS 59.025(13)  
Hist.: CC 25, f. & ef. 12-5-75; Renumbered from 815-030-0040; FCS 4-1990, f. & cert. ef. 8-21-90

#### **441-025-0050**

##### **Additional Exempt Employee Benefit Plans**

Pursuant to ORS 59.025(14), securities issued in connection with an employee benefit plan are exempt from registration if the plan:

(1) Is subject to or voluntarily complies with Title I of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001-1191c;

(2) Meets the requirements of Section 403(b) of the Internal Revenue Code, 26 U.S.C. § 403(b); or

(3) Does not permit employee contributions.

Stat. Auth.: ORS 59.285  
Stats. Implemented: ORS 59.025(15)  
Hist.: CC 3, f. 10-2-69, ef. 10-25-69; Renumbered from 815-010-0010; CC 2-1978, f. 6-5-78, ef. 6-10-78; Renumbered from 815-030-0025; FCS 3-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 5-1988, f. 3-22-88, cert. ef. 2-25-88; FCS 4-1990, f. & cert. ef. 8-21-90; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 1-2012, f. & cert. ef. 7-9-12

#### **441-025-0060**

##### **Memberships in a Non-profit Cooperative**

Pursuant to authority in ORS 59.025(14), the director exempts any certificate evidencing membership issued by a non-profit cooperative that meets all of the following criteria:

(1) The issuing cooperative is formed pursuant to ORS 62.800 to 62.815;

(2) The issuing cooperative owns or leases land in Oregon on which manufactured dwellings are or will be located;

(3) Only a natural person who owns and occupies a manufactured dwelling that is located on land owned or leased by the issuing cooperative may be issued a membership certificate;

(4) The issuing cooperative issues not more than one membership certificate for any space lease in the cooperative, regardless of the number of occupants in the manufactured dwelling located on the space.

(5) The issuing cooperative sets the price of membership at a reasonable level, not to exceed \$1,000; and

(6) Each membership certificate includes a condition that requires the certificate must be returned to the cooperative in exchange for no

more than the price originally paid by the purchasing individual upon termination of the individual's membership in the cooperative.

Stat. Auth.: ORS 59.285  
Stats. Implemented: ORS 59.025(14)  
Hist.: FCS 1-2009, f. & cert. ef. 2-3-09

### **DIVISION 35**

#### **SECURITIES TRANSACTIONS EXEMPT FROM REGISTRATION**

#### **441-035-0005**

##### **Self-Executing Transaction Exemptions**

(1) Except for ORS 59.035(11) and OAR 441-035-0045, exemptions available pursuant to ORS 59.035 are self-executing. No filing or fee is required to utilize any exemption in 59.035, except for 59.035(11) and OAR 441-035-0045.

(2) Persons relying on exemptions from registration have the burden of proof, pursuant to ORS 59.275, in establishing the availability of an exemption.

Stat. Auth.: ORS 59.285  
Stats. Implemented: ORS 59.035, 59.195 & 59.275  
Hist.: FCS 7-2000, f. & cert. ef. 6-2-00

#### **441-035-0010**

##### **Accredited Investor**

For purposes of ORS 59.035(5) accredited investor includes:

(1) Any bank as defined in Section 3(a)(2) of the Securities Act of 1933 (the "Act"), or any savings and loan association or other institution as defined in Section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934; any insurance company as defined in Section 2(13) of the Act; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940; any small business investment company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; any employee benefit plan within the meaning of Title 1 of the Employee Retirement Income Security Act of 1974 ("ERISA"), if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of ERISA, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors.

(2) Any private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940.

(3) Any organization described in **Section 501(c)(3)** of the **Internal Revenue Code**, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000.

(4) Any director, executive officer, or general partner of the issuer of the securities being offered or sold or any director, executive officer, or general partner of a general partner of that issuer.

(5) Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of the purchase exceeds \$1,000,000, excluding the value of the natural investor's primary residence.

(6) Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.

(7) Any trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in **17 CFR 230.506(b)(2)(ii)**.

(8) Any entity in which all of the equity owners are accredited investors.

Stat. Auth.: ORS 59.285  
Stats. Implemented: ORS 59.035(5)

Hist.: CC 12-1985(Temp), f. & ef. 11-25-85; CC 1-1987, f. & ef. 2-4-87; FCS 8-1988(Temp), f. & cert. ef. 4-11-88; Renumbered from 815-030-0042; FCS 14-1988, f. & ef. 10-10-88; FCS 5-1990, f. & cert. ef. 8-21-90; FCS 9-2010(Temp), f. 8-2-10, cert. ef. 8-3-10 thru 1-30-11; FCS 2-2011, f. & cert. ef. 2-15-11

**441-035-0020**

**Transactions Ineligible Under ORS 59.035(7) Exemption**

The exemption under ORS 59.035(7) is not available if the transaction includes an investment contract. An investment contract may be found in:

- (1) The sale of fractional interests or pooled interests in real paper. Under ORS 59.350(2), a transaction with an entity formed substantially for the purpose of acquiring the real estate paper will be treated as the sale of a fractional interest or pooled investment.
  - (2) Any of the following activities by the seller or its affiliates:
    - (a) Selection of the security;
    - (b) Collection of payments due under the securities;
    - (c) Advancement of delinquent payments;
    - (d) Decisions regarding default and foreclosure;
    - (e) Any other activity by the seller whereby management and control is exercised over the investment for the purchaser; or
    - (f) The mortgage broker, broker-dealer, or person described in ORS 59.015(1)(b) guarantees the real estate paper or agrees to buy back or otherwise replace the real estate paper in the event of default.
- Stat. Auth.: ORS 59.045(1) & 59.285  
 Stats. Implemented: ORS 59.035(7) & 59.045(1)  
 Hist.: FCS 4-1987(Temp), f. 9-24-87, ef. 9-28-87; Renumbered from 815-030-0042.1; FCS 7-1988, f. 3-22-88, cert. ef. 3-25-88; FCS 16-1988(Temp), f. & ef. 11-21-88; Renumbered from 815-037-0039; FCS 4-1990, f. & cert. ef. 8-21-90; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92

**441-035-0021**

**Disclosure Requirements for Real Estate Paper Transactions Exempt Under ORS 59.035(7)**

- (1) All transactions exempt under ORS 59.035(7), involving a mortgage banker or mortgage broker must comply with the provisions of OAR 441-870-0050.
- (2) All transactions exempt under ORS 59.035(7), involving a broker-dealer or person described in 59.015(1)(b) must comply with the provisions of this rule. Compliance does not relieve any person of any other duties and liabilities under the Oregon Securities Law, Oregon Administrative Rules, or any other provision of law.
- (3) For transactions to be exempt under ORS 59.035(7), a broker-dealer or person described in 59.015(1)(b) must provide to the purchaser, prior to the time of sale, a written disclosure document containing the following information:
  - (a) The legal description of the real property underlying the real estate paper being sold;
  - (b) The priority of the lien created by the real estate paper and the total face amount of any senior liens including outstanding taxes; or a current title report on the real property prepared by a title insurance company;
  - (c) The terms of any senior lien and of any assignments thereof, or a copy of the instrument creating the senior lien and any assignments thereof;
  - (d) A statement whether any future advances may have a priority senior to that of the lien created by the real estate paper being sold;
  - (e) In the case of a sale of junior real estate paper, a statement of the risk of loss on foreclosure of a senior lien;
  - (f) A prominent statement of any balloon payments, including the dates payable and the amounts due;
  - (g) A statement of the balance of all taxes owing on the real property underlying the real estate paper, as provided by the county assessor directly or indirectly through a title insurance company;
  - (h) A statement of the value of the real property underlying the real estate paper, based upon the tax assessed value of the property underlying the real estate paper, as provided by the county assessor directly or indirectly through a title insurance company, and:
    - (A) If available, a statement of value based upon an appraisal or an opinion of value prepared by an independent licensed appraiser may also be provided; however
    - (B) Under no circumstances may the statement of value be based upon any source other than the county assessor or an independent licensed appraiser.
  - (i) If the transaction involves existing real estate paper:

(A) The debtor's payment record for the lesser of two years immediately preceding the sale or for the period of existence of the real estate paper, covering the existing real estate paper being sold; and

(B) If the payment record is less than two years, or the real estate paper being sold is a junior lien, a credit report on the debtor prepared by a credit reporting agency and current within 90 days of the transaction.

(j) If the transaction involves real estate paper to be created:

(A) The debtor's payment record, if any, for the lesser of two years immediately preceding the sale or for the period of existence of the real estate paper, covering:

- (i) Any lien senior to the real estate paper being created; and
- (ii) Any lien being retired with the proceeds from the subject sale.

(B) A credit report on the debtor prepared by a credit reporting agency and current within 90 days of the transaction; and

(C) A financial statement of the debtor current within 90 days of the transaction.

(k) If the seller of the real estate paper, the seller's agent, or any affiliate is the debtor, a statement disclosing that fact and the amount of cash paid to the debtor in consideration for the issuance of the real estate paper;

(l) A statement of any commissions, collection fees, and other costs chargeable to the purchaser of the real estate paper; and

(m) A statement of whether the purchaser of the real estate paper will be insured against casualty loss.

(4) The information contained in the written disclosure document described in section (3) of this rule may be provided in summary form except that copies of the tax statement and the appraisal, where applicable, must be true and complete copies of the originals.

(5) Although not a condition of the availability of the exemption granted pursuant to ORS 59.035(7), all broker-dealers relying on the exemption and this rule shall, pursuant to 59.195, maintain and make available to the Director, or any purchaser involved in the subject transaction, a separate file for each transaction. Each file shall be retained for a period of six years following the date of the transaction, and shall include:

(a) A copy of the disclosure document described in section (3) of this rule;

(b) A written statement, signed and dated by the purchaser, acknowledging receipt of the written disclosure document and an opportunity to review the supporting documentation;

(c) The supporting documentation evidencing the summarized information contained in the disclosure document; and

(d) Copies of the documents described in section (6) of this rule.

(6) The broker-dealer or person described in ORS 59.015(1)(b) must:

(a) Deliver to the purchaser or licensed escrow agent or title company the written evidence of the obligation properly endorsed, together with the instrument creating the purchaser's lien or assessment of the lien;

(b) Record, or cause to have recorded, the instrument creating the purchaser's lien or assignment of the lien in a timely manner in the county or counties where the property is located and retain a copy of the recorded instrument in the purchaser's transaction file; and

(c) If a title report prepared by a title insurance company is relied upon for the disclosure required under subsection (3)(b) of this rule, deliver to the purchaser a fully paid title insurance policy running to the benefit of the purchaser.

(7) If a security transaction is exempt under ORS 59.035(7), the following are also exempt:

(a) Guarantees or surety agreements created as an integral part of the real estate paper and sold with the real estate paper if the guarantor or surety is not a mortgage banker, mortgage broker, broker-dealer, or person described in ORS 59.015(1)(b); and

(b) "With-recourse" agreements or guarantees created by a seller and sold with the real estate paper, if the seller is not a mortgage banker, mortgage broker, broker-dealer, or person described in ORS 59.015(1)(b).

Stat. Auth.: ORS 59.035(7), 59.045(1), 59.045(2) & 59.350(2)

Stats. Implemented: ORS 59.035(7), 59.045 & 59.350(2)

Hist.: FCS 7-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-037-0037; FCS 5-1989, f. & cert. ef. 5-17-89; Renumbered from 441-205-0160; FCS 4-1990, f. & cert. ef. 8-21-90; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 4-2007, f. 10-11-07, cert. ef. 1-1-08

**441-035-0030**

**Manual Exemption**

Pursuant to ORS 59.035(10)(c), the Mergent, Standard and Poor's, and Fitch Investors Service securities manuals are approved for purposes of the exemption granted under subsection (10) of 59.035.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.035(10)

Hist.: CC 13, f. 9-19-73, ef. 10-1-73; CC 22, f. & ef. 11-25-75; Renumbered from 815-030-0035.90; Renumbered from 815-030-0045; FCS 5-1990, f. & cert. ef. 8-21-90; FCS 7-2000; f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01

**441-035-0040**

**NASDAQ Exemption**

Pursuant to subsection (10)(d) of ORS 59.035, the National Association of Securities Dealers Automated Quotations, NASDAQ, is approved for purposes of the exemption granted under section (10) of 59.035, except for securities quoted on the OTC Bulletin Board.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.035(10)

Hist.: CC 13, f. 9-19-73, ef. 10-1-73; Renumbered from 815-030-0035.91; Renumbered from 815-030-0050; FCS 5-1990, f. & cert. ef. 8-21-90; FCS 7-2000; f. & cert. ef. 6-2-00

**441-035-0045**

**Solicitation of Interest for Offering of Securities Pursuant to SEC Regulation A or OAR 441-065-0225**

(1) An offer, but not a sale, of a security made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving a prospectus (or its equivalent) for such security is exempt from ORS 59.055 if all of the following conditions are satisfied:

(a) The issuer is or will be a business entity organized under the laws of one of the states or possessions of the United States or one of the provinces or territories of Canada, is engaged in or proposes to engage in a business other than petroleum exploration or production or mining or other extractive industries and is not a "blank check company," as such term is defined in OAR 441-045-0010(2);

(b) The offerer intends to register the security in this state and conduct its offering pursuant to either Regulation A, as promulgated by the Securities and Exchange Commission, or OAR 441-065-0225;

(c) At least 10 business days prior to the initial solicitation of interest under this rule, the offerer files with the Director:

(A) A completed solicitation of interest application on a form prescribed by the Director along with any other materials to be used to conduct solicitations of interest, including, but not limited to, the script of any broadcast to be made and a copy of any notice to be published;

(B) The minimum registration fee as set in OAR 441-065-0001;

(C) A completed Form U-4 (salesperson application available from the Securities Section) for at least one, but no more than five, issuer salespersons (each such salesperson must be a bona fide officer, director or employee of the issuer); and

(D) A salesperson licensing fee as set in OAR 441-175-0002 for each salesperson.

(d) At least five business days prior to usage, the offerer files with the Director any amendments to the foregoing materials or additional materials to be used to conduct solicitations of interest, except for materials provided to a particular offeree pursuant to a request by that offeree;

(e) No Solicitation of Interest Form, script, advertisement or other material which the offerer has been notified by the Director not to distribute is used to solicit indications of interest;

(f) Except for scripted broadcasts and published notices, the offerer does not communicate with any offeree about the contemplated offering unless the offeree is provided with the most current Solicitation of Interest Form at or before the time of the communication or within five days from the communication;

(g) During the solicitation of interest period, the offerer does not solicit or accept money or a commitment to purchase securities;

(h) No sale is made until at least seven days after delivery to the purchaser of a final prospectus, or in those instances in which delivery of a preliminary prospectus is allowed hereunder, a preliminary prospectus;

(i) The offerer does not know, and in the exercise of reasonable care, could not know that the issuer or any of the issuer's officers, directors, ten percent shareholders or promoters:

(A) Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any fed-

eral or state securities law within five years prior to the filing of the Solicitation of Interest Form.

(B) Has been convicted within five years prior to the filing of the Solicitation of Interest Form of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.

(C) Is currently subject to any federal or state administrative enforcement order or judgment entered by any state securities administrator or the Securities and Exchange Commission within five years prior to the filing of the Solicitation of Interest Form or is subject to any federal or state administrative enforcement order or judgment entered within five years prior to the filing of the Solicitation of Interest Form in which fraud or deceit, including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found.

(D) Is subject to any federal or state administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities.

(E) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction permanently restraining or enjoining, such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within five years prior to the filing of the Solicitation of Interest Form.

(F) The prohibitions listed in paragraphs (A) through (E) of this subsection shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against such person or if the broker-dealer employing such party is licensed in this state and the Form B-D filed with this state discloses the order, conviction, judgment or decree relating to such person. No person disqualified under this subsection may act in a capacity other than that for which the person is licensed. Any disqualification caused by this action is automatically waived if the agency which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

(2) A failure to comply with any condition of section (1) of this rule will not result in the loss of the exemption from the requirements of ORS 59.055 for any offer to a particular individual or entity if the offerer shows:

(a) The failure to comply did not pertain to a condition directly intended to protect that particular individual or entity;

(b) The failure to comply was insignificant with respect to the offering as a whole; and

(c) A good faith and reasonable attempt was made to comply with all applicable conditions of section (1). Where an exemption is established only through reliance upon this section (2), the failure to comply shall nonetheless be actionable as a violation of the Act by the Director under ORS 59.245 and 59.255 and constitute grounds for denying, withdrawing or conditioning the exemption pursuant to 59.045 as to a specific security or transaction.

(3) The offerer shall comply with the requirements set forth below. Failure to comply will not result in the loss of the exemption from the requirements of ORS 59.055, but shall be a violation of the Oregon Securities Law, be actionable by the Director under 59.245 and 59.255, and constitute grounds for denying, withdrawing or conditioning the exemption pursuant to 59.045 as to a specific security or transaction:

(a) Any published notice or script for broadcast must contain at least the identity of the chief executive officer of the issuer, a brief and general description of its business and products, and the following legends:

(A) THIS IS A SOLICITATION OF INTEREST ONLY. NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED;

(B) NO SALES OF THE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL DELIVERY

OF AN OFFERING CIRCULAR THAT INCLUDES COMPLETE INFORMATION ABOUT THE ISSUER AND THE OFFERING;

(C) AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND; and

(D) THIS OFFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE FEDERAL AND STATE SECURITIES LAWS. NO SALE MAY BE MADE UNTIL THE OFFERING STATEMENT IS QUALIFIED BY THE SEC, IF APPLICABLE, AND IS REGISTERED IN THIS STATE.

(b) All communications with prospective investors made in reliance on this rule must cease after a registration statement is filed in this state, and no sale may be made until at least 20 calendar days after the last communication made in reliance on this rule.

(4) The Director may waive any condition of this exemption in writing, upon application by the offerer and cause having been shown. Neither compliance nor attempted compliance with this rule, nor the absence of any objection or order by the Director with respect to any offer of securities undertaken pursuant to this rule, shall be deemed to be a waiver of any condition of the rule or deemed to be a confirmation by the Director of the availability of this rule.

(5) Offers made in reliance on this rule will not result in a violation of ORS 59.055 by virtue of being integrated with subsequent offers or sales of securities unless such subsequent offers and sales would be integrated under federal securities laws.

(6) Issuers on whose behalf indications of interest are solicited under this rule may not make offers or sales in reliance on ORS 59.025(7), 59.035(5), 59.035(12) or OAR 441-035-0050 until six months after the last communication with a prospective investor made pursuant to this rule.

Stat. Auth.: ORS 59.025(4) & 59.035(11)

Stats. Implemented: ORS 59.025(4), 59.035(11), 59.035(15) & 59.285

Hist.: FCS 10-1994, f. & cert. ef. 10-3-94; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

#### **441-035-0050**

##### **Isolated Issuer Transaction**

(1) An exemption is granted pursuant to ORS 59.035(15) for any isolated issuer transaction not involving a public offering.

(2) For purposes of this rule, an "isolated issuer transaction" shall include sales by or on behalf of an issuer to three or fewer persons during any 24-month period.

Stat. Auth.: ORS 59.035(15)

Stats. Implemented: ORS 59.035(15)

Hist.: FCS 2-1993, f. 4-13-93, cert. ef. 4-15-93

#### **441-035-0060**

##### **Offers of Securities on the Internet**

(1) Scope of Rule. This rule applies to any offer for sale of securities placed on the Internet, except for those offers for sale from Oregon. As used in this section, the term "Internet" is to be construed liberally to include all proprietary or common carrier electronic systems or similar media.

(2) Pursuant to ORS 59.035(15), an offer for sale of securities placed on the Internet by, or on behalf of, an issuer, involving securities that will not be sold in Oregon, shall be exempt from the notice filing requirements of 59.049(1) and (2), and the registration requirements of 59.055, if the following conditions are observed:

(a) The Internet offer for sale prominently and conspicuously indicates, on a page that must be viewed by readers before reading any portion of the offering document or the subscription agreement, either that the securities are not being offered to persons in Oregon, or in which specific states, other than Oregon, the securities are being offered;

(b) The offer for sale is not otherwise specifically directed to any person in Oregon by, or on behalf of, the issuer; and

(c) No sales of the issuer's securities are made in Oregon as a direct or indirect result of the Internet offer for sale.

(3) Any issuer who places an offer for sale of securities on the Internet in accordance with this section may subsequently sell the securities to persons in Oregon:

(a) Through filing a notice of the offering under ORS 59.049(1) or (2), or registration of the offering under 59.065 and the delivery of a final prospectus to the Oregon investor prior to sale;

(b) Pursuant to a transaction exemption which permits general solicitation; or

(c) Pursuant to ORS 59.035(5), 59.035(12), or OAR 441-035-0050 provided that the sale transaction is executed no earlier than six months after the final contact between the issuer and the prospective Oregon investor.

Stat. Auth.: ORS 59.285 & 59.035(15)

Stats. Implemented: ORS 59.035

Hist.: FCS 7-2000, f. & cert. ef. 6-2-00

### **DIVISION 45**

#### **DENIAL, WITHDRAWAL OR CONDITIONING OF EXEMPTIONS**

##### **441-045-0010**

##### **Blank Check Company Securities Denial of Transactional Exemptions**

(1) No issuer, licensed broker-dealer, or affiliate of an issuer or licensed broker-dealer may effect transactions in the securities of a "blank check company," as that term is defined pursuant to section (2) of this rule, in reliance on any exemption pursuant to ORS 59.035.

(2) For purposes of this rule, a "blank check company" shall mean a company that:

(a) Is devoting substantially all of its efforts to establishing a new business in which planned principal operations have not commenced or, that has commenced planned principal operations, but has not derived significant revenue therefrom;

(b) Has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies; and

(c) Is issuing or has issued "penny stock" as that term is defined in section (3) of this rule.

(3) For purposes of this rule, the term "penny stock" shall mean any equity security having a price of less than five dollars, excluding any broker-dealer commission, commission equivalent, mark-up or mark-down in an agency transaction or a contemporaneous offsetting purchase and sale principal transaction, but including any broker-dealer mark-up or mark-down in any other principal transaction; other than a security that is:

(a) Registered or approved for registration and traded on a national securities exchange registered with the Securities and Exchange Commission;

(b) Quoted or approved for quotation on NASDAQ; or

(c) Issued by an investment company registered under the Investment Company Act of 1940.

(4) The provisions of this rule shall not apply to a transaction involving a licensed broker-dealer or affiliate serving as agent in an unsolicited transaction pursuant to ORS 59.035(8).

(5) Written requests for waiver of the prohibitions of this rule pursuant to OAR 441-011-0020 may be made by any person. Waivers may be granted only where it can be shown that such action would not be contrary to the public interest.

Stat. Auth.: ORS 59.045(1)

Stats. Implemented: ORS 59.045(1)

Hist.: FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92

### **DIVISION 49**

#### **NOTICE FILINGS FOR FEDERAL COVERED SECURITIES**

##### **441-049-1001**

##### **Fees for Federal Covered Securities Notice Filings**

Pursuant to ORS 59.049, for new filings received on or after July 1, 2010 or renewal filings effective on or after July 1, 2010, the Director sets the following fees for notice filings for federal covered securities:

(1) For an investment company, other than a unit investment trust, an initial and renewal notice filing fee of \$500 per portfolio. Issuers may submit filings containing multiple portfolios, provided the portfolios are identified in the Form NF and correct fees are paid.

(2) For a unit investment trust notice filing, an initial fee of \$500 per portfolio and a renewal fee of \$500 per portfolio. Issuers may submit filings containing multiple portfolios, provided the portfolios are identified in the Form NF and correct fees are paid.

(3) For a notice filing for offerings to qualified purchasers, or of federally exempt securities or federally exempt transactions pursuant to section 18(b)(3) or (4), other than section 18(b)(4)(D), of the Securities Act of 1933, as amended, a fee of \$200. No renewal notice filing or fee is required.

(4) For a Regulation D Rule 506 offering notice filing, a fee of \$250. No renewal notice filing or fee is required.

Stat. Auth.: ORS 59.049

Stats. Implemented: ORS 59.049

Hist.: FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 3-2006, f. & cert. ef. 5-4-06; FCS 8-2010, f. 6-22-10, cert. ef. 7-1-10

#### **441-049-1011**

##### **Scope and Definitions**

(1)(a) Scope of rule. The Notice Filing Rules (OAR 441-049-1011 to 441-049-1051) provide Oregon procedures for notice filings and renewals under ORS 59.049.

(b) Application of Notice Filing Rules:

(A) An offering under the Notice Filing Rules does not have to comply with OAR 441 division 065 Registration of Securities or 441 division 070 Renewal of Securities Registrations; and

(B) An effective offering under former OAR 441-025-0045 or an effective registered offering that qualifies for the Notice Filing Rules shall become subject to the Notice Filing Rules when the person that previously filed under former 441-025-0045 or securities offering registrant files under the notice filing renewal procedures in 441-049-1021(6).

(2) Definitions. As used in the Notice Filing Rules:

(a) "Investment company notice filing" means a filing by a mutual fund, unit investment trust or other investment company, that covers a security that would be a federal covered security pursuant to section 18(b)(2) of the Securities Act of 1933, as amended;

(b) "NASAA" means the North American Securities Administrators Association Inc.;

(c) "NASAA Form NF" means the Uniform Investment Company Notice Filing form adopted by the NASAA;

(d) "Notice Filing Rules" means the rules in OAR 441-049-1011 to 441-049-1051;

(e) "Offering to qualified purchaser," "federally exempt security" or "federally exempt transactions" means offerings of federal covered securities that are subject to section 18(b)(3) or 18(b)(4) of the Securities Act of 1933, as amended, but does not include section 18(b)(4)(D) of that Act;

(f) "Rule 506 offering" means an offering of federal covered securities that is subject to section 18(b)(4)(D) of the Securities Act of 1933, as amended;

(g) "SEC" means the Securities and Exchange Commission; and

(h) "SEC Form D" means "Form D; Notice of Sale of Securities Pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption" including Part E and the Appendix as adopted by the SEC.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth: ORS 59.049 & 59.085

Stats. Implemented: ORS 59.049

Hist.: FCS 3-1998, f. & cert. ef. 7-2-98

#### **441-049-1021**

##### **General Provisions Applicable to Notice Filing Rules**

(1) Address. All notice filings and payment of fees under the Notice Filing Rules shall be directed to the State of Oregon, Department of Consumer and Business Services, Division of Finance and Corporate Securities, 350 Winter Street NE Room 410, Salem, Oregon 97301-3881. At such time as filings can be received electronically by the Director, filings may be made electronically.

(2) Fees. Filing fees are set out in OAR 441-049-1001.

(3) Additional information. Notwithstanding the filing requirements in the Notice Filing Rules, the Director may request additional information, documentation or both. The request shall not exceed the information or documentation required by the SEC to be filed in connection with that offering.

(4) Salespersons. (a) An individual employed by the issuer of a federal covered security is not required to be licensed in Oregon to offer or sell the federal covered security.

(b) A salesperson must be identified on the Form NF filed with the Director but is not required to be licensed in Oregon to offer or sell

federal covered securities under section 18(b)(2) of the Securities Act of 1933.

(c) Other than a salesperson offering or selling a variable annuity, a salesperson is not required to be licensed in Oregon to offer or sell federal covered securities under section 18(b)(3) or (4) of the Securities Act of 1933.

(5) Initial Filings. Notice and fees submitted as an initial filing shall become effective on the later of the date the notice is received by the Director or date specified by the notice filer in accordance with 59.049(1), (2), or (3). The notice filings for federal covered securities under section 18(b)(3) and (4) of the Securities Act of 1933 shall be indefinite. The notice for federal covered securities under section 18(b)(2) of the Securities Act of 1933 shall continue for one year from the effective date. The Director may reject the notice if the Director does not receive the correct fees within 10 business days of the receipt of the notice.

(6) Renewal Filings:

(a) Notice form:

(A) A person seeking renewal shall provide the same form and materials required for the initial filing or most recent renewal. The renewal, if received prior to the annual anniversary date of the initial filing, shall become effective on the anniversary date and shall continue for one year from that date. The Director may reject the renewal if the Director does not receive the correct fees within 10 business days of the receipt of the notice;

(B) Notices submitted for renewals and received after the anniversary date shall become effective on the date received. A late renewal shall be accompanied by a letter from or on behalf of the notice filer indicating whether any sales were made in this state after the expiration date. The Director may reject the renewal if the Director does not receive the correct fees within 10 business days of the receipt of the notice. A late renewal may be treated as an initial filing.

(b) Aggregate offering amount. A renewal notice may be submitted for any aggregate offering amount of securities provided appropriate fees are submitted. A renewal is not limited to unsold portions of previously noticed aggregate offering amounts.

(c) Fees. A person seeking renewal shall submit the appropriate fees set out in OAR 441-049-1001.

(7) Acknowledgment of filing. Upon receipt of an initial filing or renewal, the Director shall provide written acknowledgment of the filing to the person submitting the request for the filing. An inadvertent failure by the Director to acknowledge the filing shall not invalidate the filing.

(8) Options, warrants or similar rights to purchase securities. Options, warrants or similar rights to purchase securities that are part of an offering under the Notice Filing Rules, constitute a continuous offering of the underlying securities during the exercise period and require the notice filing to be continually renewed as relevant. Disclosure materials shall be kept continuously current throughout the exercise period.

Stat. Auth: ORS 59.049 & 59.285

Stats. Implemented: ORS 59.049

Hist.: FCS 3-1998, f. & cert. ef. 7-2-98; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 12-2001, f. 12-27-01, cert. ef. 1-1-02; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 4-2007, f. 10-11-07, cert. ef. 1-1-08

#### **441-049-1031**

##### **Investment Company Notice Filing**

(1) An investment company notice filing shall comply with this rule.

(2) The notice required by ORS 59.049 shall:

(a) Identify the portfolios offered through the same SEC registration; and

(b) Subject to section (3) of this rule, be filed on NASAA Form NF.

(3) In lieu of the notice provided in section (2) of this rule, if the issuer follows ORS 59.049(1), and files a copy of its registration statement as filed with the SEC, the issuer shall advise the Director of the number of portfolios covered by the registration statement and pay fees as provided in OAR 441-049-1001.

Stat. Auth: ORS 59.049 & 59.085

Stats. Implemented: ORS 59.049

Hist.: FCS 3-1998, f. & cert. ef. 7-2-98; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

**441-049-1041**

**Offering to Qualified Purchaser, Federally Exempt Securities and Federally Exempt Transactions**

(1) Except as provided in section (2) of this rule, an issuer offering a security that is a covered security under section 18(b)(3) or (4), other than 18(b)(4)(D), of the Securities Act of 1933, as amended, shall:

(a) File a written notice of such offering identifying the issuer and seller if other than the issuer; and

(b) Pay a fee as set in OAR 441-049-1001.

(2) An issuer offering a security that is a variable annuity is exempt from notice filing and the fee requirements under ORS 59.049 and OAR 441-049-1001 provided the security is:

(a) A covered security under section 18(b)(4) by virtue of being an exempted security under section 3(a)(8) of the Securities Act of 1933; and

(b) In a form filed with and approved by the Director of the Department of Consumer and Business Services under the Oregon Insurance Code.

Stat. Auth.: ORS 59.049 & 59.085

Stats. Implemented: ORS 59.049

Hist.: FCS 3-1998, f. & cert. ef. 7-2-98; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 4-2007, f. 10-11-07, cert. ef. 1-1-08

**441-049-1051**

**Rule 506 Offerings**

A person offering a covered security under section 18(b)(4)(D) shall:

(1) File a notice on SEC Form D not later than 15 days after the first sale of securities subject to the notice in Oregon; and

(2) Pay a fee as set in OAR 441-049-1001.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 59.049 & 59.085

Stats. Implemented: ORS 59.049

Hist.: FCS 3-1998, f. & cert. ef. 7-2-98; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

**DIVISION 65**

**REGISTRATION OF SECURITIES**

**441-065-0001**

**Fees for Registration of Securities**

Pursuant to ORS 59.065, the Director sets the following fees for registration of securities:

(1) For initial registration, a fee of 1/10 of 1% of the amount offered in Oregon, with a minimum fee of \$200 and a maximum fee of \$1,500.

(2) For renewal of a current registration, a fee of 1/10 of 1% of the amount offered in Oregon, with a minimum fee of \$200 and a maximum fee of \$1,500.

(3) To increase the aggregate offering amount of a current registration, a fee calculated for registration of the desired aggregate offering amount less fees previously paid for the current registration, but not less than \$100. Amending the aggregate offering amount does not extend the expiration date of the current registration.

Stat. Auth.: ORS 59.065

Stats. Implemented: ORS 59.065 & 59.070

Hist.: FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

**441-065-0010**

**Types of Registration**

Types of registration. Securities may be registered under one of the following provisions:

(1) Registration by qualification (OAR 441-065-0020).

(2) Registration by filing (OAR 441-065-0030).

(3) Registration by multijurisdictional coordination (OAR 441-065-0035).

(4) Registration for resale, trading, or dealing (OAR 441-065-0040).

(5) Registration for condominium securities (OAR 441-065-0050).

(6) Registration for non-public offerings not exceeding \$500,000 including under SEC Rule 504 (OAR 441-065-0220).

(7) Registration for SCOR offerings not exceeding \$1,000,000 including under SEC Rule 504 (OAR 441-065-0225).

(8) Registration for non-public offerings not exceeding \$5,000,000 including under SEC Rule 505 (OAR 441-065-0230).

(9) Registration for generic real estate paper offerings (OAR 441-065-0260).

(10) Registration for certain compensatory benefit plans and contracts (OAR 441-065-0270).

Stat. Auth.: ORS 59.065 & 59.285

Stats. Implemented: ORS 59.065

Hist.: FCS 5-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 5-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0050.1; FCS 3-1991, f. & cert. ef. 8-23-91; FCS 7-2000, f. & cert. ef. 6-2-00

**441-065-0015**

**When Registration Application Deemed Abandoned**

(1) For purposes of this rule, the term "application" includes all documents, information and fees prescribed for the registration of securities under ORS 59.065 and OAR 441, division 65.

(2) An application shall be deemed deficient when:

(a) Insufficient fees have been paid and the Director has notified the applicant that the fees are insufficient;

(b) Documents required by the rules in OAR 441, division 65 have not been submitted by the applicant;

(c) Additional information requested by the Director as permitted by the rules in OAR 441, division 65 has not been submitted to the Director by the applicant; or

(d) Changes to disclosure documents requested by the Director have not been submitted to the Director by the applicant.

(3) An application for registration of securities is deemed abandoned if:

(a) The application has been on file for a minimum of six (6) months;

(b) The application is deficient; and

(c) The applicant has failed to respond to the Director's written notice of warning of abandonment within thirty (30) calendar days of the date of warning.

(4) Fees paid in connection with an abandoned registration shall not be refunded.

(5) An applicant whose application has been abandoned may reapply by submitting a new application including new fees.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.065

Hist.: FCS 7-2000, f. & cert. ef. 6-2-00; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

**441-065-0020**

**Registration by Qualification**

(1) Eligibility. Any issuer, owner, licensed broker-dealer, licensed mortgage broker, or any other person on whose behalf an offering is to be made may apply to register or renew by qualification.

(2) Application. An applicant for registration by qualification must use **Form U-1** (developed by the North American Securities Administrators Association, Inc.). The application must be complete and accompanied by the following documents as applicable:

(a) One copy of the registration statement filed with the Securities and Exchange Commission;

(b) One copy of the most recent prospectus;

(c) The underwriting agreement, agreement among underwriters, and selected dealers' agreement;

(d) Copies, including all amendments, of the issuer's articles of incorporation, certificate of limited partnership, or charter;

(e) Issuer's bylaws as amended to date;

(f) Other contracts or documents of a material nature including option or warrant plans, proceeds escrow agreements, stock escrow agreements, key employment contracts, leases, patent opinions, preliminary title reports, and loan commitment letters;

(g) Counsel's opinion as to the legality of the securities to be issued and counsel's consent to use the opinion;

(h) Other experts' opinions or reports and consent to use the opinions;

(i) A specimen of the security including any restrictions on its transfer;

(j) Proposed advertising material except material described in Rules 134, 134a, 135, or 135a adopted under the Securities Act of 1933, as amended;

(k) Financial statements as defined in OAR 441-011-0040;

(l) A **Form U-4** application and a filing fee as set in OAR 441-175-0002 for each salesperson if the offering will not be made through a licensed broker-dealer; and

(m) A registration fee as set in OAR 441-065-0001.

(3) Post application information. Every applicant or registrant by qualification must:

(a) Advise the Director prior to registration in Oregon of any material change in any information contained in the application or in any documents submitted with or as a part of the application;

(b) File within two business days after filing with the Securities and Exchange Commission:

(A) Any amendments to the federal registration statement designating the changed, revised, or added material or information; and

(B) The final prospectus and any further amendments or supplements thereto.

(c) File within 14 days of the date of registration the final prospectus, if not filed with the Securities and Exchange Commission;

(d) Notify the Director within two business days of receipt of:

(A) Any stop order, order of denial, order to show cause, order of suspension or revocation, injunction, or restraining order, or similar order entered or issued by any state or other regulatory authority or by any court concerning the securities covered by the application or other securities of the issuer currently being offered to the public; and

(B) Notice of effectiveness of the registration by the Securities and Exchange Commission.

(e) Notify the Director at least two business days prior to the effectiveness of the registration with the Securities and Exchange Commission of:

(A) Any requests by the issuer or applicant to any other state or regulatory authority for permission to withdraw any application to register the securities described in the application; and

(B) All states in which applications have been filed where the issuer or applicant has received notice from the state authority that the application does not comply with state requirements and the applicant or issuer cannot or does not intend to comply with such requirements.

(f) Furnish promptly all additional information and documents with respect to the issuer or the securities covered by the application as the Director requests.

(4) Registration. Registration is effective on the issuance of an order of registration.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.065

Hist.: FCS 5-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 5-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0050.2; FCS 7-2000; f. & cert. ef. 6-2-00; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

#### **441-065-0030**

##### **Registration by Filing**

(1) Securities for which a registration statement has been filed under the Securities Act of 1933 in connection with the offering of the securities may be registered by filing, whether or not they are also eligible for registration under any other rule if:

(a) The issuer is organized under the laws of the United States or any state, as defined in ORS 174.100, or, if the issuer is not organized under the laws of the United States or any state, it has appointed a duly authorized agent in the United States for service of process;

(b) The issuer has actively engaged in business operations in the United States for a period of at least 36 consecutive calendar months immediately before the filing of the federal registration statement;

(c) The issuer has registered a class of equity securities under Section 12(b) or (g) of the Securities Exchange Act of 1934, which class of securities is held of record by 500 or more persons;

(d) The issuer has:

(A) Either a total net worth of \$4,000,000 or a total net worth of \$2,000,000 and net pretax income from operations before allowances for extraordinary items, for at least two of the three preceding fiscal years;

(B) Not less than 400,000 units of the class of security registered under section 12 of the Securities Exchange Act of 1934 held by the public, excluding securities held by officers and directors of the issuer,

underwriters and persons beneficially owning ten percent or more of that class of security; and

(C) No outstanding warrants and options held by the underwriters and executive officers and directors of the issuer in an amount exceeding ten percent of the total number of shares to be outstanding after completion of the offering of the securities being registered.

(e) The issuer has been subject to the requirements of section 12 of the Securities Exchange Act of 1934 and has filed all the material required to be filed under Sections 13 and 14 of that act for at least 36 consecutive calendar months immediately before the filing of the federal registration statement and the issuer has filed in a timely manner all reports required to be filed during the 12 calendar months next preceding the filing of the federal registration statement;

(f) For at least 30 days during the three months next preceding the offering of the securities registered there have been at least four market makers for the class of equity securities registered under section 12 of the Securities Exchange Act of 1934;

(g) Each of the underwriters participating in the offering of the security and each broker-dealer who will offer the security in this State is a member of or is subject to the rules of fair practice of a national association of securities dealers with respect to the offering and the underwriters have contracted to purchase the securities offered in a principal capacity;

(h) The person(s) on whose behalf the securities are offered must receive proceeds equal to 90 percent or more of the aggregate public offering price;

(i) Neither the issuer nor any of its subsidiaries, since the end of the fiscal year next preceding the filing of the registration statement, have:

(A) Failed to pay a dividend or sinking fund installment on preferred stock;

(B) Defaulted on indebtedness for borrowed money; or

(C) Defaulted on the rental on one or more long-term leases which defaults in the aggregate are material to the financial position of the issuer and its subsidiaries, taken as a whole.

(j) In the case of an equity security, the price at which the security will be offered to the public is not less than five dollars per share.

(2) A filing under this section must contain the following information and be accompanied by the following documents:

(a) A completed Form U-1;

(b) A statement demonstrating eligibility for registration by filing;

(c) The name, address, and form of organization of the issuer;

(d) With respect to a person on whose behalf a part of the offering is to be made in a nonissuer distribution: name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; and a statement of the reasons for making the offering;

(e) A description of the security being registered; and

(f) A copy of the latest prospectus filed with the registration statement under and satisfying the requirements of Section 10 of the Securities Act of 1933.

(3) If the information and documents required to be filed by section (2) of this rule have been on file with the Director for at least ten business days, or any shorter period which the Director by rule or order allows, and the applicable registration fee has been paid before the effectiveness of the federal registration statement, a registration statement under this section automatically becomes effective concurrently with the effectiveness of the federal registration statement. If the federal registration statement becomes effective before the conditions in this section are satisfied and they are not waived, the registration statement becomes effective when the conditions are satisfied. The registrant shall promptly notify the Director of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall file promptly a post effective amendment containing the information and documents in the price amendment. The Director shall promptly acknowledge receipt of notification and effectiveness of the registration statement as of the date and time the registration statement became effective with the Securities and Exchange Commission.

(4) Registration pursuant to this rule shall be deemed fair, just, and equitable for purposes of ORS 59.085 and 59.105(1)(a).

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.065

Hist.: FCS 5-1987(Temp), f. 9-24-87, ef. 9-28-88; FCS 5-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0050.3

**441-065-0035****Registration by Multijurisdictional Coordination**

(1) Securities for which a registration statement has been filed under the Securities Act of 1933 on Securities and Exchange Commission Forms F-7, F-8, F-9 or F-10 in connection with the same offering may be registered by multijurisdictional coordination.

(2) A registration statement filed with the Director under this rule shall contain the following information and be accompanied by the following documents as applicable:

- (a) An appropriate registration fee as set in OAR 441-065-0001;
- (b) An executed registration application on Form U-1;
- (c) One copy of the latest form of prospectus filed under the Securities Act of 1933;
- (d) If the Director requests, any other information, or copies of any other documents, filed under the Securities Act of 1933; and
- (e) An undertaking to forward all amendments to the federal registration statement, other than an amendment which merely delays the effective date of the registration statement, promptly and in any event not later than the first business day after the day they are forwarded to or filed with the Securities and Exchange Commission, whichever first occurs.

(3) A registration statement under this rule automatically becomes effective at the moment the federal registration becomes effective if all the following conditions are satisfied:

(a) No order is in effect or proceeding is pending pursuant to ORS 59.105;

(b) The application for registration and all required documents have been on file with the Director for seven calendar days or such shorter period as the Director permits by rule or otherwise; and

(c) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions have been on file for two full business days or such shorter period as the Director permits by rule or otherwise and the offering is made within those limitations. The registrant shall promptly notify the Director by telephone or otherwise of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price. Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the Director may institute proceedings to suspend or revoke the registration pursuant to ORS 59.105.

(4) If the federal registration statement becomes effective before all the conditions specified in section (3) of this rule are satisfied, and those pending conditions are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the Director of the date when the federal registration statement is expected to become effective, the Director shall promptly advise the registrant by telephone or otherwise, at the registrant's expense, whether all the conditions are satisfied and whether the Director then contemplates the institution of a proceeding pursuant to ORS 59.105. This advice by the Director does not preclude the institution of such a proceeding at any time.

(5) A registration under this rule remains effective for a period of 12 months from the initial date of effectiveness unless earlier terminated by the registrant or the Director. A registrant may renew a registration under this rule by meeting the requirements of this rule.

(6) For purposes of this rule, financial statements and financial information which have been prepared in accordance with Canadian generally accepted accounting principles, consistently applied, and which have been accepted by the Securities and Exchange Commission for inclusion in Form F-7, F-8, F-9 or F-10, with or without reconciliation to United States generally accepted accounting principles, consistently applied, will be accepted.

(7) Any person, not otherwise licensed in Oregon, who is a bona fide officer, director or employee of an issuer whose securities are registered pursuant to this rule and who is not otherwise compensated in connection with the sale of the registered securities, is exempt from

the licensing requirements of OAR chapter 441, division 175 pursuant to OAR 441-175-0020 through 441-175-0040.

(8) Any person, not otherwise licensed in Oregon, who serves as a dealer manager for an exchange offer of securities which have been registered pursuant to this rule and who does not perform any active solicitation in this state, is exempt from the licensing requirements of OAR chapter 441, division 175 pursuant to OAR 441-175-0020 through 441-175-0040.

Stat. Auth.: ORS 59.015, 59.065 & 59.285

Stats. Implemented: ORS 59.065

Hist.: FCS 4-1991, f. & cert. ef. 8-23-91; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

**441-065-0040****Registration for Resale, or Dealing and Trading**

(1) Eligibility. A licensed broker-dealer may register securities for resale, or dealing and trading purposes if:

(a) The securities are outstanding in the hands of the public; and either:

(A) The issuer is organized under the laws of the United States or any state, as defined in ORS 174.100; or

(B) There are at least 300 beneficial owners of the security domiciled in the United States.

(b) The issuer has not made an offer of the same class of securities for six months except to employees;

(c) The securities were acquired in the ordinary and usual course of business by the seller and are not part of an unsold allotment or an attempt to evade the Oregon Securities Law;

(d) The securities are sold at prices reasonably related to the current market price at the time of sale if a market exists;

(e) Any commissions collected by the broker-dealer on account of the sale are not in excess of the usual and customary commissions collected with respect to securities and transactions having comparable characteristics; and

(f) The issuer agrees or is required to provide an audited balance sheet, statement of income or operations, and statement of cash flows annually to the holders of the class of security to be registered.

(2) Disqualification. Registration for resale, or dealing and trading may be denied if at the time of application the issuer is insolvent or if, within the five years preceding the filing of the application, the issuer or any executive officer, director, or general partner of the issuer:

(a) Has been subject to an administrative order issued by the Director for violation of any provision of the Oregon Securities Law or any rule or order of the Director;

(b) Has been or is engaged in dishonest or fraudulent conduct with regard to the securities;

(c) Has been convicted of a misdemeanor, an essential element of which is fraud, or a felony;

(d) Has made or caused to be made to the Director any false representation of a material fact or has suppressed or withheld from the Director any material information;

(e) Has refused to permit an examination to be made by the Director or failed to file any report including any financial report or furnish any information required by the Director in connection with the Oregon Securities Law;

(f) Has been subject to any order entered by an governmental agency or self-regulatory organization prohibiting or suspending the person from engaging in or continuing any conduct or practice involving any aspect of the securities business; or

(g) Has been subject to any judgment or decree of any court of competent jurisdiction which is based on either securities violations or fraud.

(3) Conditions of registration:

(a) The registration shall not be effective for sales which occur within 90 days after any public offering of the same class of securities which is not registered with the Securities and Exchange Commission under the Securities Act of 1933;

(b) The security shall not be sold pursuant to exemption under ORS 59.035(8), (9), or (10) when the registration is ineffective under subsection (3)(a) of this rule. This condition shall not apply to sales for which the broker-dealer places in its records reasonably sufficient evidence to document that the securities sold were issued and outstanding prior to the public offer, or are not part of the new issue.

(4) Application. An applicant for registration for resale, or dealing and trading shall apply on a form approved by the Director. The application must be accompanied by the following information:

- (a) The information required under subsection (5)(b) of this rule;
- (b) Appropriate fees;
- (c) The annual report of the issuer for the most recent fiscal year including audited financial statements;
- (d) Interim financial statements of the issuer not over 135 days old (unless annual statements are current); and
- (e) If the issuer is not a United States organization, a signed opinion of counsel duly licensed in any of the United States that the securities are qualified for sale in the United States or evidence that the securities are registered with the Securities and Exchange Commission.

(5) Recordkeeping and notice to purchasers:

(a) The applicant and any other broker-dealer relying upon the registration must:

(A) Maintain the information required in subsection (5)(b) of this rule in its records and keep the information reasonably current for each sale;

(B) Notify any proposed purchaser prior to the time of sale that the information is in its records; and

(C) Make the information reasonably available upon request to any person expressing an interest in a proposed transaction in the security with the broker-dealer.

(b) The applicant must maintain in its records at the time of sale and for two years after any sale the information listed in this section. The broker-dealer must have obtained the information from sources which it has a reasonable basis for believing are reliable. Forms filed by the issuer with the Securities and Exchange Commission are deemed a reliable source:

- (A) The exact name of the issuer and its predecessor (if any);
- (B) The address of its principal executive offices;
- (C) The date and state, province, or nation of organization and type of organization;
- (D) The exact title and class of the security;
- (E) The par or stated value of the security;
- (F) The number of shares or total amount of the securities outstanding as of the end of the issuer's most recent fiscal year;
- (G) The name and address of the transfer agent;
- (H) The nature of the issuer's business;
- (I) The nature of products or services offered;
- (J) The nature and extent of the issuer's facilities;
- (K) The name of the chief executive officer and members of the board of directors;
- (L) The issuer's most recent balance sheet and statement of income or operations and cash flows, which must be audited;
- (M) Similar financial information, which may be unaudited, for such part of the two fiscal years preceding the audited balance sheet and statements as the issuer or its predecessor has been in existence;
- (N) Whether the broker-dealer or any associated person is affiliated directly or indirectly with the issuer;
- (O) Whether the registration is submitted directly or indirectly for the benefit of any other broker-dealer, and, if so, the name of such broker-dealer; and
- (P) Whether the registration is being submitted directly or indirectly on behalf of the issuer, or any director, controlling person, officer, or any person, directly or indirectly the beneficial owner of more than ten percent of the outstanding units or shares of any equity security of the issuer and, if so, the name of such person and the basis for any exemption under the federal securities laws for any sales of such securities on behalf of such person.

(c) When the information described in subsection (5)(b) of this rule is made available to others upon request pursuant to this rule, such delivery, unless otherwise represented, shall not constitute a representation by such broker-dealer that such information is true and correct, but shall constitute a representation by such broker-dealer that the information is reasonably current in relation to the day the information is submitted, that the broker-dealer has no reasonable basis for believing the information is not true and correct, and that the information was obtained from sources which the broker-dealer has a reasonable basis for believing are reliable.

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.035(9) & 59.065

Hist.: FCS 6-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 5-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0050.4

#### **441-065-0050**

##### **Condominium Securities**

(1) Definitions:

(a) "Condominium Security" shall be defined to include the sale of a condominium in fee, leasehold, undivided interest or a license or right to use a facility with any of the following arrangements: Units offered in conjunction with:

(A) The offer of a rental arrangement or similar service with emphasis on the economic benefits derived by the purchaser from the managerial efforts of the promoter in connection with the rental of the units;

(B) The offering of participation in a rental pool arrangement;

(C) The offering of a rental or similar arrangement which requires the purchaser to hold a unit available for rental or to use an exclusive rental agent or otherwise materially restricts the purchaser's occupancy of his units.

(b) "Net Fee Contract" means a contract under which a management company, for a percentage of the gross rental income, provides overall management of the rental operation of the condominium project but the operating costs are borne by unit owners;

(c) "Gross Fee Contract" means a contract under which a management company, for a percentage of the gross rental income, provides management services. The cost of operation of the rental aspects of the project are borne by the management company but the cost of maintenance of the project is borne by the unit owners;

(d) "Unit" shall mean either a condominium unit, a leasehold interest in a condominium unit, or condominium project, a partial or limited partnership interest, or undivided interest in a condominium unit;

(e) "Operator" means the individual or company which does or will operate the project for the condominium unit owners;

(f) "Developer" means the individual or company which constructs, acquires or converts a property in which condominium unit securities, as herein defined, are to be sold.

(2) Project Financing:

(a) The financing arrangements for completion of the project shall be fully disclosed in the prospectus;

(b) If the project is to be phased or staged, the prospectus should clearly disclose what the effect of failure to complete the phases would be on the recreational amenities, public facilities and future use of the units;

(c) No encumbrances or liens of any kind shall be permitted on any portion of the project, except an individual investor-purchaser may arrange for financing the purchase of his unit and encumber the unit for the purchase price, including a mortgage or other arrangement to purchase the furniture package;

(d)(A) The developer or operator shall undertake to commit the restaurant, bar, hotel, and convention facilities to their specific uses through dedication in the Declaration of Unit Ownership; and any other use of those facilities shall only be permitted by a majority of unit owners;

(B) If, for any reason, the developer or operator shall be unable or unwilling to continue the operation of those facilities, the unit owners shall have the right to acquire title to the facilities, with the purchase price to be determined by arbitration;

(C) There shall be no separate ownership of service areas and other maintenance facilities necessary for the operation of the restaurant, bar, hotel, and convention facilities, and the unit owners shall own pro rata shares in all such service areas and maintenance facilities.

(e) The amount of any profits to the developer, whether by way of construction fee, finder's fee, acquisition fee, conversion costs, developer's fee, or otherwise should be disclosed in the prospectus;

(f) The proceeds of the offering shall be escrowed until the following conditions have been met:

(A) That the other condominium units can be delivered free and clear of any encumbrance (other than the major lease or long-term ownership, if such is the case). This shall not prevent a unit purchaser from encumbering a unit by purchase money lien or mortgage. In lieu of the escrow requirement, a satisfactory completion bond or guaranty by a financial institution may be substituted;

(B) A number of units have been sold which, in the opinion of the Director and as represented in the prospectus, will make the project feasible in light of the objectives promised to the investor-purchaser;

(C) The submission to the Director of an architect's certification that the units have been constructed according to specifications and in accordance with industry standards. In the case of a conversion of an existing structure into units, the architect's certificate should include a statement that the conversion has taken place according to specifications and in accordance with industry standards. As an alternative to the architect's certificate, an Engineer's Certification may be submitted which includes a structural or condition report on the units.

(3) Management Contracts:

(a) The management fee shall be reasonable in light of the number of units proposed to be managed and the duties imposed thereby and shall be disclosed in the prospectus. The fees, rights, and duties of the operator and unit owners may be negotiated at the end of not more than the three-year period from the date of the first notice and at any time after the first three years, and may be canceled upon a majority vote of the unit owners. The operator shall provide for full-time management of the units and hotel facilities. In lieu of the above, a management contract with a major hotel operator with demonstrated management capabilities and expertise will be permitted for a term of up to ten years. Any such contract can be terminated by a vote of the holders of at least two-thirds (2/3) of the units;

(b) A minimum number of rooms committed to a rental program shall be required and withdrawal from such a rental program shall not be permitted except upon approval of the manager and all other unit owners participating in the rental program;

(c) The management contract shall provide that the operator shall submit to the unit owners, at least once annually, a written report summarizing the receipts and disbursements affecting the operation of the hotel facilities;

(d) In addition, the management contract shall provide for the disbursement to the unit owners, at least quarterly, their pro rata share of receipts from the operations of the hotel facilities.

(4) Financial Statements:

(a) If the operator is a subsidiary of another company, the financial statements of both the parent and subsidiary will be required to be furnished in the prospectus. Such statements shall be audited in accordance with the standards prescribed by Securities and Exchange Commission Release S-X;

(b) In an interstate offering of units, the use of projections will be encouraged unless prohibited by the Securities and Exchange Commission. In all intrastate offerings of units, the operator/developer shall provide the Director with a projected cash flow for the first three years of operation, the projection shall be realistic in its predictions and shall clearly identify the assumptions made with respect to all material features of the presentation.

(5) Commissions and Fees: The combined real estate brokerage selling commission and securities underwriting commissions and fees in total shall not exceed 15 percent of the aggregate purchase price of the units being offered. All such commissions and fees shall be disclosed in the prospectus. Additional costs for accountants' fees, attorneys' fees, printing costs, and any additional costs required by any state or federal regulatory agency may be allowed in addition to the 15 percent limitation.

(6) Prospectus:

(a) The prospectus or other document used in connection with the solicitation or sale must be filed with the Director;

(b) The prospectus shall be in a form required by the Director and may also include such information as would make it acceptable under the real estate laws or regulations of any state in which the offering is to be made;

(c) The prospectus shall contain a facsimile of an engineer's survey and report of architect's certificate concerning the condition of the project in a form prescribed by the Director.

(7) Authority of Director: The Director may amend these rules if, in his discretion, it is determined to be in the public interest and appropriate for protection of investors.

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.065

Hist.: CC 27, f. 4-9-76, ef. 4-16-76; Renumbered from 815-030-0056

**Registration of Securities Offered in  
Connection with or Structured as a Regulation  
“D” or Similar Non-Public Offering**

**441-065-0060**

**Creation of Classifications**

(1) The Director creates the following classifications of transactions in securities:

(a) An offering relying on “Regulation D” adopted by the Securities and Exchange Commission in 17 CFR Part 230, except 230.506; and Part 239;

(b) An offering relying on a federal statute or rule other than “Regulation D” but designed to meet the applicable requirements of OAR 441-065-0070 through 441-065-0230 as a non-public or limited offering.

(2) Transactions in securities described in section (1) may be registered under the appropriate provisions of OAR 441-065-0060 through 441-065-0230.

Stat. Auth.: ORS 59.065 & 59.285

Stats. Implemented: ORS 59.065

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88, Renumbered from 815-036-0000; FCS 15-1988, f. & ef. 11-21-88, Renumbered from 815-036-0000; FCS 4-1992, f. & cert. ef. 10-1-92; FCS 2-1998, f. & cert. ef. 4-30-98

**441-065-0070**

**Definitions**

The following definitions are adopted for the purposes of OAR 441-065-0060 through 441-065-0230:

(1) “Accredited Investor” means a person as defined in OAR 441-035-0010.

(2) “Affiliate” means a person that directly or indirectly controls, is controlled by, or is under common control with, the person specified.

(3) “Aggregate Offering Price” means the sum of all cash, services, property, notes, cancellation of debt, or other consideration to be received by an issuer for issuance of its securities. Where securities are offered for both cash and non-cash consideration, the aggregate offering price shall be the price at which the securities are offered for cash. Any portion of the aggregate offering price attributable to cash received in a foreign currency shall be translated into United States currency at the currency exchange rate in effect at a reasonable time prior to or on the date of the sale of the securities. If securities are not offered for cash, the aggregate offering price shall be the value of the consideration established by bona fide sales of that consideration made within a reasonable time, or, in the absence of sales, on the fair value as determined by an accepted standard. Such valuations of non-cash consideration must be reasonable at the time made.

(4) “Business Combination” means any transaction of the type specified in paragraph (a) of Rule 145 under the Securities Act of 1933 (17 CFR 230.145) or any transaction involving the acquisition by one issuer, in exchange for all or a part of its own or its parent's stock, of stock of another issuer if, immediately after the acquisition, the acquiring issuer has control of the other issuer (whether or not it had control before the acquisition).

(5) “Calculation of Number of Purchasers” means the process of determining the number of purchasers under OAR 441-065-0230(2)(b) by:

(a) Excluding the following purchasers:

(A) Any relative, spouse, or relative of the spouse of a purchaser who has the same principal residence as the purchaser;

(B) Any trust or estate in which a purchaser and any of the persons related to the purchaser, as specified in paragraph (5)(a)(A) or (C) of this rule, collectively have more than 50 percent of the beneficial interest (excluding contingent interests);

(C) Any corporation or other organization of which a purchaser and relatives of the purchaser specified in paragraph (5)(a)(A) or (B) of this rule, collectively are beneficial owners of more than 50 percent of the equity securities (excluding directors' qualifying shares) or equity interests; and

(D) Any accredited investor.

(b) Counting as a single purchaser a corporation, partnership or other entity. If, however, that entity is organized for the specific purpose of acquiring the securities offered and is not an accredited investor under OAR 441-035-0010(8), then each beneficial owner of

equity securities or equity interests in the entity shall count as a separate purchaser, except to the extent provided in subsection (5)(a) of this rule;

(c) Counting as a single purchaser a non-contributory employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 where the trustee makes all investment decisions for the plan;

(d) Counting as a single purchaser each client of a federal or state investment adviser or customer of a broker-dealer regardless of the amount of discretion given to the investment adviser or broker-dealer to act on behalf of the client or customer.

(6) "Effective Date of Registration" means the date an issuer is authorized to sell securities under an order of registration issued by the Director.

(7) "Executive Officer" means the president, any vice president in charge of a principal business unit, division or function (such as administration, sales or finance), any other officer who performs a policy making function, or any other person who performs similar policy making functions for the issuer. Executive officers of subsidiaries may be deemed executive officers of the issuer if they perform policy making functions for the issuer.

(8) "Issuer" shall have the meaning given it in ORS 59.015, except that in the case of a proceeding under the Federal Bankruptcy Code (11 USC 101 et seq.), the trustee or debtor in possession shall be considered the issuer in an offering under a plan of reorganization, if the securities are to be issued under the plan.

(9) "Notice filing" or "notice filing rule" means a filing made under ORS 59.049, OAR 441 division 049 or under former 441-065-0240.

(10)(a) "Permitted Oregon Purchaser" means any person who at the time of sale is or who the issuer reasonably believes is:

(A) A natural person who purchases the security for cash, marketable securities or both at least \$10,000 of the securities offered, provided the purchase does not exceed ten percent of the purchaser's net worth at the time of purchase;

(B) A natural person who purchases the securities for cash, marketable securities or both provided:

(i) The purchaser's personal income exceeded \$70,000 in each of the two most recent years;

(ii) The purchaser reasonably expects an income in excess of \$70,000 in the current year; and

(iii) The amount purchased does not exceed ten percent of the purchaser's personal income for the most recent year.

(C) A partnership, corporation, trust or other entity in which all of the equity owners, or holders of beneficial interests in the case of a trust, satisfy the requirements of paragraph (A) or (B) of this section and the amount invested by the entity would be allowable as an individual purchase by each person under the same subsections.

(b) In subsection (a), the net worth and personal income of a spouse may be included in determining whether a purchaser is a "Permitted Oregon Purchaser."

(11) "Purchaser Representative" means any person who satisfies all of the following conditions or who the issuer reasonably believes satisfies all of the following conditions:

(a) The person is not an affiliate, director, officer or other employee of the issuer, beneficial owner of ten percent or more of any class of the equity securities or ten percent or more of the equity interest in the issuer, except where the purchaser is:

(A) A relative of the purchaser representative by blood, marriage or adoption and not more remote than a first cousin;

(B) A trust or estate in which the purchaser representative and any persons related to the purchaser representative, as specified in paragraph (a)(A) or (C) of this section, collectively have more than 50 percent of the beneficial interest (excluding contingent interest) or of which the purchaser representative serves as trustee, executor, or in any similar capacity; or

(C) A corporation or other organization of which the purchaser representative and any persons related to the purchaser representative, as specified in paragraph (a)(A) or (B) of this section, collectively are the beneficial owners of more than 50 percent of the equity securities (excluding directors' qualifying shares) or equity interest.

(b) The person has such knowledge and experience in financial and business matters that the person is capable of evaluating alone, or together with other purchaser representatives of the purchaser, or

together with the purchaser, the merits and risks of the prospective investment;

(c) The person is acknowledged by the purchaser in writing, during the course of the transaction, to be the purchaser representative in connection with evaluating the merits and risks of the prospective investment; and

(d) The person discloses to the purchaser in writing a reasonable time prior to the sale of the securities any material relationship between the purchaser representative or affiliates and the issuer or its affiliates as well as compensation involved that:

(A) Exists presently;

(B) Existed within two years; or

(C) Is planned.

(12) "Sophisticated Purchaser" means any person, acting alone or with a Purchaser Representative, that has, or that the issuer reasonably believes has, sufficient knowledge and experience in financial and business matters to evaluate the merits and risks of the proposed investment.

(13) "Suitable Purchaser" means any person who purchases the securities of the issuer through a licensed broker-dealer on a solicited basis.

(14) "Termination of the Offering" means the earlier of:

(a) The expiration of an order of registration; or

(b) A written notice of termination filed with the Director.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 59.065

Stats. Implemented: ORS 59.065

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88, Renumbered from 815-036-0005; FCS 15-1988, f. & ef. 11-21-88, Renumbered from 815-036-0005; FCS 4-1992, f. & cert. ef. 10-1-92; FCS 2-1998, f. & cert. ef. 4-30-98

#### **441-065-0080**

##### **General Requirements and Limitations**

(1) OAR 441-065-0060 through 441-065-0210 are applicable to offerings registered pursuant to 441-065-0220, 441-065-0225 or 441-065-0230.

(2) Registration of offerings pursuant to OAR 441-065-0220, 441-065-0225 or 441-065-0230 is only available to the issuer of the securities for purposes of the issuance of its securities.

(3) No offering of the securities of a "blank check company" may be registered pursuant to OAR 441-065-0220, 441-065-0225, or 441-065-0230. A "blank check company" is defined in 441-045-0010.

(4) Options, warrants and similar rights to purchase securities which are part of an offering registered pursuant to OAR 441-065-0220, 441-065-0225 or 441-065-0230 constitute a continuous offering of the underlying securities during the exercise period and require the securities to be registered and renewed on an annual basis and any disclosure materials to be kept continuously current throughout the exercise period.

(5) All forms mentioned in OAR 441-065-0060 to 441-065-0230 are available from the Director.

Stat. Auth.: ORS 59.065

Stats. Implemented: ORS 59.065

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88, Renumbered from 815-036-0010; FCS 15-1988, f. & ef. 11-21-88, Renumbered from 815-036-0010; FCS 4-1992, f. & cert. ef. 10-1-92; FCS 2-1998, f. & cert. ef. 4-30-98

#### **441-065-0090**

##### **Integration**

All separate sales of securities by the issuer that are a part of the same offering that is registered pursuant to OAR 441-065-0220, 441-065-0225 or 441-065-0230; for which a notice filing is made pursuant to ORS 59.049(5) and OAR 441-049-1051 or registered for failure to comply with notice filing requirements of ORS 59.049(5) and OAR 441-049-1051 shall be counted and included as securities sold under the same offering except as provided in this rule:

(1) A separate sale of securities within or without this state will be included as part of the same offering if, after considering the following elements, there are compelling reasons to treat the sale as part of the same offering. The elements to be considered are:

(a) Whether the sales are part of a single plan of financing;

(b) Whether the sales involved issuance of the same class of security;

(c) Whether the sales are made at or about the same time;

(d) Whether the same type of consideration is received; and

(e) Whether the sales are made for the same general purpose.

(2) Employee benefit plans. Offers and sales of any securities under an employee benefit plan as defined by 17 CFR 230.405 or 230.701 are not included for purposes of this rule.

(3) Safe harbor by absence of sales. Sales of securities made more than six months prior to the effective date of registration under OAR 441-065-0220, 441-065-0225, 441-065-0230; notice filing pursuant to ORS 59.049(5) and OAR 441-049-1051; or registration for failure to comply with notice filing requirements of ORS 59.049(5) and OAR 441-049-1051, or more than six months after the termination of the offering will not be counted or included as sales made as part of the same offering under this rule if there are no sales of securities of the same or similar class by the issuer during either six month period other than sales of securities under an employee benefit plan as defined by 17 CFR 230.405 or 230.701.

(4) Safe harbor for “discrete offerings” of partnership interests. Offerings of interests in a partnership shall not be included as securities sold under the same offering, even where there is a common sponsor or affiliate involved in offerings of interests in another entity, if all of the conditions of subsections (4)(b) through (f) of this rule are satisfied:

(a) As used in this subsection only, the following definitions are applicable:

(A) A “partnership” includes a general partnership, limited partnership, joint venture or other similar entity. A “partnership” includes existing entities as well as those that are to be formed in the future;

(B) A “sponsor” is a promoter or any person directly or indirectly instrumental in organizing the entity wholly or in part, or any person who will manage or participate in the management of the partnership. A “sponsor” includes a general partner and affiliate of the sponsor. A “sponsor” does not include independent third parties such as attorneys, accountants, and underwriters whose only compensation is for professional services rendered in connection with offering of interests in the partnership.

(b) Separate entity. The partnership must:

(A) Be a separate legal entity;

(B) Have separate books and records;

(C) Not commingle funds of the partnership with that of the sponsor or any other entity having the same sponsor.

(c) Economic independence. The partnership at the time the interests are sold must have an independent opportunity to meet its primary investment objective. If the partnership is substantially dependent on the creation, continued existence or economic results of investments of another entity having a common sponsor, then the partnership does not have an independent opportunity to meet its primary investment objective.

(d) Application of proceeds. No material portion of the gross offering proceeds of the partnership shall be invested in properties where another entity having a common sponsor has also invested and continues to hold invested, a material portion of its gross offering proceeds.

(e) Unspecified programs. An offering that does not identify at least 50 percent of the assets in which the partnership intends to invest does not qualify under this safe harbor if:

(A) Another entity with a common sponsor was formed to conduct the same general type of activity and that entity has not invested or committed the major portion of its gross offering proceeds prior to commencement of this offering by the registering partnership; or

(B) The sponsor creates a simultaneous or subsequent offering through another entity to conduct the same general type of activity before the registering partnership has invested or committed for investment the major portion of its gross offering proceeds. This paragraph does not apply if the investment to be made by the other entity is fully identified.

(f) An offering of interests in a partnership which is formed to engage in sale and leaseback transactions does not qualify under this safe harbor if the ultimate intended lessee of the assets in which the partnership invests is a sponsor of the partnership.

(5) Safe harbor by order of registration:

(a) Applicants desiring the Director’s concurrence of non-integration under section (1) of this rule or applicability of the safe harbors in section (3) or (4) of this rule shall file a written request with

their application for registration. Applicants shall attach arguments and citations in support of their position;

(b) By order of registration, the Director may determine whether separate sales will be integrated under this rule;

(c) No presumptions are created by the non-availability of safe harbors under section (3) or (4) of this rule.

Stat. Auth.: ORS 59.065

Stats. Implemented: ORS 59.065

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88, Renumbered from 815-036-0015; FCS 15-1988, f. & ef. 11-21-88, Renumbered from 815-036-0015; FCS 4-1992, f. & cert. ef. 10-1-92; FCS 2-1998, f. & cert. ef. 4-30-98; FCS 4-1998, f. & cert. ef. 8-5-98

#### **441-065-0100**

##### **Information Requirements**

(1) In general. The rules in OAR 441 division 065 rule shall not be construed as waiving or modifying the provisions of the Oregon Securities Law relating to disclosure of material information to investors.

(2) Except for offerings pursuant to section (4) of this rule, no specific disclosure or method of disclosing information is required for sales made exclusively to accredited investors.

(3) Registered offerings under OAR 441-065-0220. For an offering registered under 441-065-0220, each prospective purchaser of the securities shall be given written disclosure materials material to an understanding of the issuer, its business and the securities being offered.

(4) Registered offerings under OAR 441-065-0225. For an offering registered under 441-065-0225, each prospective purchaser of the securities shall be given a copy of the Form U-7 Disclosure Document (including all amendments) filed with the Director pursuant to 441-065-0170.

(5) Registered offerings under OAR 441-065-0230. For an offering registered under 441-065-0230, each prospective purchaser of the securities shall be given disclosures as provided in this rule.

(a) The disclosure materials shall either:

(A) Include at least the type of information and documentation as provided in Securities and Exchange Commission Rule 502(b)(2) (17 CFR 230.502(b)(2)), which rule is adopted by reference; or

(B) Be in writing, include all information material to an understanding of the issuer, its business and the securities being offered, be full, fair and complete, and be presented in a clear, concise and understandable manner.

(b) The issuer must give each prospective purchaser an opportunity to ask questions and receive answers concerning the terms and conditions of the offering and to obtain any additional information that the issuer possesses or can acquire without unreasonable effort or expense that is necessary to verify the accuracy of information provided under subsection (5)(a) of this rule; and

(c) Each prospective purchaser who is not an “accredited investor” shall be given upon written request, a brief description in writing of any written information concerning the offering that is provided by the issuer to any accredited investor provided that the purchaser makes a written request for the information.

(6) Time for disclosures. All disclosures shall be provided prior to the time a person becomes a purchaser of the securities.

(7) Written legend. Except for offers and sales of securities registered under OAR 441-065-0225, (to which the provisions of this section shall not apply), when written information is provided to a prospective Oregon purchaser, the written information shall contain one of the following legends which shall be prominent and in print that is easy to read:

(a) “The securities offered are registered with the Director of the Department of Consumer and Business Services for the State of Oregon under provisions of OAR 441-065-0060 through 441-065-0230. The Director reviewed the registration statement only briefly and has not reviewed this document. In deciding whether or not to invest in these securities, you should rely on your own examination of the company issuing the securities and the terms of the offering including the merits and risks involved;”

(b) “In making an investment decision investors must rely on their own examination of the person or entity creating the securities and the terms of the offering, including the merits and risks involved. These securities have not been recommended by any federal or state

securities commission or regulatory authority. Furthermore, the foregoing authorities have not confirmed the accuracy or determined the adequacy of this document. Any representation to the contrary is a criminal offense. These securities are subject to restrictions on transferability and resale and may not be transferred or resold except as permitted under the Securities Act of 1933 as amended, pursuant to registration or exemption therefrom. Investors should be aware that they will be required to bear the financial risks of this investment for an indefinite period of time;" or

(c) "In deciding whether or not to invest in the securities offered, you should rely on your own examination of the company issuing the securities and the terms of the offering, including the merits and risks involved. These securities have not been approved or disapproved by any federal or state securities commission or other regulatory authority. Also, no such agency has determined if this document is truthful or complete. Any representation to the contrary is a criminal offense. You will not be able to transfer or resell these securities except pursuant to registration under the federal Securities Act of 1933 or an exemption from registration if available. Consequently, you may be required to bear the financial risks of this investment for an indefinite period of time."

[ED. NOTE: Forms referenced are available from the agency.]

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 59.065 & 59.085

Stats. Implemented: ORS 59.065

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88, Renumbered from 815-036-0020; FCS 15-1988, f. & ef. 11-21-88, Renumbered from 815-036-0020; FCS 4-1992, f. & cert. ef. 10-1-92; FCS 2-1998, f. & cert. ef. 4-30-98

#### **441-065-0110**

##### **Public Advertising and General Solicitation**

(1) Offerings conducted pursuant to OAR 441-065-0225 may be offered and sold using public advertising or general solicitation provided the sales materials to be used are reviewed and cleared by the Securities Section prior to use. Any sales materials proposed to be used shall contain no more than the following:

(a) The name of the issuer;

(b) Characterization of the issuer as indicated on the cover page of the Form U-7 Disclosure Document to be delivered to prospective investors;

(c) Address and telephone number of the issuer;

(d) A brief description of the issuer's business or proposed business;

(e) The number and type of securities offered and the offering price per security;

(f) The name, address and telephone number of any selling agent authorized to sell the securities;

(g) A statement that the offering does not constitute an offer to sell or solicitation of an offer to purchase and that any such offer must be made by the Disclosure Document;

(h) The procedure for obtaining the Disclosure Document; and

(i) The issuer's corporate logo.

(2) Offerings conducted pursuant to OAR 441-065-0220 or 441-065-0230 may not be offered or sold using any form of public advertising or general solicitation without the prior authorization of the Director.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 59.065 & 59.085

Stats. Implemented: ORS 59.065

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88, Renumbered from 815-036-0025; FCS 15-1988, f. & ef. 11-21-88, Renumbered from 815-036-0025; FCS 4-1992, f. & cert. ef. 10-1-92; FCS 2-1998, f. & cert. ef. 4-30-98

#### **441-065-0130**

##### **Disqualification**

(1) The Director may deny the use of the optional registration provisions in OAR 441-065-0220 through 441-065-0230 if:

(a) Federal Disqualification. Applicant is disqualified from using any provisions of SEC Regulations A or D; or

(b) Oregon Disqualification. Any of the parties of interest described in the Securities Act of 1933, Regulation A, SEC Rule 230.252 Sections (c), (d), (e), or (f):

(A) Filed a registration statement which is the subject of a currently effective stop order entered by any state within five years prior to the registration of the offering;

(B) Was convicted within five years of the application for registration of:

(i) Any felony or misdemeanor in connection with the offer, purchase or sale of any security or involving the making of a false filing with a state; or

(ii) Any felony involving fraud or deceit including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud.

(C) Is currently subject to any state administrative order or judgment, including an injunction entered within five years prior to the filing of the application of registration in which fraud or deceit, including but not limited to making untrue statements of material facts and omitting to state material facts, was found; or

(D) Is currently subject to any order, judgment or decree of any court of competent jurisdiction entered within five years of the application for registration, restraining or enjoining such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or the making of any false filing with a state.

(2) The disqualifications of section (1)(b) of this rule shall not apply if the party of interest subject to the disqualifying action is duly licensed to conduct securities-related business in the state in which the disqualifying action was entered or if the broker-dealer employing such party is licensed in this state and the Form B-D filed with this state discloses the order, conviction, judgment, or decree relating to such person.

(3)(a) The Director reviews each application to register to determine whether registration should be granted or denied.

(b) Notwithstanding the requirements of subsection (1)(b), registration may be allowed if the Director finds adequate public safeguards are provided for the offerings and:

(A) The applicant for registration provides sufficient facts from which the Director finds it is in the public interest to allow the registration; or

(B) The state that caused the disqualification recommends registration of the offering.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.065 & 59.285

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88, Renumbered from 815-036-0035; FCS 15-1988, f. & ef. 11-21-88, Renumbered from 815-036-0035; FCS 4-1992, f. & cert. ef. 10-1-92; FCS 2-1998, f. & cert. ef. 4-30-98; FCS 4-1998, f. & cert. ef. 8-5-98

#### **441-065-0140**

##### **Limitation on Sales Expenses**

(1) All expenses of an offering registered pursuant to OAR 441-065-0220 or 441-065-0230, including sales expenses, acquisition expenses, expenses for preparing the offering and the like shall be reasonable after taking into account the nature of the offering, amount to be raised and proposed use of funds.

(2) The provisions of OAR 441-085-0010 shall apply to offerings registered pursuant to OAR 441-065-0225, except that "20%" shall be substituted for "15%" in OAR 441-085-0010(2) relating to selling expenses.

Stat. Auth.: ORS 59.085

Stats. Implemented: ORS 59.065, 59.085 & 59.105

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88, Renumbered from 815-036-0040; FCS 15-1988, f. & ef. 11-21-88, Renumbered from 815-036-0040; FCS 4-1992, f. & cert. ef. 10-1-92; FCS 2-1998, f. & cert. ef. 4-30-98

#### **441-065-0150**

##### **Escrow of Proceeds**

(1) The applicant for registration pursuant to OAR 441-065-0220 through 441-065-0240 must establish an escrow or similar arrangement for funds raised in an offering if the conditions set forth in section (2) of this rule exist, unless the requirement is waived under section (4) of this rule.

(2) An escrow must be established where, because of the nature of the intended use of the funds or the nature of the project or business plan, a minimum amount of funds must be raised within or outside this state in order that the project can get underway with a reasonable chance of success even if no further sales are made.

(3) Where an escrow is required:

(a) The escrow agent must be an institution licensed to conduct banking, savings and loan, trust or other escrow activities or a licensed professional whose requirements of licensure requires the segregation of funds of others into fiduciary trust accounts; but it cannot be the issuer, a promoter of an issuer to be formed, or an affiliate of such issuer or promoter;

(b) The escrow terms must include instructions that the funds placed into escrow shall be held in trust for the benefit of the investors and shall not be released to the issuer until the minimum amount of funds set forth in the application for registration has been raised; and

(c) The provisions of this section may be satisfied by the holding of the funds without formal escrow arrangement by a person described in subsection (3)(a) of this rule, until the minimum amount of funds has been received for the account of the purchasers.

(4) The requirements of this rule may be waived by the Director upon a showing that an escrow is not necessary and that investor rights are adequately protected.

Stat. Auth.: ORS 59.085 & 59.285

Stats. Implemented: ORS 59.065 & 59.085

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88, Renumbered from 815-036-0045; FCS 15-1988, f. & ef. 11-21-88, Renumbered from 815-036-0045; FCS 4-1992, f. & cert. ef. 10-1-92

#### **441-065-0160**

##### **Rescission of Improvident Sales Including Oversales**

(1) The improvident closing of a sale of securities in violation of any of the provisions of OAR 441-065-0060 through 441-065-0230 will not by itself invalidate the registration of securities if the conditions of subsections (a), (b), (c), and either (d) or (e) of this section are satisfied:

(a) The registrant seeks an appropriate amendment to the registration with the Director, provides full details of the transaction, and receives an amended order authorizing the proposed transaction;

(b) The registrant and the person acting on behalf of the registrant who sold the security demonstrate to the Director that they had acted in good faith and sustain the burden of proof that they acted without intent to violate the provisions of this rule;

(c) The registrant cancels the sale or provides rescission to the purchaser involved within a reasonable time after discovery;

(d) The rescission or cancellation is made prior to release of proceeds from escrow;

(e) The registrant has the financial capacity to make a rescission payment out of separate funds, which payment does not create additional risks or obligations to the remaining purchasers or the project for which the funds were raised and offers or makes the rescission payment.

(2) Nothing in this rule shall allow a rescission payment or payment date to be made subject to resale of the interest to be canceled.

(3) This rule may be used by the registrant as well as all persons liable as a result of the sale of securities.

Stat. Auth.: ORS 59.065 & 59.125

Stats. Implemented: ORS 59.065

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88, Renumbered from 815-036-0050; FCS 15-1988, f. & ef. 11-21-88, Renumbered from 815-036-0050; FCS 4-1992, f. & cert. ef. 10-1-92; FCS 2-1998, f. & cert. ef. 4-30-98

#### **441-065-0170**

##### **Registration Procedures for "Regulation D" and Similar Type Offerings**

(1) An application to register securities filed pursuant to OAR 441-065-0220 (small offerings not exceeding \$500,000 including under SEC Rule 504) shall include the following:

(a) A completed Form 440-2013 (a form for the registration of limited or non-public offerings);

(b) A copy of the written disclosures required by OAR 441-065-0100(3);

(c) A registration fee as set in OAR 441-065-0001;

(d) Unless the offering is being sold through a licensed broker-dealer or by a person exempt from the licensing requirements of ORS 59.165, at least one completed salesperson application on Form U-4 and a per person license fee as set in OAR 441-175-0002; and

(e) Any additional or supplementary materials requested by the Director.

(2) An application to register securities filed pursuant to OAR 441-065-0225 (small corporate offerings not exceeding \$1,000,000 including under SEC Rule 504) shall include the following:

(a) A completed **Form U-7** (a uniform disclosure document for small corporate offerings) including the following exhibits, to the extent applicable:

(A) Form of underwriting or selling agency agreement;

(B) Issuer's articles of incorporation or other charter documents and all amendments thereto;

(C) Issuer's bylaws, as amended to date;

(D) Copy of any resolutions by the issuer's board of directors setting forth terms and provisions of capital stock to be issued;

(E) Any indenture, form of note or other contractual provision containing terms of notes or other debt, or of options, warrants or rights to be offered;

(F) Specimen of security to be offered (including any legend restricting resale);

(G) Copy of all advertising or other materials directed to or to be furnished investors in the offering;

(H) Form of escrow agreement for escrow of proceeds;

(I) Consent to inclusion in **Form U-7** Disclosure Document of accountant's report;

(J) Consent to inclusion in **Form U-7** Disclosure Document of tax advisor's opinion or description of tax consequences;

(K) Consent to inclusion in **Form U-7** Disclosure Document of any evaluation of litigation or administrative action by counsel;

(L) Form of any Subscription Agreement for the purchase of the securities;

(M) Opinion of counsel that the securities to be sold in the offering have been duly authorized and when issued upon payment of the offering price will be legally and validly issued, fully paid and nonassessable and binding on the issuer in accordance with their terms;

(N) Schedule of residence street addresses of the issuer's officers, directors and principal stockholders;

(O) Work sheets showing computations of responses to Questions 6, 7(a), 8(a), 8(b) and 17(b) of **Form U-7** Disclosure Document; and

(P) Any additional or supplementary materials requested by the Director.

(b) A registration fee as set in OAR 441-065-0001; and

(c) Unless the offering is being sold through a licensed broker-dealer or by a person exempt from the licensing requirements of ORS 59.165, at least one completed salesperson application on **Form U-4** and a per person license fee as set in OAR 441-175-0002.

(3) Amendments to Small Corporate Registrations under section (2). If a material change occurs concerning the issuer or the offering while the offering is effective in this state:

(a) The **Form U-7** Disclosure Document shall be amended to make the disclosures accurate and complete;

(b) The amended **Form U-7** showing additions and deletions shall be filed with the Director for approval;

(c) The offering shall be suspended in this state until approval is received from the Director to proceed with the offering; and

(d) The registrant shall report the status of the offering in this state and file a plan for dealing with present purchasers in this state.

(4) An application to register securities filed pursuant to OAR 441-065-0230 (limited offering for offerings not exceeding \$5,000,000 including under SEC Rule 505) shall include the following:

(a) A completed **Form 440-2013** (a form for the registration of limited or non-public offerings);

(b) A registration fee in accordance with OAR 441-065-0001;

(c) Unless the offering is being sold through a licensed broker-dealer or by a person exempt from the licensing requirements of ORS 59.165, at least one completed salesperson application on Form U-4 (available from the Securities Section) and a per person license fee in accordance with OAR 441-175-0002; and

(d) Any additional or supplementary materials requested by the Director.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 59.065 & 59.235

Stats. Implemented: ORS 59.065

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88, Renumbered from 815-036-0055; FCS 15-1988, f. & ef. 11-21-88, Renumbered from 815-036-0055; FCS 4-1992, f. & cert. ef. 10-1-92; FCS 7-1994, f. & cert. ef. 5-13-94; FCS 2-1998, f. & cert. ef. 4-30-98; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

**441-065-0180**

**Licensing of Salespersons**

(1) General License Requirements. Offers and sales of offerings registered pursuant to OAR 441-065-0220, 441-065-0225 or 441-065-0230 may only be made by licensed broker-dealers, licensed salespersons or persons excluded by rule pursuant to OAR 441-175-0020 through 441-175-0040.

(2) Issuer Salespersons; Licensing Conditions. The following special licensing conditions are applicable to salespersons licensed to an issuer:

(a) An issuer may license up to five persons as issuer salespersons;

(b) Issuer salespersons must be bona fide officers, directors or employees of the issuer;

(c) Issuer salespersons are exempt from examination requirements and are not required to file a surety bond or an irrevocable letter of credit;

(d) An issuer salesperson shall not be simultaneously licensed to two or more employers; and

(e) The issuer and salespersons shall comply with OAR 441-175-0120.

(3) Issuer Salespersons; Licensing Procedures. An issuer shall submit to the Director a complete application to license each salesperson, including:

(a) A completed Form U-4 (salesperson application); and

(b) A salesperson licensing fee for each salesperson as set in OAR 441-175-0002.

[ED. NOTE: Forms referenced available from the agency.]

Stat. Auth.: ORS 59.165 & 59.175

Stats. Implemented: ORS 59.165 & 59.175

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88, Renumbered from 815-036-0060; FCS 15-1988, f. & ef. 11-21-88, Renumbered from 815-036-0060; FCS 4-1992, f. & cert. ef. 10-1-92; FCS 2-1998, f. & cert. ef. 4-30-98; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

**441-065-0190**

**Reports**

(1) For offerings registered pursuant to OAR 441-065-0220 or 441-065-0230, the Director may, as a condition of registration, require the issuer to file one or more sales reports.

(2) For offerings registered pursuant to OAR 441-065-0225, the issuer shall file the following reports with the Director:

(a) If the offering is made pursuant to SEC Regulation D, a copy of any completed Form D with appropriate state signature pages which shall be filed at the same time that the Form D is filed with the Securities and Exchange Commission; or

(b) If the offering is not made pursuant to SEC Regulation D, a report on a form and at times specified by the Director as a condition of registration.

[Publications: Publications referenced are available from the agency.]

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 59.085

Stats. Implemented: ORS 59.085

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88, Renumbered from 815-036-0065; FCS 15-1988, f. & ef. 11-21-88, Renumbered from 815-036-0065; FCS 4-1992, f. & cert. ef. 10-1-92; FCS 2-1998, f. & cert. ef. 4-30-98

**441-065-0200**

**Records**

The issuer shall, for three years following the termination of the offering, maintain and keep open for inspection by the Director:

(1) Records relating to purchaser representatives used and materials and data relied upon to determine the qualifications of the purchaser representatives;

(2) Records relating to purchasers and materials and data relied upon to determine the qualifications of the purchasers;

(3) Records relating to securities sales following the close of the offering that are considered as part of the offering; and

(4) All offering materials used in connection with offerings registered under OAR 441-065-0220 through 441-065-0230.

Stat. Auth.: ORS 59.235

Stats. Implemented: ORS 59.235

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88, Renumbered from 815-036-0070; FCS 15-1988, f. & ef. 11-21-88, Renumbered from 815-036-0070; FCS 4-1992, f. & cert. ef. 10-1-92; FCS 2-1998, f. & cert. ef. 4-30-98

**441-065-0210**

**Waiver of Provisions**

The Director may, by Order, modify or waive any requirement of OAR 441-065-0060 through 441-065-0230. The applicant for waiver must provide proof and arguments, pursuant to OAR 441-011-0020, that the action requested is consistent with the Oregon Securities Law and that the investors are otherwise adequately protected.

Stat. Auth.: ORS 59.065

Stats. Implemented: ORS 59.065

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88, Renumbered from 815-036-0075; FCS 15-1988, f. & ef. 11-21-88, Renumbered from 815-036-0075; FCS 4-1992, f. & cert. ef. 10-1-92; FCS 2-1998, f. & cert. ef. 4-30-98

**441-065-0220**

**Small Offering Registration Procedure for Offerings Not Exceeding \$500,000 (Including Under SEC Rule 504)**

(1) General Requirements. An applicant for registration pursuant to this rule must comply with all applicable provisions of OAR 441-065-0060 through 441-065-0210.

(2) Specific Requirements and Limitations. In addition to the provisions of section (1) of this rule, an applicant for registration must comply with the following specific requirements and limitations:

(a) The total of the amount being registered, plus the aggregate offering price of all securities of the issuer sold within or outside this state within the 12 months preceding the effective date of the order of registration, plus the aggregate offering price of all securities of the issuer sold within or outside this state during the course of the offering being registered, where the securities are sold in reliance on Section 3(b) of the Securities Act of 1933 or in violation of Section 5(a) of that Act, may not exceed \$500,000; and

(b) No limits are placed upon the number of persons who may purchase securities registered pursuant to this rule.

(3) Purchaser Qualifications. Sales of securities registered pursuant to this rule may only be made to purchasers in one or more of the following categories:

(a) Accredited investors;

(b) Permitted Oregon purchasers;

(c) Sophisticated purchasers; or

(d) Suitable purchasers.

Stat. Auth.: ORS 59.065

Stats. Implemented: ORS 59.065

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88, Renumbered from 815-036-0080; FCS 15-1988, f. & ef. 11-21-88, Renumbered from 815-036-0080; FCS 4-1992, f. & cert. ef. 10-1-92

**441-065-0225**

**Small Corporate Offering Registration Procedure for Offerings Not Exceeding \$1,000,000 (Under SEC Rule 504)**

(1) General Requirements. An applicant for registration pursuant to this rule shall comply with all applicable provisions of OAR 441-065-0060 through 441-065-0210.

(2) Qualifications checklist:

(a) The issuer shall be a corporation or limited liability company organized under the laws of one of the states or possessions of the United States;

(b) The issuer shall not engage in a petroleum exploration or production, mining or other extractive industries business;

(c) The offering shall not be a "blind pool" or other offering for which the specific business to be engaged in or property to be acquired by the issuer cannot be specified;

(d) If the offering includes debt securities, the application for registration shall include information demonstrating the ability of the issuer to service its debt;

(e) The offering price for any common stock (and the exercise price, if the securities offered are options, warrants or rights for common stock, and the conversion price if the securities are convertible into common stock) registered under this rule shall be equal to or greater than \$1 per share. In addition, the issuer shall not be permitted to split its common stock or declare a stock dividend for two years after the effectiveness of the registration without the prior written approval of the Director;

(f) The total of the amount being registered, plus the aggregate offering price of all securities sold within or outside the state within the 12 months preceding the effective date of the order of registration, plus the aggregate offering price of all securities of the issuer sold

within or outside the state during the course of the offering being registered, where the securities are sold in reliance on section 3(b) of the Securities Act of 1933 or in violation of Section 5(a) of that Act, shall not exceed \$1,000,000;

(g) The issuer shall not be an investment company within the meaning of Section 3 of the Investment Company Act of 1940;

(h) The issuer shall not be subject to the reporting requirements of Sections 13 or 15(d) of the Securities Exchange Act of 1934.

(3) Purchaser Qualifications. No limits are placed upon the number of persons who may purchase securities registered pursuant to this rule. Sales of securities registered pursuant to this rule shall only be made to purchasers who are:

- (a) Accredited investors;
- (b) Permitted Oregon purchasers;
- (c) Sophisticated purchasers;
- (d) Suitable purchasers; or
- (e) Direct purchasers from the issuer.

Stat. Auth.: ORS 59.065

Stats. Implemented: ORS 59.065

Hist.: FCS 4-1992, f. & cert. ef. 10-1-92; FCS 3-1998, f. & cert. ef. 7-2-98

#### **441-065-0230**

##### **Limited Offering Registration Procedure for Offerings not Exceeding \$5,000,000 (Including Under SEC Rule 505)**

(1) General Requirements. An applicant for registration pursuant to this rule must comply with all applicable provisions of OAR 441-065-0060 through 441-065-0210.

(2) Specific Requirements and Limitations. In addition to the provisions of section (1) of this rule, an applicant for registration must comply with the following specific requirements and limitations:

(a) The total of the amount being registered, plus the aggregate offering price of all securities of the issuer sold within or outside this state within the 12 months preceding the effective date of the order of registration, plus the aggregate offering price of all securities of the issuer sold within or outside the state during the course of the offering being registered, where the securities were sold in reliance on section 3(b) of the Securities Act of 1933 or in violation of section 5(a) of that Act, may not exceed \$5,000,000; and

(b) The total number of non-accredited, counting purchasers may not exceed 35.

(3) Purchaser Qualifications. Sales of securities registered pursuant to this rule may only be made to purchasers in one or more of the following categories:

- (a) Accredited investors;
- (b) Permitted Oregon purchasers;
- (c) Sophisticated purchasers; or
- (d) Suitable purchasers.

Stat. Auth.: ORS 59.065

Stats. Implemented: ORS 59.065

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88, Renumbered from 815-036-0085; FCS 15-1988, f. & ef. 11-21-88, Renumbered from 815-036-0085; FCS 4-1992, f. & cert. ef. 10-1-92

#### **Registration of Securities Involving Real Estate Paper**

#### **441-065-0250**

##### **Definitions**

The following definitions are adopted for the purpose of this division:

(1) An "agency transaction" is defined as a transaction in securities where one person acts for the account of another person.

(2) A "generic registration" of securities is defined as a registration procedure where a variety and series of securities to be offered is registered based on a gross dollar volume.

(3) A "participation" or "fractional interest" is defined as a transaction where several investors are given an interest in a single mortgage, trust deed, or single land sales contract. This is sometimes referred to as a "split."

(4) A "pooled investment or interest" is defined as a transaction where the investor is given a partial interest along with other investors, in more than one mortgage, trust deed, or land sales contract.

(5) A "principal transaction" is defined as a transaction in mortgage broker securities where a person sells or deals for the person's own account or for the account of an affiliate, officer, director or person holding a similar position with the principal.

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.065

Hist.: CC 6-1981(Temp), f. 10-27-81, ef. 11-2-81; CC 2-1982, f. 1-18-82, ef. 2-1-82; FCS 8-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 7-1988, f. 3-22-88, cert. ef. 3-25-88, Renumbered from 815-037-0005

#### **441-065-0260**

##### **Optional Registration Procedures for Securities Involving Real Estate Paper**

(1) Creation of Classification. A classification of "mortgage broker offering" is created.

(2) Optional Mechanisms for Registration. An applicant for registration of a mortgage broker offering may elect to register the offering under this rule in lieu of following the full registration procedure by:

(a) The filing of a generic registration covering a series of offerings; and

(b) The filing of a specific offering for a specified security which incorporates by reference documents filed under subsection (a) of this section.

(3) Registration Procedure:

(a) All registrations shall be filed on forms provided by the Director;

(b) The registrant shall file, along with the registration form, two copies of the proposed offering documents;

(c) The registration, when granted, will be effective for one year from the date of registration;

(d) If any material changes are made or occur concerning the offering, these changes must be filed with the Director, and an amendment of the registration order must be obtained before further sales are made; and

(e) The registrant must file with the Director all advertising materials before they are used.

(4) Retention of Documents. Documents, including specific offering materials and records, concerning purchasers and investors must be kept by the registrant for whichever of the following periods is longest:

(a) Four years from the date of sale;

(b) As long as the registrant, or principals of the registrant remain obligated to make payments or deliver documents on loan transactions; or

(c) As long as the registrant is obligated to provide servicing in connection with the transaction.

(5) Use of Legend. The offering document used in connection with a registered mortgage broker offering shall contain the following legend set out in a prominent place in the document:

"This offering has been registered with the Director of the Department of Consumer and Business Services of the State of Oregon as a mortgage broker offering under the provision of OAR 441-065-0260.

Registration does not constitute an endorsement or recommendation by the Director. It is not a representation that the Director has passed upon or reviewed the accuracy or values claimed. Any representation to the contrary is a criminal offense."

(6) Limitations on the Use of the Generic Registration Procedure:

(a) The following types of securities cannot be offered or sold under a generic registration of securities unless written permission is obtained from the Director based upon a showing that the investors are adequately protected:

(A) Construction loans and loans exceeding 90 percent of the property and improvements that are in place. Offerings involving construction loans and loans exceeding 90 percent of the value of the property including existing improvements may not be sold as part of a generic registration. These have to be registered separately. An offering exceeds 90 percent of the value of the property and existing improvements if the principal amount of the note secured by a mortgage or trust deed or land sale contract together with the unpaid principal amount of any encumbrances on the property, plus unpaid interest to date of the transaction, exceeds 90 percent of the reasonable market value of the real property including improvements;

(B) Principal Transaction. Offerings involving the broker, its officers, agents, affiliates, and persons controlling the broker or affiliates may not be sold as part of a generic registration unless the registration with the Director includes a full description of these transactions. An offering "involves" the persons listed where the person is the owner, the borrower, or has an interest in the proceeds other than fees, commissions, or mark-ups;

(C) Offerings involving documents reserving the right to subordinate the investor's position. Offerings involving real estate paper which reserve the right to subordinate the position of any investor to any mortgage, trust deed or lien created at or after the sale may not be sold under a generic registration;

(D) Offerings to more than ten persons. Offerings involving pooling or participations involving more than ten investors may not be sold under a generic registration. However, where only first liens are involved, the registrant may apply for a modification to allow sales up to 25.

(b) A registrant requesting a modification under this section must request it in writing and must provide satisfactory evidence that the interest of the public will be adequately protected.

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.065

Hist.: CC 6-1981(Temp), f. 10-27-81, ef. 11-2-81; CC 2-1982, f. 1-18-82, ef. 2-1-82; FCS 8-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 7-1988, f. 3-22-88, cert. ef. 3-25-88, Renumbered from 815-037-0045

### **Registration for Certain Compensatory Benefit Plans and Contracts**

#### **441-065-0270**

##### **Compensatory Benefit Plans and Contracts**

(1) Creation of Classification.

(a) The Director creates a classification of transaction in securities by an issuer designated as a compensatory benefit plan offering that is exempt under SEC Rule 701 (17 CFR 230.701).

(b) An issuer of a compensatory benefit plan offering that is exempt under SEC Rule 701 (17 CFR 230.701) may use this registration rule.

(2) Application to Register. The issuer shall submit:

(a) A completed Form U-1 (Application to Register Securities), except documents required under section 8 of Form U-1;

(b) A registration fee in accordance with OAR 441-065-0001;

(c) At least one completed Application to License a Salesperson on Form U-4 and license fee as set in OAR 441-175-0002. The salesperson must be a bona fide affiliate of the issuer, its parent or majority-owned subsidiary, and must either:

(A) Be an officer, director, general partner or trustee of the issuer, its parent or majority-owned subsidiary; or

(B) Have significant involvement in the administration of the benefit plan or contract.

(d) The following information:

(A) Type of business organization;

(B) Full title of plan or description of contracts;

(C) Type of plan;

(D) Affirmation that the offering is exempt from federal registration pursuant to SEC Rule 701; and

(E) Aggregate offering price of securities to be offered or sold pursuant to this application.

(e) An election regarding expiration date of an Order of Registration pursuant to section (5) of this rule; and

(f) Any supplementary materials requested by the Director.

(3) Discrete Offering. Subject to the inclusion of certain offers and sales of securities pursuant to OAR 441-065-0060 through 441-065-0230 or notice filing, offers and sales of securities registered pursuant to this rule shall be deemed to be part of a single, discrete offering and shall not be subject to integration with any other offer or sale by the issuer, whether registered pursuant to other provisions of OAR chapter 441, division 65 or otherwise exempt from the registration requirements of ORS 59.055.

(4) Review of Application. An application for registration pursuant to this rule shall be subject to the authority of the Director, pursuant to ORS 59.075, to deny registration or, pursuant to 59.085 and section (8) of this rule, to impose conditions on registration.

(5) Order of Registration. Renewal. An initial Order of Registration, if issued, shall, at the election of the registrant, expire 30 days following the end of the issuer's fiscal year, otherwise, one year after the date of issuance. The election must be made at the time application is made pursuant to section (3) of this rule. An application may be submitted for renewal. An Order of Renewal, if issued, shall expire one year after the date of issuance.

(6) Conditions of Registration. The following conditions shall be imposed upon every Order of Registration or Renewal issued pursuant to this rule:

(a) The issuer, its parent or majority-owned subsidiary shall provide each participant in a compensatory benefit plan with a copy of such plan, and a copy of a written contract relating to compensation shall be provided to the parties; and

(b) This registration shall be effective only while the federal exemption under 17 CFR 230.701 is available to the issuer for this offering.

(7) Order of Registration. Continued Effectiveness. An issuer may rely on this rule with respect to offers made pursuant to this rule prior to the issuer becoming subject to the reporting requirements of Section (13) or (15)(d) of the Securities Exchange Act of 1934 (15 USC 78a et seq.), and sales consummating such offers may be made thereafter in reliance upon this rule and an effective Order of Registration or Renewal.

(8) Full Disclosure. This rule shall not be construed as waiving or modifying the provisions of the Oregon Securities Law relating to disclosure of material information to investors.

[ED. NOTE: Forms referenced available from the agency.]

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 59.065 & 59.285

Stats. Implemented: ORS 59.065 & 59.285

Hist.: FCS 3-1991, f. & cert. ef. 8-23-91; FCS 2-1998, f. & cert. ef. 4-30-98; FCS 4-1998, f. & cert. ef. 8-5-98; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

## **DIVISION 75**

### **RENEWAL OF SECURITIES REGISTRATIONS**

#### **441-075-0010**

##### **General Renewal Procedure**

(1) Except for orders issued pursuant to OAR 441-065-0270(5), every order of registration or renewal automatically expires no later than 12 months from its effective date unless otherwise renewed pursuant to the rules contained in this division.

(2) Generally, the renewal process shall be accomplished by following all requirements and procedures necessary for initial registration, as supplemented or modified by the requirements set forth in this division.

Stat. Auth.: ORS 59.075 & 59.285

Stats. Implemented: ORS 59.075

Hist.: FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 7-2000, f. & cert. ef. 6-2-00

#### **441-075-0020**

##### **Specific Renewal Procedures**

An application for renewal must meet the following requirements:

(1) Timely Application. In order to prevent an automatic expiration of an order of registration or renewal, an applicant for renewal should file a complete application no less than 30 days prior to the expiration date of the current order of registration or renewal. Applications not timely filed will be processed, but no assurance can be given that an order of renewal will be issued prior to expiration of a previous order.

(2) Incomplete Applications. Incomplete applications will not be processed.

(3) Application Form. An applicant for renewal shall use the same application form used for the initial registration application or most recent renewal.

(4) Aggregate Offering Amount. A renewal application may be submitted for any aggregate offering amount of securities. An applicant is not limited to renewing unsold portions of previously authorized aggregate offering amounts.

(5) Fees. An applicant for renewal shall submit the appropriate fees as established pursuant to OAR 441-065-0001.

(6) Prospectus. An applicant for renewal of an offering, other than a compensatory benefit plan registered under OAR 441-065-0270, shall file one copy of the most recent prospectus including supplements.

(7) Financial Statements. If financial statements are not submitted as part of the prospectus or offering document, the applicant for renewal of an offering other than a compensatory benefit plan registered under OAR 441-065-0270 shall file one copy of the most recent

annual financial statements, including a balance sheet, statement of income or operations, statement of cash flows, and all accompanying footnotes. The annual financial statements must be current within 135 days of filing the application for renewal, or interim financial statements current within 135 days must also be submitted.

(8) Additional Documents. An applicant for renewal shall promptly furnish all additional information and documents with respect to the issuer or the securities covered by the renewal application as the Director requests.

(9) Salesperson Applications. If the offering is not being sold by a licensed broker-dealer, the applicant for renewal shall submit a U-4 salesperson application for each person who will sell securities on behalf of the issuer and the appropriate fees as established pursuant to OAR 441-175-0002. The requirements for issuer salesperson licensing are set forth in OAR 441-175-0120(11).

(10) Order of Renewal. An order of renewal will be issued by the Director upon receipt and processing of a complete application, unless the Director determines that the application should be denied pursuant to ORS 59.105. An order of renewal will be effective for a period of 12 months from the date of issuance.

Stat. Auth.: ORS 59.075 & 59.285

Stats. Implemented: ORS 59.065 & 59.075

Hist.: FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

## **DIVISION 85**

### **CONDITIONS OF REGISTRATION**

#### **441-085-0010**

##### **Selling Expenses**

(1) The North American Securities Administrators Association, Inc., has adopted a Statement of Policy regarding Selling Expenses and Selling Security Holders. This rule is designed to parallel, with modifications, the Statement of Policy regarding Selling Expenses and Selling Securities Holders adopted by the North American Securities Administrators Association, Inc. Except as otherwise provided pursuant to sections (5) and (6) of this rule, the provisions of this rule will apply to offerings of securities registered pursuant to ORS 59.065.

(2) Except for offerings by issuers specified in section (5) of this rule, an Application to Register Securities filed pursuant to ORS 59.065 may be denied by the Director pursuant to 59.105(1)(a) or (h) if the selling expenses of the offering exceed 15 percent of the aggregate offering price (before deducting discounts and commissions) as computed only on the portion of the aggregate offering price when and as paid to the issuer.

(3) Selling expenses shall mean:

(a) Total underwriting and brokerage discounts and commissions;

(b) Accountable and non-accountable fees or expenses to be paid to the underwriter or broker-dealer;

(c) Underwriters' attorney fees and expenses paid by the issuer;

(d) Fees payable pursuant to consulting or financial advisory agreements or similar arrangements;

(e) Printing and engraving expenses;

(f) Advertising and other promotional expenses;

(g) Charges of transfer agents, registrars, indenture trustees, escrow holders, depositories, engineers, appraisers and other experts; and

(h) Any other expenses incurred by the issuer directly related to the offering and sale of the securities, excluding:

(A) Accountants' fees and expenses;

(B) Issuer's attorney fees and expenses;

(C) Expenses of qualification, including issue taxes and registration fees, for the sale of securities under Federal and State laws; and

(D) Options, future registration rights and rights of first refusal granted to underwriters.

(4) In any event, the selling expenses and all other costs associated with an offering subject to this rule, including those tangible costs set forth in paragraphs (3)(h)(A) through (C) of this rule, must be reasonable. Selling expenses and all other costs associated with an offering subject to this rule which exceed 25 percent of the aggregate offering price (before deducting discounts and commissions) shall be presumed to be unreasonable.

(5) The following offerings by issuers shall not be governed by section (2) of this rule, but selling expenses and other costs in connection with such offerings must be reasonable:

(a) Partnerships, corporations or other similar organizations, formed and operated for the primary purpose of investment in or the operation of or gain from commodity pools;

(b) Partnerships or other similar organizations, other than corporations, formed and operated for the primary purpose of investment in or the operation of or gain from an interest in equipment, including equipment leases;

(c) Partnerships or other similar organizations, other than corporations, formed and operated for the primary purpose of investment in or the operation of or gain from the exploration for oil, gas or other hydrocarbon substances;

(d) Partnerships or other similar organizations, other than corporations, formed and operated for the primary purpose of investment in or the operation of or gain from an interest in real property, including such entities formed to make or invest in mortgage loans;

(e) Offerings by issuers pursuant to OAR 441-065-0030, which shall be subject to OAR 441-065-0030(1)(h);

(f) Offerings by issuers pursuant to OAR 441-065-0035;

(g) Offerings by issuers pursuant to OAR 441-065-0060 through 441-065-0240, which shall be subject to OAR 441-065-0140; and

(h) Offerings by issuers pursuant to OAR 441-065-0270.

(6) An Application to Register Securities that includes selling security holders and is filed pursuant to OAR 441-065-0020 or 441-065-0260 may be denied by the Director pursuant to ORS 59.105(1)(a) unless the following conditions are met:

(a) Selling security holders shall pay a pro rata share of all additional selling expenses that are the result of the inclusion of their securities in the offering; and

(b) The prospectus or offering document shall disclose the amount of selling expenses which the selling security holders shall pay.

(7) With the exception of underwriter's or broker-dealer's discounts or commissions, the provisions of subsections (6)(a) and (b) of this rule shall not apply if:

(a) The security holders have a written agreement with the issuer, that was entered into one year or more prior to the filing of the Application to Register Securities, whereby someone other than the selling security holders has agreed to pay all of the selling security holders' selling expenses;

(b) The agreement was arrived at through arm's-length negotiations; and

(c) The selling security holders have held their securities for at least one year prior to the filing of the Application to Register Securities.

(8) The Director may, by order, impose a condition requiring the Registrant to file with the Securities Section a written report setting forth the actual amounts of selling expenses and other costs incurred in connection with the offering.

Stat. Auth.: ORS 59.085 & 59.285

Stats. Implemented: ORS 59.085

Hist.: FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92

#### **441-085-0020**

##### **Options to Underwriters**

(1) The North American Securities Administrators Association, Inc., has adopted a Statement of Policy regarding Options and Warrants. This rule is designed to parallel, with modifications, the Statement of Policy regarding Options and Warrants adopted by the North American Securities Administrators Association, Inc. The provisions of this rule shall apply to offerings of securities registered pursuant to ORS 59.065 and OAR 441, division 065.

(2) Options granted by the issuer to underwriters or other persons as compensation, in whole or in part, for the sale of securities must be reasonable in amount and in terms and conditions under the circumstances of the particular issue. Options which meet all of the following requirements are presumptively reasonable:

(a) The number of shares or units called for by such options does not exceed ten percent of the number of shares or units underwritten for the issuer in the offering;

(b) The options do not exceed five years in total duration;

(c) The options are exercisable at an exercise price which is initially not less than the public offering price of the securities under-

written and the options provide for an increase of the exercise price by seven percent of the initial exercise price for each full year such options are outstanding; or the options are exercisable at a price which is not less than 120 percent of the public offering price of the securities underwritten;

(d) The options are not deliverable to the underwriters until the entire issue has been sold, whether it is underwritten on a firm commitment or a best-efforts basis;

(e) The options are nontransferable other than by will or pursuant to the laws of descent and distribution, except to a partner of the underwriter when the underwriter is a partnership or to a stockholder, officer or director of the underwriter or beneficiary of a trust which is a stockholder of such underwriter when the underwriter is a corporation; however, after one year such a transfer may occur providing the option is exercised immediately upon transfer. If not exercised immediately upon transfer, the option shall lapse; and

(f) Either the exercise of the options, or the resale, transfer and assignment of the shares underlying the options, is prohibited for a period of at least one year from the date of the offering.

Stat. Auth.: ORS 59.085 & 59.285

Stats. Implemented: ORS 59.085

Hist.: FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92

## **DIVISION 95**

### **FAIRNESS HEARINGS**

#### **441-095-0030**

##### **Fairness Hearing Procedures**

(1) The Director may decline to accept the filing of a plan pursuant to ORS 59.095 if the proponent of the plan is unable to establish a nexus with Oregon. That nexus must be established by showing:

(a) That the proponent of the plan is an entity with headquarters in Oregon;

(b) That the entity to be acquired or merged has its headquarters in Oregon; or

(c) That a minimum of 50% of the securities, claims or property interests to be exchanged are owned by persons who reside in Oregon.

(2) The proponent of the plan shall file:

(a) A **Form U-1** registering all securities to be issued by the proponent;

(b) A copy of the merger agreement between the parties;

(c) A copy of the information statement to be submitted to the holders of the securities, claims or property interests to be exchanged;

(d) A copy of the Articles of Formation of the acquiring entity;

(e) A **Form U-4** for each agent of the issuer, or the name and Central Registration Depository number of the broker-dealer to execute the securities transactions; and

(f) A filing fee for the total offering amount calculated pursuant to OAR 441-065-0001 and a fee in the amount set in OAR 441-175-0002 for each **Form U-4** being filed.

(3) Following a preliminary review by the Director and resolution, if necessary, of any fairness or procedure issues raised by the Director, 30 days notice of the fairness hearing shall be given to all holders of the securities, claims or property interests to be exchanged. The proponent may request a shorter notice period of not less than 10 days, which request may not be unreasonably denied by the Director, provided the proponent demonstrates that all holders of the securities, claims or property interests to be exchanged:

(a) Are accredited investors as defined in OAR 441-035-0010; or

(b) Have been directly involved in the development of the plan, merger or acquisition negotiations.

(4)(a) The fairness hearing shall be conducted as an other than contested case pursuant to ORS Chapter 183 by a hearings officer designated by the Director at a location in Oregon designated by the hearings officer. With the consent of both parties to the merger or acquisition, the hearing may be conducted by telephone conference.

(b) The hearings officer may permit testimony of counsel, all interested parties to the exchange, and any holder of securities, claims or property interests to be exchanged who wishes to make a statement

or raise questions. Any interested party who is unable to attend the hearing shall be permitted to participate by telephone or in writing.

(5) Any order issued concerning the plan of the proponent shall be dated effective as of the date of the hearing, unless issues were raised at the hearing which must be resolved, in which event the order shall be dated on the date when all such issues are satisfactorily resolved.

(6) The order issued shall make specific findings as to whether the plan is fair, just and equitable and free from fraud; and

(a) Approve the request as proposed by the proponent;

(b) Approve the request with conditions, limitation, or restrictions imposed by the Director; or

(c) Deny the request, provided the Director made findings that the plan is unfair, unjust or inequitable or not free from fraud. Notice of any denial issued under this subsection shall be provided by the Director, at the expense of the proponent, to all persons who were entitled to receive or who did receive notice of the hearing.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth: ORS 59.285

Stats. Implemented: ORS 59.095

Hist.: FCS 12-2001, f. 12-27-01, cert. ef. 1-1-02; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

## **DIVISION 135**

### **FRAUD AND DECEIT WITH RESPECT TO SECURITIES OR SECURITIES BUSINESS**

#### **441-135-0020**

##### **Use of Certification or Professional Designation**

(1) A person may not use a certification or designation that falsely indicates or implies that the person has special certification or training, in connection with the offer, sale or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, directly or indirectly, or through a publication or writing, or by issuing or disseminating analyses or reports relating to securities. Prohibited use of a certification or designation includes, but is not limited to, the following activities:

(a) Use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use the certification or designation.

(b) Use of a nonexistent or self-conferred certification or professional designation.

(c) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training or experience that the person using the certification or professional designation does not have.

(d) Use of a certification that falsely states or implies specialized knowledge of the financial needs of a particular segment of the population, or class of investors, that the person using the certification or professional designation does not have. Examples of a particular segment of the population, or class of investors, include but are not limited to senior citizens, elderly or retired persons.

(e) Use of a certification or professional designation that was obtained from a designating or certifying organization that:

(A) Is primarily engaged in the business of instruction in sales or marketing, or both;

(B) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(C) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct;

(D) Does not have reasonable continuing education requirements for its designees to maintain the designation or certificate; or

(E) Has not been certified or accredited by one of the following organizations, or has been certified or accredited by one of the following organizations but the designation or credential issued from the organization primarily applies to sales or marketing, or both:

(i) The American National Standards Institute;

(ii) The National Commission for Certifying Agencies; or

(iii) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes".

(2) The Director recognizes a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of section (1)(e) of this rule when the designation or credential does not primarily apply to sales or marketing or both, and when the organization is accredited by:

- (a) The American National Standards Institute;
- (b) The National Commission for Certifying Agencies; or
- (c) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes".

(3) The Director will consider at least the following factors in determining whether a combination of words, or an acronym standing for a combination of words, constitutes a certification or professional designation that could falsely indicate or imply that a person has special certification or training in advising or servicing a particular segment of the population or class of investor:

(a) The use of one or more words indicating specialized knowledge of the needs of a particular segment of the population or class of investors, including but not limited to "senior," "elder," "retired," or "retirement," combined with one or more words such as "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(b) The manner in which the words in subsection (a) of this section are combined.

(4) This rule does not apply to use of any of the following designations, titles, degrees, or certifications used by a person unless the facts and circumstances associated with the use of the designation, title, degree or certification indicate that the use suggests or implies a greater degree of certification or training than the person possesses or that the designation, title, degree or certification otherwise misleads consumers:

(a) A job title within an organization that is licensed, registered or authorized by a state or federal financial services regulatory agency, when that job title:

- (A) Indicates seniority or standing within the organization; or
- (B) Specifies an individual's area of specialization within the organization.

(b) A degree, certificate, or designation evidencing completion of an academic program at an institution of higher education that has been accredited by an organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes."

(5) Violation of section (1) of this rule is an act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, for the purposes of ORS 59.135(3) and OAR 441-205-0020(1).

(6) The prohibitions in this rule and the remedies available to the Director do not limit the Director's authority to enforce existing provisions of law and apply existing remedies.

Stat. Auth.: ORS 59.285 & 59.235

Stats. Implemented: ORS 59.235, 59.135 & 59.205

Hist.: FCS 10-2009, f. 10-30-09, cert. ef. 11-1-09

## **DIVISION 175**

### **LICENSING OF BROKER-DEALERS, INVESTMENT ADVISERS, AND SALESPERSONS**

#### **General Provisions**

#### **441-175-0002**

##### **Fees for Licensing or Notice Filing of Firms and Individuals**

Fees for Licensing or Notice Filing of Firms and Individuals

Pursuant to ORS 59.175, the Director sets the following fees for licensing or notice filing of firms and individuals:

- (1) For a broker-dealer, an initial license fee of \$250 and a renewal license fee of \$250;
- (2) For a state investment adviser, an initial license fee of \$200 and a renewal license fee of \$200;
- (3) For a federal covered investment adviser, an initial notice filing fee of \$200 and a renewal notice filing fee of \$200;
- (4) For a broker-dealer salesperson, an initial license fee of \$60 and a renewal license fee of \$55;

(5) For an investment adviser representative, an initial license fee of \$50 and a renewal license fee of \$50;

(6) For an agent of an issuer, an initial license fee of \$50 and a renewal license fee of \$50; and

(7) For a filing for use of a trade name or an assumed business name, a one time fee of \$50.

Stat. Auth.: ORS 59.175

Stats. Implemented: ORS 59.175

Hist.: FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 8-2010, f. 6-22-10, cert. ef. 7-1-10; FCS 1-2012, f. & cert. ef. 7-9-12

#### **441-175-0010**

##### **Definitions**

As used in these rules:

(1) "Associated person" shall mean any partner, officer, director, or branch manager of a broker-dealer, or investment adviser (or any person occupying a similar status or performing similar functions), or any person directly or indirectly controlling or controlled by such broker-dealer, or investment adviser, including any employee of such broker-dealer or investment adviser, except that for the purposes of OAR 441-195-0010, 441-195-0070, 441-205-0140, and 441-205-0210, the term "associated person" shall not include persons whose functions are only clerical or ministerial.

(2) "CRD" means the Central Registration Depository of the Financial Industry Regulatory Authority, a database maintained by the Financial Industry Regulatory Authority to register broker-dealers and salespersons.

(3) "The completion of the transaction" means:

(a) In the case of a customer who purchases a security through or from a broker-dealer except as provided in subsection (b) of this section, the time when such customer pays the broker-dealer any part of the purchase price, or if payment is effected by a bookkeeping entry, the time when such bookkeeping entry is made by the broker-dealer for any part of the purchase price;

(b) In the case of a customer who purchases a security through or from a broker-dealer and who makes payment therefor prior to the time when payment is requested or notification is given that payment is due, the time when such broker-dealer delivers the security to or into the account of such customer;

(c) In the case of a customer who sells a security through or to a broker-dealer except as provided in subsection (d) of this section, if the security is not in the custody of the broker-dealer at the time of sale, the time when the security is delivered to the broker-dealer and, if the security is in the custody of the broker-dealer at the time of sale, the time when the broker-dealer transfers the security from the account of such customer; and

(d) In the case of a customer who sells a security through or to a broker-dealer and who delivers the security to such broker-dealer prior to the time when delivery is requested or notification is given that delivery is due, the time when such broker-dealer makes payment to or into the account of such customer.

(4) "Controlling security holder" means a person who exercises control as defined under ORS 59.015(2) or who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of an issuer.

(5) "Director" means the Director of the Department of Consumer and Business Services.

(6)(a) "Financial Industry Regulatory Authority" or "FINRA" means the self-regulatory organization registered as a national securities association under section 15A of the Securities Exchange Act of 1934, 15 U.S.C. §73o-3, to register and regulate broker-dealers and salespersons and approved by the SEC as a successor to the National Association of Securities Dealers, Inc.

(b) For purposes of ORS 59.025, 59.049, 59.065, 59.175, 59.331, and 59.370, references to the "National Association of Securities Dealers, Inc." or "NASD" shall refer to the Financial Industry Regulatory Authority or FINRA.

(7) "FINRA broker-dealer" means a broker-dealer subject to section 15 of the Securities Exchange Act of 1934, 15 U.S.C. §78o, as amended.

(8) "Form ADV" means the application for registration as an investment advisor under sections 203(c) or 203(g) of the Investment Advisors Act of 1940, 15 U.S.C. § 80b-3, as prescribed by 17 C.F.R.

§ 279.1, and available at <http://www.sec.gov/divisions/investment/iard/iastuff.shtml>.

(9) “Form BD” means the application for registration as a broker-dealer under the Securities Exchange Act of 1934, 17 U.S.C. § 78a et seq., as prescribed by 17 C.F.R. § 249.501, and available at <http://www.sec.gov/about/forms/formbd.pdf>.

(10) “Form U-4” means the Uniform Application for Securities Industry Registration or Transfer, published by FINRA and available at <http://www.finra.org/industry/compliance/registration/crd/filing-guidance/p005235>

(11) “Form U-5” means the Uniform Termination Notice for Securities Industry Registration, published by FINRA and available at <http://www.finra.org/industry/compliance/registration/crd/filing-guidance/p005235>.

(12) “IARD” means the Investment Adviser Registration Depository maintained by the Financial Industry Regulatory Authority to register investment advisers and investment adviser representatives.

(13) “Independent accountant” means a certified public accountant (CPA) or public accountant (PA), who holds an Oregon permit pursuant to ORS 673.150 or similar permit or license from another state or province.

(14)(a) “Interim financial statement” means a financial statement prepared at a time other than year end. Interim financial statements must be prepared at month end, may be prepared by management, and must include at least a balance sheet and statement of income or operations. (b) The Focus Report filed with the Securities and Exchange Commission, Form X-17A-5 as required by 17 C.F.R. § 240.17a-5 and available at <http://www.sec.gov/about/forms/secforms.htm>, is acceptable as an interim financial statement.

(15) “NASD” means the National Association of Securities Dealers, Inc., the self-regulatory organization previously registered as a national securities association under section 15A of the Securities Exchange Act of 1934, 15 U.S.C. § 73o-3, to register and regulate broker-dealers and salespersons and subsequently succeeded by the Financial Institution Regulatory Authority.

(16) “Non-FINRA broker-dealer” means a broker-dealer who is not a member of the Financial Industry Regulatory Authority.

(17) “S-3” means the Series 3 National Commodity Futures Examination published by the National Futures Association on May 2012 and made available at <http://www.nfa.futures.org/NFA-registration/study-outlines/SO-Series3.pdf>.

(18) “S-6” means the Series 6 Investment Company Products/Variable Contracts Limited Representative Qualifications Examination, published by FINRA in 2005 and made available at <http://www.finra.org/Industry/Compliance/Registration/QualificationsExams/RegisteredReps/Qualifications/p011096>.

(19) “S-7” means the Series 7 General Securities Representative Qualification Examination, published by FINRA in 2011 and made available at <http://www.finra.org/Industry/Compliance/Registration/QualificationsExams/RegisteredReps/Qualifications/p011096>.

(20) “S-22” means the Series 22 Direct Participation Programs Limited Representative Qualification Examination published by FINRA in 2007 and made available at <http://www.finra.org/Industry/Compliance/Registration/QualificationsExams/RegisteredReps/Qualifications/p011096>.

(21) “S-42” means the Series 42 Registered Options Representative Qualification Examination published by FINRA in 2007 and made available at <http://www.finra.org/Industry/Compliance/Registration/QualificationsExams/RegisteredReps/Qualifications/p011096>.

(22) “S-52” means the Series 52 Municipal Securities Representative Qualification Examination published by the Municipal Securities Rulemaking Board in January 2011 and made available at <http://www.msrb.org/Rules-and-Interpretations/Professional-Qualification.aspx>.

(23) “S-62” means the Series 62 Corporate Securities Qualification Examination published by FINRA in 2007 and made available at <http://www.finra.org/Industry/Compliance/Registration/QualificationsExams/RegisteredReps/Qualifications/p011096>.

(24) “S-63” means the Uniform Securities Agent State Law Examination published by the North American Securities Administrators Association in January 2010 and made available at <http://www.nasaa.org/industry-resources/exams/study-guides/>.

(25) “S-65” means the Series 65 Uniform Investment Adviser Law Examination published by the North American Securities Administrators Association in 2010 and made available at <http://www.nasaa.org/industry-resources/exams/series-65-66-resources/series-65-study-guide/>.

(26) “S-66” means the Series 66 Uniform Combined State Law Examination published by the North American Securities Administrators Association in January 2010 and made available at <http://www.nasaa.org/industry-resources/exams/study-guides/>.

(27) “SEC” means the United States Securities and Exchange Commission.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.175 & 59.285

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0161; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0065; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 7-2000; f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 9-2003, f. 12-30-03, cert. ef. 1-1-04; FCS 1-2012, f. & cert. ef. 7-9-12

#### **441-175-0015**

##### **When Licensing Application Deemed Abandoned**

(1) For purposes of this rule, the term “application” includes all documents, information and fees prescribed for the licensing of broker-dealers, state investment advisers, salespersons, or investment adviser representatives under ORS 59.175 and OAR 441, division 175.

(2) An application shall be deemed deficient when:

(a) Insufficient fees have been paid and the Director has notified the applicant that fees are insufficient;

(b) Documents required by the rules in OAR 441, division 175 have not been submitted by the applicant; or

(c) Additional information requested by the Director as permitted by the rules in OAR 441, division 175 has not been submitted to the Director by the applicant.

(3) An application for licensing is deemed abandoned if:

(a) The application has been on file for a minimum of six (6) months;

(b) The application is deficient; and

(c) The applicant has failed to respond to the Director’s written notice of warning of abandonment within thirty (30) calendar days of the date of warning.

(4) Fees paid in connection with an abandoned licensing application shall not be refunded.

(5) An applicant whose application has been abandoned may reapply by submitting a new application including new fees.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.175

Hist.: FCS 7-2000, f. & cert. ef. 6-2-00; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

#### **441-175-0020**

##### **Exclusion from Definition of “Broker-Dealer”**

An exclusion from the definition of “broker-dealer” is granted pursuant to subsection (1)(i) of ORS 59.15 to the following persons, provided the person is not otherwise licensed as a broker-dealer, investment adviser, or salesperson:

(1) Any person who effects sales of securities that are exempt pursuant to subsection (13) of ORS 59.025 and OAR 441-025-0040.

(2) Any person who is a bona fide officer, director or employee of an issuer whose securities are registered pursuant to OAR 441-065-0035, while effecting sales of the securities without special compensation.

(3) Any person, who serves as a dealer manager for an exchange offer of securities which have been registered pursuant to OAR 441-065-0035 and who does not perform any active solicitation activities in this state.

(4) Any person who is a licensed real estate broker or any other real estate licensee (associate real estate broker, or a real estate salesperson) acting on behalf of that person’s real estate broker provided that all of the following conditions are met:

(a) The person is actively licensed with the Oregon Real Estate Commissioner;

(b) The person, with respect to securities subject to the Oregon Securities Law, ORS Chapter 59, only effects transactions in securities that are registered pursuant to 59.065, and:

(A) Involve interests in a general or limited partnership, joint venture, cooperative, or unincorporated association, but not a corporation,

formed for the purpose of investment in specified real property, including condominium securities; or

(B) Involve resale of those securities described under paragraph (A) of this subsection; and

(c) The person complies with the rules of fair practice pursuant to OAR 441-175-0050.

(5) The Director may, by order, as to any person or type of security or sale, withdraw or condition the exclusions allowed under this rule if the action would be in the public interest and would be in accordance with the purposes of the Oregon Securities Law. No person shall be liable under the Oregon Securities Law by reason of the withdrawal of the exclusions allowed under this rule if the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could not have known of such withdrawal.

Stat. Auth.: ORS 59.15(1)

Stats. Implemented: ORS 59.15(1)

Hist.: CC 13, f. 9-19-73, ef. 10-5-73; Renumbered from 815-030-0015.1; CC 8-1981, f. 10-27-81, ef. 12-1-81; CC 1-1983, f. & ef. 1-19-83; Renumbered from 815-030-0005; FCS 4-1991, f. & cert. ef. 8-23-91; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94

#### **441-175-0030**

##### **Exclusion from Definition of "Investment Adviser"**

An exclusion from the definition of "state investment adviser" is granted pursuant to subsection (20)(b)(K) of ORS 59.015 to the following persons, provided the person is not otherwise licensed as a broker-dealer, state investment adviser, mortgage broker, salesperson, or investment adviser representative:

(1) Any person who conducts no public advertising or general solicitation in this state and whose only clients in this state are "accredited investors" as that term is defined in OAR 441-035-0010.

(2) Any person who is a bona fide officer, director or employee of an issuer whose securities are registered pursuant to OAR 441-065-0035, while providing advice, analyses, reports or other advisory services regarding the securities without special compensation.

(3) Any person who serves as a dealer manager for an exchange offer of securities which has been registered pursuant to OAR 441-065-0035 and who does not perform any active solicitation in this state.

(4) Any person whose advice, analyses or reports relate only to securities exempted by subsection (13) of ORS 59.025 and OAR 441-025-0040.

(5) Any person who is a licensed real estate broker or any other real estate licensee (associate real estate broker or real estate salesperson) acting on behalf of the real estate broker provided that the following conditions are met:

(a) The person is actively licensed with the Oregon Real Estate Commissioner;

(b) The person, with respect to securities activities, only renders advice, analyses, reports or other advisory services relating to securities that are registered pursuant to ORS 59.065, and:

(A) Involve interests in a general or limited partnership, joint venture, cooperative, or unincorporated association, but not a corporation, formed for the purpose of investment in specified real property, including condominium securities; or

(B) Involve the resale of those securities described in paragraph (A) of this subsection; and

(c) The person complies with the rules of fair practice pursuant to OAR 441-175-0050.

(6) Any person who acts as a purchaser representative under OAR 441-065-0060 through 441-065-0230 if the activity is merely an incidental part of the person's usual activities or occupation.

(7) Any person who is licensed as a mortgage banker or mortgage broker under the provisions of ORS 59.840 to 59.965 and whose performance of advisory services relate solely to securities involving real estate paper, whose performance of the advisory services is solely incidental to the person's conduct of business as a mortgage banker or mortgage broker and who receives no special compensation for such services.

(8) The Director may, by order, as to any person or type of security or sale, withdraw or condition the exclusions allowed under this rule if the action would be in the public interest and would be in accordance with the purposes of the Oregon Securities Law. No person shall be liable under the Oregon Securities Law by reason of the withdrawal

of the exclusions allowed under this rule if the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could not have known of such withdrawal.

Stat. Auth.: ORS 59.15(6)

Stats. Implemented: ORS 59.15(6)

Hist.: CC 13, f. 9-19-73, ef. 10-5-73; Renumbered from 815-030-0015.7; CC 8-1981, f. 10-27-81, ef. 12-1-81; CC 1-1983, f. & ef. 1-19-83; Renumbered from 815-030-0010; FCS 4-1991, f. & cert. ef. 8-23-91; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 7-2000; f. & cert. ef. 6-2-00

#### **441-175-0040**

##### **Exclusion from Definition of "Salesperson"**

An exclusion from the definition of "salesperson" is granted pursuant to subsection (18)(b)(F) of ORS 59.015 to the following persons, provided the person is not otherwise licensed as a broker-dealer, investment adviser, or salesperson:

(1) Subject to section (5) of this rule, any person, not otherwise excluded as a "broker-dealer" pursuant to ORS 59.015(1) or OAR 441-175-0020, who represents such an excluded person.

(2) Subject to section (5) of this rule, any person, not otherwise excluded as an "investment advisor" pursuant to ORS 59.015(20)(b) or OAR 441-175-0030, who represents such an excluded person.

(3) Any person who is a bona fide officer, director or employee of an issuer whose securities are registered pursuant to OAR 441-065-0035, while effecting sales of the securities without special compensation.

(4) Any person who serves as a dealer manager for an exchange offer of securities which have been registered pursuant to OAR 441-065-0035 and who does not perform any active solicitation in this state.

(5) Any person who is a real estate licensee, acting through or on behalf of a real estate broker exempt pursuant to OAR 441-175-0020 or 441-175-0030, provided the following conditions are met:

(a) The person is actively licensed with the Oregon Real Estate Commissioner;

(b) The person, with respect to securities activities, only acts as a salesperson in connection with securities that are registered pursuant to ORS 59.065, and:

(A) Involve interests in a general or limited partnership, joint venture, cooperative, or unincorporated association, but not a corporation, formed for the purpose of investment in specified real property, including condominium securities; or

(B) Involve the resale of those securities described in paragraph (A) of this subsection; and

(c) The person complies with the rules of fair practice pursuant to OAR 441-175-0050.

(6) Any person who acts as a purchaser representative under OAR 441-065-0060 through 441-065-0240 if the activity is merely an incidental part of the person's usual activities or occupation.

(7) Any person who is compensated by a licensed broker-dealer, or investment adviser on a per capita referral basis without regard to present or future fee or commission income from any customer of the licensed broker-dealer, or investment adviser.

(8) The Director may, by order, as to any person or type of security or sale, withdraw or condition the exclusions allowed under this rule if the action would be in the public interest and would be in accordance with the purposes of the Oregon Securities Law. No person shall be liable under the Oregon Securities Law by reason of the withdrawal of the exclusions allowed under this rule if the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could not have known of such withdrawal.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.015(18)

Hist.: CC 13, f. 9-19-73, ef. 10-5-73; Renumbered from 815-030-0015.12; CC 8-1981, f. 10-27-81, ef. 12-1-81; CC 1-1983, f. & ef. 1-19-83; Renumbered from 815-030-0015; FCS 4-1991, f. & cert. ef. 8-23-91; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 4-2007, f. 10-11-07, cert. ef. 1-1-08

#### **441-175-0041**

##### **Exclusion from Definition of "Investment Adviser Representative"**

An exclusion from the definition of "investment adviser representative" is granted pursuant to subsection (8)(b) of ORS 59.015 to the following persons, provided that the person is not otherwise licensed as a broker-dealer, federal covered investment adviser, state investment adviser, salesperson or investment adviser representative:

(1) Any person, not otherwise excluded as a "state investment adviser" pursuant to subsection (20)(b) except (20)(b)(I) of ORS

59.015 or OAR 441-175-0030, who represents such an excluded person.

(2) Any person who is compensated by a licensed broker-dealer, federal covered investment adviser or state investment adviser on a per capita referral basis without regard to present or future fee or commission income from any customer of the licensed broker-dealer, federal covered investment adviser or state investment adviser.

(3) The Director may, by order, as to any person or type of activity, withdraw or condition the exclusions allowed under this rule if the action would be in the public interest and would be in accordance with the purposes of the Oregon Securities Law. No person shall be liable under the Oregon Securities Law by reason of the withdrawal of the exclusions allowed under this rule if the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could not have known of such withdrawal.

Stat. Auth.: ORS 59.015(8) & 59.285

Stats. Implemented: ORS 59.015(8)

Hist.: FCS 12-2001, f. 12-27-01, cert. ef. 1-1-02

#### **441-175-0046**

##### **Federal Covered Investment Advisor Representative**

For purposes of ORS 59.015(8)(a)(B), the term “Investment Advisor Representative” who is employed by or associated with a federal covered investment advisor only includes an individual who has a “place of business,” as that term is defined in rules or regulations promulgated under Section 203A of the Investment Advisors Act of 1940 by the U.S. Securities and Exchange Commission, in Oregon, and who either:

(1) Is an Investment Advisor Representative” as that term is defined in rules or regulations promulgated under Section 203A of the Investment Advisors Act of 1940 by the U.S. Securities and Exchange Commission; or

(2)(a) Is not a “supervised person” as that term is defined in rules or regulations promulgated under the Investment Advisor Act of 1940 by the U.S. Securities and Exchange Commission; and

(b) Solicits, offers or negotiates for the sale of or sells investment advisory services on behalf of a federal covered investment advisor.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.015(8), 59.175(7) & 59.175(8)

Hist.: FCS 2-1999, f. & cert. ef. 11-8-99

#### **441-175-0050**

##### **Rules of Fair Practice for Real Estate Licensees**

Any real estate licensee relying on exclusions pursuant to OAR 441-175-0020, 441-175-0030 or 441-175-0040 must comply with the following rules of fair practice:

(1) Advertising. All advertising involving securities registered pursuant to ORS 59.065 and OAR chapter 441, division 065 must be filed with the Director before the advertising is used.

(2) Customer Funds and Securities. All customer funds and securities must be segregated from those of the real estate licensee, and:

(a) All customer funds must be deposited in a client trust account which is free from all claims, attachment or levy by creditors of the real estate licensee; and

(b) All customer securities must be held in trust in a secure depository and the securities must be free from all claims, attachment or levy by creditors of the real estate licensee.

(3) Books and Records. The real estate licensee must create and maintain for the longer of three years or such time period established under rules of the Oregon Real Estate Commissioner, the following books and records pertaining to securities activities:

(a) Records of all securities sales and purchases;

(b) Investor information records;

(c) Trust account transactions;

(d) Discretionary account agreements;

(e) Investor complaints and resolution; and

(f) Financial information of the real estate licensee.

(4) Investor Suitability:

(a) A real estate licensee shall not recommend a securities transaction to an investor unless the real estate licensee has reviewed the terms of the transaction and has reasonable grounds to believe that the recommendation is suitable for the investor on the basis of information furnished by the investor, after reasonable inquiry is made by the real estate licensee, concerning the investor’s investment objectives,

financial situation and any other information known to and deemed relevant by the real estate licensee;

(b) The requirements of subsection (a) of this section, except for the requirement to review the transaction, may be satisfied if the investment in fact is suitable for the particular investor;

(c) A real estate licensee who is selling securities registered pursuant to OAR 441-065-0060 through 441-065-0240 to “sophisticated purchasers” shall comply with the suitability requirements for such purchasers instead of the requirements of subsection (a) of this section.

(5) Supervision. The responsibility for supervision of all persons engaged by a real estate broker to effect securities transactions or render advisory services is that of the real estate broker. This supervision includes reviewing and authorizing all securities activities of associate real estate brokers and real estate salespersons engaged by the real estate broker.

Stat. Auth.: ORS 59.15 & 59.285

Stats. Implemented: ORS 59.15(1), 59.15(6), 59.15(10), 59.135 & 59.235

Hist.: CC 6-1981(Temp), f. 10-27-81, ef. 11-2-81; CC 2-1982, f. 1-18-82, ef. 2-1-82; FCS 8-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 7-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-037-0025; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94

#### **441-175-0055**

##### **Rules of Fair Practice for Mortgage Banker and Mortgage Broker Licensees**

Any mortgage banker or mortgage broker (“licensee”) licensed pursuant to ORS 59.840 to 59.980 and relying upon exclusion from the definition of “broker-dealer” pursuant to 59.015(1)(h) in connection with the offer and sale of registered offerings of securities involving real estate paper shall comply with the following rules of fair practice:

(1) Securities Registration: All offerings shall be registered pursuant to the provisions of ORS 59.065 and OAR chapter 441, division 065.

(2) Salesperson Licensing. All natural persons involved in the offer and sale of securities shall be licensed as issuer salespersons pursuant to the provisions of ORS 59.175 and OAR 441-175-0120. In addition, the employing mortgage banker or mortgage broker must file material amendments to the salesperson license application pursuant to the provisions of 441-175-0105.

(3) Advertising. All advertising involving the offering must be filed with and accepted by the Director prior to its use.

(4) Supervision: The responsibility for supervision of all persons engaged by a licensee to effect securities transactions is that of the licensee. This supervision includes reviewing and authorizing all securities activities of the licensee’s salespersons.

(5) Investor Funds and Securities: All funds received in connection with an offering must be segregated from those of the licensee, and:

(a) All investor funds must be deposited in a client trust account which is free from all claims attachment or levy by creditors of the licensee; and

(b) All investor securities must be held in trust in a secure depository and the securities must be free from all claims, attachment or levy by creditors of the licensee.

(6) Books and Records: The licensee must create and maintain those books and records required in OAR chapter 441, division 865.

(7) Investor Suitability:

(a) A licensee shall not recommend a securities transaction to an investor unless the licensee has reviewed the terms of the transaction and, after reasonable inquiry by the licensee, the licensee has reasonable grounds to believe that the recommendation is suitable for the investor on the basis of:

(A) Information furnished by the investor (including the investor’s investment objectives and financial situation); and

(B) Any other relevant information known to the licensee.

(b) The requirements of subsection (a) of this section, except for the requirement to review the terms of the transaction, may be satisfied if the investment is in fact suitable for the particular investor;

(c) Specific investor suitability requirements established pursuant to rule or order of the Director shall take precedence over the general investor suitability requirements of subsection (a) of this section.

Stat. Auth.: ORS 59.235 & 59.285

Stats. Implemented: ORS 59.15(1), 59.135 & 59.235

Hist.: FCS 7-1994, f. & cert. ef. 5-13-94; FCS 9-2003, f. 12-30-03, cert. ef. 1-1-04

**441-175-0060**

**Licensing Rule Implementing, 1997 Oregon Laws Chapter 772 and the National Markets Improvement Act of 1996**

(1) A FINRA broker dealer is not required to comply with the corporate surety bond, irrevocable letter of credit or net capital requirements for licensing in this state as described in OAR 441-175-0080 or 441-175-0110.

(2)(a) A federal covered investment adviser that makes a notice filing under ORS 59.165(7) and section (4) of this rule does not have to comply with OAR 441-175-0100 and 441-175-0110.

(b) A state investment adviser who has a principal place of business in a state other than this state and complies with that state's bonding or net capital requirements is not required to comply with the corporate surety bond, irrevocable letter or credit or net capital requirements for licensing in this state in OAR 441-175-0100 and 441-175-0110.

(c) An out-of-state state investment adviser that is not exempt under the "de minimis" exemption of ORS 59.015(20)(b)(J) must license in this state and can only operate in this state through an investment adviser representative licensed in this state.

(3) Surety bonds currently in effect in Oregon filed by a broker-dealer, federal covered investment adviser or out-of-state state investment adviser that no longer has to file a bond or letter of credit under ORS 59.175 and this rule shall continue in effect until canceled. However, the liability on the bond or letter of credit continues for six years following its cancellation.

(4)(a) Notice filing by a federal covered investment adviser will be accepted by the director through IARD using a Form ADV and shall include the fee required by OAR 441-175-0002.

(b) The renewal of the notice filing for a federal covered investment adviser will be accepted by the director through IARD and shall include the fee required under OAR 441-175-0002.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 59.165 & 59.285

Stats. Implemented: ORS 59.165

Hist.: CC 1-1987, f. & ef. 2-4-87; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 9-1987(Temp), f. & ef. 10-9-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0067; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 2-1998, f. & cert. ef. 4-30-98; FCS 4-1998, f. & cert. ef. 8-5-98; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 1-2012, f. & cert. ef. 7-9-12

**441-175-0070**

**General Licensing Rules for Broker-Dealers, Investment Advisers and Salespersons**

(1) Incomplete applications will not be processed.

(2) When all documents and fees have been submitted and reviewed by the director, a license for the broker-dealer or investment adviser, which may be conditioned or restricted pursuant to OAR 441-225-0030, shall be issued unless the director determines that licensing should be denied on one or more grounds set forth in ORS 59.205 to 59.225.

(3) Licensees conducting business under any name other than the name in which their license is issued by the director shall comply with OAR 441-175-0171.

(4) Licenses of non-FINRA broker-dealers or state investment advisers expire one year after the date of initial licensing, except licenses of state investment advisers which license through IARD will expire on December 31 of each year. The licensee may renew its license as provided in ORS 59.185 and OAR 441-175-0165.

(5) Licenses of FINRA broker-dealers expire December 31 of each year. The licensee may renew its license as provided in ORS 59.185 and OAR 441-175-0160.

(6) Any amendments to an application or license shall be filed in accordance with the provisions of OAR 441-175-0105.

(7)(a) If any person not licensed in the State of Oregon succeeds to the business and continues the business of a person licensed in Oregon, a new application must be filed. However, the license of the predecessor and predecessor salespersons or investment adviser representatives shall remain effective as the license of the successors for a period of 75 days after the succession, if a completed application is received by the director within 30 days of the succession. The salespersons or investment adviser representatives to the predecessor who were licensed in Oregon at the time of the acquisition will be licensed to the successor when the new license is issued. A new license will be

issued reflecting the date of succession and a new effective date. There will be no charge for the transfer of salespersons' or investment adviser representatives' licenses from the predecessor to the successor;

(b) A Form BD or ADV filed by a person that is not licensed when such form is filed and which succeeds to and continues the business of a person licensed in this state shall be deemed an application for licensing filed by that predecessor and adopted by the successor, even though designated as an amendment, if filed within 30 days of the succession and the succession is based on a change in the predecessor's date or state of incorporation, form or organization, or change in composition of a partnership and the amendment is filed to reflect these changes.

(8) If a broker-dealer or state investment adviser who is licensed in the State of Oregon is acquired by another person licensed in the State of Oregon, there will be no additional licensing requirements. However, the acquiring party must submit an amended Form BD, or Form ADV pursuant to OAR 441-175-0105. There will be no charge for the transfer of salespersons' or investment adviser representatives' licenses from the predecessor to the successor.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 59.175(1), 59.205(2) & 59.285

Stats. Implemented: ORS 59.165, 59.175(1), 59.205(2) & 59.285

Hist.: FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0067.1; FCS 3-1989, f. & cert. ef. 2-1-89; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 8-1994, f. & cert. ef. 6-1-94; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 1-2012, f. & cert. ef. 7-9-12

**441-175-0080**

**Applications for Licensing of Broker-Dealers**

(1) An applicant for licensing as a FINRA broker-dealer must submit to the FINRA/CRD:

(a) A completed Form BD;

(b) A broker-dealer licensing fee as set in OAR 441-175-0002;

(c) At least one completed Form U-4 pursuant to OAR 441-175-0130. All licensed broker-dealers must have at least one salesperson licensed continuously throughout the licensing period of the broker-dealer; and

(d) A salesperson licensing fee for each salesperson as set in OAR 441-175-0002.

(2) An applicant for licensing as a non-FINRA broker-dealer must submit to the director:

(a) A completed Form BD;

(b) A broker-dealer licensing fee as set in OAR 441-175-0002;

(c) At least one completed Form U-4 pursuant to OAR 441-175-0120. All licensed broker-dealers must have at least one salesperson licensed continuously throughout the licensing period of the broker-dealer;

(d) A salesperson licensing fee for each salesperson as set in OAR 441-175-0002; and

(e) The name of the person or persons designated as supervisors for purposes of OAR 441-205-0210. When a new supervisor is designated, this change must be filed with the director within 30 days following the change.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 59.175, 59.195 & 59.285

Stats. Implemented: ORS 59.165, 59.175, 59.185, 59.195 & 59.285

Hist.: FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0067.2; FCS 16-1988(Temp), f. & cert. ef. 11-21-88; FCS 5-1989, f. & cert. ef. 5-17-89; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 1-2012, f. & cert. ef. 7-9-12

**441-175-0085**

**Limited Licensing of Canadian Broker-Dealers and Salespersons**

(1) A broker-dealer that is resident in Canada and has no office or other physical presence in this state may, provided the broker-dealer is licensed in accordance with this rule, effect transactions in securities with or for, or induce or attempt to induce the purchase or sale of any security by,

(a) A person from Canada who is temporarily resident in this state, with whom the Canadian broker-dealer had a bona fide broker-dealer-client relationship before the person entered the United States; or

(b) A person from Canada who is resident in this state, whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor.

(2) A salesperson who will be representing a Canadian broker-dealer licensed under this rule may, provided the agent is licensed in accordance with this rule, effect transactions in securities in this state as permitted for the broker-dealer in section (1) of this rule.

(3) A Canadian broker-dealer may license under this rule provided that it:

(a) Files an application in the form required by the jurisdiction in which it has its head office;

(b) Is registered as a broker or dealer in good standing in the jurisdiction from which it is effecting transactions in this state and files evidence thereof; and

(c) Is a member of a self-regulatory organization or stock exchange in Canada.

(4) A salesperson who will be representing a Canadian broker-dealer licensed under this rule in effecting transactions in securities in this state may license under this rule provided that he or she:

(a) Files an application in the form required by the jurisdiction in which the broker-dealer has its head office; and

(b) Is registered in good standing in the jurisdiction from which he or she is effecting transactions into this state and files evidence thereof.

(5) If no denial order is in effect and no proceeding is pending under ORS 59.205, licensing becomes effective on the 30th day after an application is filed, unless earlier made effective, and expires on December 31 of every year.

(6) A Canadian broker-dealer licensed under this rule shall:

(a) Maintain its provincial or territorial registration and its membership in a self-regulatory organization or stock exchange in good standing;

(b) Provide the Director upon request with its books and records relating to its business in this state as a broker-dealer;

(c) Inform the Director forthwith of any criminal action taken against it or of any finding or sanction imposed on the broker-dealer as a result of any self-regulatory or regulatory action involving fraud, theft, deceit, misrepresentation or similar conduct; and disclose to its clients in the state that the broker-dealer and its salespersons are not subject to the full regulatory provisions in the Oregon Securities Law.

(7) A salesperson of a Canadian broker-dealer licensed under this rule shall:

(a) Maintain his or her provincial or territorial registration in good standing;

(b) Inform the Director forthwith of any criminal action, taken against him or her, or of any finding or sanction imposed on the salesperson as a result of any self-regulatory or regulatory action involving fraud, theft, misrepresentation or similar conduct.

(8)(a) Renewal applications for Canadian broker-dealers and salespersons under this rule must be filed by January 1 of each calendar year following the date of original licensing.

(b) Renewal applications may be made by filing the most recent renewal application, if any, filed in the jurisdiction in which the broker-dealer has its head office, or if no such renewal application is required, the most recent application filed pursuant to subsection (3)(a) or (4)(a) of this rule, as the case may be.

(9) Every applicant for licensing or renewal licensing under this rule shall pay the applicable non-refundable fee for broker-dealers and agents as set in OAR 441-175-0002.

(10) A Canadian broker-dealer or salesperson licensed under this rule may only effect transactions in this state as permitted in sections (1) or (2) of this rule with or through:

(a) The issuers of the securities involved in the transactions;

(b) Other broker-dealers;

(c) Banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

(d) As otherwise permitted pursuant to the Oregon Securities Law.

(11) A Canadian broker-dealer or agent licensed under this rule and acting in accordance with the limitations set out in section (10) is exempt from all of the requirements of the Oregon Securities Law, except the anti-fraud provisions and the requirements set out in this rule. Such Canadian broker-dealer or salesperson may only have its notice filing under this rule denied, suspended or revoked for a breach

of the anti-fraud provisions in ORS 59.135 or the requirements in this rule.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.175

Hist.: FCS 5-2001, f. & cert. ef. 6-7-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

#### **441-175-0100**

##### **Applications for Licensing of Investment Advisers**

(1) An applicant for licensing as a state investment adviser must apply through the IARD.

(2) An applicant must submit:

(a) To the IARD:

(A) A completed Form ADV, including Parts 1 and 2 of Form ADV;

(B) An investment adviser licensing fee as required by OAR 441-175-0002;

(C) At least one completed Form U-4. All licensed state investment advisers must have at least one representative licensed continuously throughout the licensing period of the investment adviser; and

(D) A licensing fee for each investment adviser representative as required by OAR 441-175-0002.

(b) To the director:

(A) A surety bond or letter of credit pursuant to OAR 441-175-0110 if the person is an Oregon based state investment adviser applicant;

(B) The name of the person or persons designated as supervisors for purposes of OAR 441-205-0210. When a new supervisor is designated, this change must be filed with the director within 30 days following the change;

(C) A copy of any proposed client contracts if the applicant is an Oregon based state investment adviser; and

(D) Any form or portion of any form which cannot be submitted through the IARD.

(3) An Oregon based investment adviser applicant who has custody or possession of a client's funds or securities or requires payment of advisory fees six months or more in advance and in excess of \$500 per client must file with the director financial statements as defined in OAR 441-011-0040 and prepared by an "independent accountant" as defined in 441-175-0010(8) as follows:

(a) If the applicant has been in operation for more than two years, and the application is made less than 90 days after the end of the applicant's fiscal year, the applicant must provide financial statement for the two most recent fiscal years, not including the most recently completed fiscal year.

(b) If the applicant has been in operation for less than two years, the applicant must provide financial statements for the periods of operation.

(c) If the year-end financial statements are dated more than 90 days from the date of the completed application, the applicant must provide interim financial statements that were completed within 90 days of the application.

(4) All applicants must comply with the provisions of OAR 441-175-0070.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 59.175(1), 59.205(2) & 59.285

Stats. Implemented: ORS 59.175(1) & 59.205(2)

Hist.: FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0067.4; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 8-1994, f. & cert. ef. 6-1-94; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 8-2010, f. 6-22-10, cert. ef. 7-1-10; FCS 1-2012, f. & cert. ef. 7-9-12

#### **441-175-0105**

##### **Material Changes, Amendments and Notice of Civil and Criminal Actions**

(1) A broker-dealer or state investment adviser applicant or licensee must file an amendment to its application and a broker-dealer, state or federal covered investment adviser, must file an amendment to the application of their respective salespersons or investment adviser representatives if there is a material change to any information on the original application or previous amendments including:

(a) Bankruptcy;

(b) Civil or criminal actions described on the application;

(c) Disciplinary disclosure answers on the application;

(d) Change in or additional affiliated business entity name;

(e) Change in ownership other than as provided in OAR 441-175-0070(7);

(f) Change in form of organization;

(g) Change of address; or

(h) Change in scope of business.

(2) Amendments must be filed within 30 days of the occurrence of the material change. If a completed amendment cannot be filed within 30 days, the applicant or licensee shall file with the director within the 30 day limit a written notice containing available information, the reasons a complete amendment cannot be timely filed and a specific date on which the completed amendment will be filed.

(3) Amendments to the application shall be made on:

(a) A Form BD for broker-dealers;

(b) A Form ADV for state investment advisers; and

(c) A Form U-4 for salespersons or investment adviser representatives.

(4) Amendments to the application shall be filed with:

(a) The CRD for broker-dealers who are or will be members of the FINRA and their salespersons; except for changes in designated supervisor, which shall be filed with the director;

(b) The IARD for any investment advisers or investment adviser representatives who have previously filed applications through IARD; or

(c) The director for all other persons.

(5) Filing amendments to a salesperson or investment adviser representative application shall be the responsibility of both the salesperson or investment adviser representative and the employing broker-dealer, or state or federal covered investment adviser.

(6) There is no fee required in connection with an amendment filed pursuant to this rule.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 59.175, 59.185 & 59.285

Stats. Implemented: ORS 59.175 & 59.185

Hist.: FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 1-2012, f. & cert. ef. 7-9-12

#### **441-175-0110**

##### **Surety Bond; Letter of Credit**

(1) Every applicant for a license as an Oregon based state investment adviser, must file with the Director a surety bond as specified in section (4) of this rule or a letter of credit as specified in section (5) of this rule.

(2) Every person licensed as an Oregon based state investment adviser must maintain a surety bond as specified in section (4) of this rule or a letter of credit as specified in section (5) of this rule during the period of licensing and for at least six years after the person ceases to be licensed as an Oregon based state investment adviser.

(3) In no less than six years after a person ceases to be required to maintain a surety bond or a letter of credit, the person may apply to the Director for release of the surety bond or letter of credit. Unless the Director determines that claims are pending against the person for violation of the Oregon Securities Law, the Director shall release the surety bond or letter of credit.

(4) A surety bond shall be in a form and on terms approved by the Director in the sum of \$10,000 from a corporation authorized by the Director to transact insurance in the State of Oregon.

(5) A letter of credit shall be in the form and on terms approved by the Director in the sum of \$10,000 from a financial institution authorized to transact banking business in the State of Oregon.

Stat. Auth.: ORS 59.175

Stats. Implemented: ORS 59.175(4) & 59.225

Hist.: CC 1-1987, f. & ef. 2-4-87; FCS 1-1987(Temp), f. & ef. 8-7-87; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 3-1988, f. 2-2-88, cert. ef. 2-3-88; Renumbered from 815-030-0068; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 7-2000, f. & cert. ef. 6-2-00

#### **441-175-0120**

##### **Licensing of Salespersons or Representatives to Non-FINRA Broker-Dealers, State or Federal Covered Investment Advisers, Issuers and Owners of Securities**

(1) For purposes of ORS 59.175, all salespersons or investment adviser representatives, except salespersons desiring to work for a FINRA broker-dealer, must be licensed as provided in this rule.

(2) A non-FINRA broker-dealer, an issuer, or an owner of securities must submit to the director a complete application to license a salesperson including:

(a) A completed Form U-4;

(b) A licensing fee for each salesperson as set in OAR 441-175-0002;

(c) Official notice of a passing score of the appropriate examinations pursuant to section (5), if required for licensing under this rule; and

(d) If employed by more than one broker-dealer or state or federal covered investment adviser, an undertaking as provided in section (10) of this rule.

(3) A state or federal covered investment adviser must submit to the IARD, if the adviser files with the IARD and the IARD is capable of accepting the application, and otherwise to the director:

(a) A completed Form U-4;

(b) A licensing fee for each investment adviser representative as set in OAR 441-175-0002;

(c) Official notice of a passing score on the appropriate examination, if required for licensing under section (6) of this rule; and

(d) If employed by more than one broker-dealer or state or federal covered investment adviser, an undertaking as provided in section (10) of this rule.

(4) The following salespersons or investment adviser representatives are exempt from the examination requirements of section (5) or (6) of this rule:

(a) Salespersons or investment adviser representatives who have been licensed at any time in Oregon during the two years immediately prior to filing an application for licensing and whose current application is for the same type of license;

(b) Salespersons licensed to an issuer or owner of securities where the securities have been registered pursuant to ORS 59.065 and OAR chapter 441, division 65; and

(c) Salespersons or investment adviser representatives licensed in any jurisdiction during the two years immediately prior to filing an application for licensing in Oregon. For salespersons, this exemption is limited to the extent a salesperson has previously taken and passed the examinations required by section (5) of this rule.

(5) A salesperson to a non-FINRA broker-dealer, or an issuer or owner of securities, who is not exempt from the examination requirements pursuant to section (4) of this rule is required to pass the S-63 with a minimum score of 70 percent. In addition, a salesperson is required to pass, with a minimum score of 70 percent, the specific examination which corresponds to the authorized sales activity as follows:

(a) S-7 for a general securities license;

(b) S-3 for a commodity futures license;

(c) S-6 for an investment company, mutual funds or variable contracts license;

(d) S-22 for a limited partnership or tax shelter license;

(e) S-42 for an options license;

(f) S-52 for a municipal bonds license; or

(g) S-62 for a corporate securities license.

(6)(a) An investment adviser representative to a state or federal covered investment adviser, who is not exempt from the examination requirements pursuant to section (4) or subsection (6)(b) of this rule, is required to pass the examinations in one of the following paragraphs:

(A) If the applicant has passed the S-7 examination, then either the S-65 examination if taken prior to January 1, 2000 or the S-66 examination if taken after January 1, 2000; or

(B) The S-65 examination if taken after January 1, 2000.

(b) The examinations in subsection (6)(a) shall be waived for an individual who currently holds one of the following professional designations:

(A) Chartered Financial Analyst (CFA) granted by the Association for Investment Management and Research;

(B) Certified Financial Planner (CFP) issued by the Certified Financial Planner Board of Standards, Inc.;

(C) Chartered Financial Consultant (ChFC) awarded by The American College, Bryn Mawr, Pennsylvania;

(D) Chartered Investment Counselor (CIC) granted by the Investment Counsel Association of America;

(E) Personal Financial Specialist (PFS) administered by the American Institute of Certified Public Accountants; or

(F) Such other professional designation as the director may by order recognize.

(7) Limited licensed salespersons or investment adviser representatives may only effect transactions in or provide investment advice concerning securities for which their license is issued.

(8) Alternate equivalent examinations will be considered upon a written request to the director, stating the examination to be replaced, the type of examination, and the material covered in the alternate examination. Examinations which have been replaced by a new examination will be accepted as an alternate equivalent examination without written request.

(9) Waiver of the examination requirement will be considered upon a written request to the director. Waivers will be limited to applications showing a minimum of three continuous years of securities related activity immediately prior to the application and a pre-existing business relationship with a person who is now in this state.

(10)(a) A person may be licensed simultaneously in this state as a salesperson with more than one broker-dealer or as an investment adviser representative with a state or federal covered investment adviser if all employers enter into an undertaking on a form approved by the director. The undertaking shall contain the following provisions:

(A) The effective date of the salespersons or investment adviser representatives employment with the respective employers;

(B) Consent by each employer to the employment of the salesperson or investment adviser representative by all other employers;

(C) An agreement by each employer to assume joint and several liability with all other employers for any act or omission of the person during the period of employment which violates the Oregon Securities Law. This agreement will continue until written notice is given to the director of the termination of the employment relationship; and

(D) An agreement that each employer will license the salesperson or investment adviser representative with the director and pay the applicable fees.

(b) No undertaking is required where:

(A) The salesperson is employed by one or more issuers registered under the Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq, under common management or control; or

(B) The employer, a single entity, is licensed or has filed notice in Oregon as both a broker-dealer and a state or federal covered investment adviser.

(C) Any changes in employment by a salesperson or investment adviser representative which would result in requiring an undertaking or changing the existing undertaking must be immediately filed on a new undertaking form with the director.

(11) Where a salesperson desires to work for an issuer or owner of securities:

(a) The salesperson must be a bona fide officer, director or employee of the issuer or owner. No salesperson may be licensed to more than one issuer or owner of securities simultaneously. No person described in this subsection may be licensed to another issuer or owner of securities until two years from the date of the original licensing or last renewal of the prior offering. However, salespersons licensed to a single issuer to sell a continuing issue may be renewed. A waiver of this subsection may be requested from the director as provided in OAR 441-011-0020;

(b) Persons not otherwise licensed, who are selling securities of an issuer for which notice has been filed pursuant to ORS 59.049(1) or 59.049(2), do not have to meet the requirements of subsection (a) of this section.

(12) Once the requirements of this rule are met, the director shall issue a license, which may be conditioned or restricted pursuant to OAR 441-225-0030, for the salesperson or investment adviser representative unless the director determines that licensing should be denied on one or more grounds as set forth in ORS 59.205 to 59.225.

(13) If the application, the undertaking, any supporting material or any representations made to the director are inaccurate or incomplete in any material respect, the license shall be void.

(14) A salesperson or investment adviser representative license issued pursuant to this rule automatically expires without further action of the director as follows:

(a) The license of an issuers or owners salesperson expires when the securities are no longer authorized for sale;

(b) The license of every salesperson or investment adviser representative licensed to a broker-dealer or state or federal covered investment adviser expires on the same date that the license of the broker-dealer or state investment adviser or the notice filing of the federal covered investment adviser expires.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 59.175

Stats. Implemented: ORS 59.165 & 59.175

Hist.: CC 13, f. 9-19-73, ef. 10-1-73; CC 16, f. 5-13-74, ef. 6-11-74; Renumbered from 815-030-0165.2; CC 9-1986(Temp), f. & ef. 1-16-86; CC 1-1987, f. & ef. 2-4-87; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0070; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 5-1999, f. & cert. ef. 12-23-99; FCS 13-2000, f. & cert. ef. 11-6-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 1-2012, f. & cert. ef. 7-9-12

#### **441-175-0130**

##### **Licensing of Salespersons to FINRA Broker-Dealers**

(1) For purposes of ORS 59.175, all FINRA salespersons will be eligible for automatic licensing as provided in this rule if:

(a) The salesperson is licensed by the FINRA to a broker-dealer who is a member in good standing of the FINRA;

(b) The salesperson is employed by a broker-dealer who is licensed in Oregon pursuant to ORS 59.175;

(c) An application to license the salesperson has been submitted to the CRD by the employer as provided in this rule;

(d) The salesperson has filed with the director an undertaking as required in section (8) of this rule, if applicable; and

(e) The salesperson is not disqualified under OAR 441-175-0140.

(2) The employing broker-dealer must submit an application to license a salesperson in Oregon to the CRD including:

(a) A completed Form U-4;

(b) A salesperson licensing fee for each salesperson as set in OAR 441-175-0002; and

(c) Official notice of a passing score of the appropriate examination as required for licensing under section (4) of this rule.

(3) The following salespersons are exempt from the examination requirements of section (4) of this rule:

(a) Salespersons licensed in Oregon at any time during the two years immediately prior to filing an application. The application must be for the same type of license; or

(b) Salespersons licensed in any jurisdiction during the two years immediately prior to filing an application for licensing in Oregon. This exemption is limited to the extent a person has previously taken and passed the examinations required by section (4) of this rule.

(4) A salesperson who is not exempt from the examination requirements pursuant to section (3) of this rule is required to pass the S-63 examination with a minimum score of 70 percent. In addition to the S-63 examination, a salesperson is required to pass, with a minimum score of 70 percent, the specific examination which corresponds to the authorized sales activity as follows:

(a) S-7 for a general securities license;

(b) S-3 for a commodity futures license;

(c) S-6 for an investment company, mutual funds or variable contracts license;

(d) S-22 for a limited partnership or tax shelter license;

(e) S-42 for an options license;

(f) S-52 for a municipal bonds license; or

(g) S-62 for a corporate securities license.

(5) Limited licensed salespersons may only effect transactions in securities for which their license is issued.

(6) Alternate equivalent examinations will be considered upon a written request to the director, stating the examination to be replaced, the type of examination and the material covered in the alternate examination. Examinations which have been replaced by a new examination will be accepted as an alternate equivalent examination without written request.

(7) Waiver of the examination requirement will be considered upon a written request to the director. Waivers will be limited to applications showing a minimum of three continuous years of securities-related activity immediately prior to the application and a pre-existing business relationship with a person who is now in this State.

(8)(a) A person may be licensed simultaneously in Oregon as a salesperson with more than one broker-dealer, mortgage banker, mortgage broker, or investment adviser if all employers enter into an under-

taking on a form provided by the director. The undertaking shall contain the following provisions:

(A) The effective date of the salesperson's employment with the respective employers;

(B) Consent by each employer to the employment of the salesperson by all other employers;

(C) An agreement by each employer to assume joint and several liability with all other employers for any act or omission of the salesperson during the period of employment which violates the Oregon Securities Law. This agreement will continue until written notice is given to the Securities Section of the termination of the employment relationship; and

(D) An agreement that each employer will license the salesperson with the director and pay the applicable fees.

(b) No undertaking is required where the employer, a single entity, is licensed in Oregon as both a broker-dealer and an investment adviser; and

(c) Any changes in employment by a salesperson which would result in requiring an undertaking or changing the existing undertaking must be immediately filed on a new undertaking form with the director.

(9) Unless disqualified for automatic licensing in Oregon pursuant to OAR 441-175-0140, the salesperson will be automatically licensed in Oregon upon meeting the requirements as stated in this rule.

(10) If automatic licensing occurs, the effective date of licensing in Oregon will be the Oregon approved date as shown on the CRD.

(11) If the salesperson is disqualified from automatic licensing under OAR 441-175-0140, the director will either approve the application, condition or restrict the license pursuant to 441-225-0030, or deny it pursuant to ORS 59.205 to 59.225. If the director denies the application, the salesperson will be notified of the facts forming the basis for the denial, the statutory grounds for the denial and the person's right to a hearing under ORS Chapter 183.

(12) A salesperson licensed under this rule is licensed in Oregon only for the same classification for which the salesperson is licensed with FINRA.

(13) If the application, the undertaking, any supporting material or any representations made to the director are inaccurate or incomplete in any material respect, the license shall be void.

(14) The license for a FINRA salesperson expires on December 31 of each year. The FINRA broker-dealer shall renew the salesperson's license as provided in ORS 59.185 and OAR 441-175-0160.

[ED. NOTE: Forms referenced available from the agency.]

Stat. Auth.: ORS 59.175 & 59.285

Stats. Implemented: ORS 59.165 & 59.175

Hist.: CC 4-1986(Temp), f. & ef. 1-16-86; CC 1-1987, f. & ef. 2-4-87; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0071; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; Administrative correction 12-4-97; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 9-2003, f. 12-30-03, cert. ef. 1-1-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 1-2012, f. & cert. ef. 7-9-12

#### **441-175-0140**

##### **Disqualification from Automatic Licensing**

(1) For purposes of this rule, principal means a person who is engaged in the management of an enterprise including supervision, solicitation, conduct of the enterprise, or training of persons associated with the enterprise. Principal includes sole proprietors, officers, partners, directors, and persons owning ten percent or more of the outstanding voting securities of the enterprise or of a control person of the enterprise.

(2) A person is not qualified for automatic licensing if the person:

(a) Has been a principal of a broker-dealer or state or federal covered investment adviser which has had its license or notice denied, suspended or revoked by the Director;

(b) Has had a license or notice suspended or revoked by the Director or a previous application for license denied by the Director;

(c) Has been convicted of or pleaded guilty or nolo contendere (no contest) to any felony;

(d) Has been convicted of or pleaded guilty or nolo contendere (no contest) to any misdemeanor involving investments or an investment-related business, fraud, false statements or omissions, wrongful taking of property or bribery, counterfeiting, extortion or gambling;

(e) Has been charged, either individually or as a member of an enterprise in which the person was a principal, with any felony or with a misdemeanor specified in subsection (d) of this section;

(f) Has been enjoined by a court in connection with any investment-related activity or has been found by a court to have violated investment-related statutes or regulations;

(g) Has been found by the Securities and Exchange Commission or the Commodity Futures Trading Commission:

(A) To have made a false statement or omission;

(B) To have violated investment-related statutes or regulations; or

(C) To have been a cause of an investment-related enterprise having its authorization to do business denied, suspended, revoked, or restricted.

(h) Has been the subject of an order by the Securities and Exchange Commission or the Commodity Futures Trading Commission denying, suspending, or revoking a registration or restricting activities;

(i) Has been found by any federal or state regulatory agency:

(A) To have made a false statement or omission or to have been dishonest, unfair, or unethical;

(B) To have violated investment-related statutes or regulations; or

(C) To have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted.

(j) Has been the subject of an order by any federal or state agency in connection with any investment-related activity;

(k) Has had any federal or state agency deny, suspend, or revoke a registration, license or notice or otherwise prevent the person from associating with an investment-related business or otherwise discipline the person by restriction of activities;

(l) Has had any federal or state agency revoke or suspend a professional license as an attorney, accountant, or public contractor;

(m) Has been found by any self-regulatory organization or commodities exchange:

(A) To have made a false statement or omissions;

(B) To have violated the rules of the self-regulatory organization or commodities exchange; or

(C) To have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted.

(n) Has been disciplined by expulsion or suspension from membership of any self-regulatory organization or commodities exchange;

(o) Has been barred or suspended from association with a member of a self-regulatory organization or commodities exchange;

(p) Has had activities restricted by any self-regulatory organization or commodities exchange;

(q) Has been the subject of an order issued by a foreign government, court, regulatory agency, or exchange relating to investments or fraud;

(r) Has been the subject of an investment-related complaint or proceeding initiated by a consumer which:

(A) Alleged sales practices violations which is still pending, resulted in an arbitration award or civil judgment against the applicant, regardless of amount, or was settled for an amount of \$10,000 or more; or

(B) Was settled or decided against the person individually or as part of a group for \$10,000 or more; or

(C) Within the past 24 months, alleged sales practices violations and compensatory damages of \$5,000 or more, or alleged forgery, theft, misappropriation or conversion of funds or securities.

(s) Is the subject of any complaint, investigation, or proceeding specified in subsections (2)(a) through (r) of this rule;

(t) Has been denied a securities-related bond or similar instrument, has had such a bond or similar instrument revoked, or has been the cause for payout on such a bond or similar instrument;

(u) Has any unsatisfied judgments or liens against the person;

(v) Has failed in business, made a compromise with creditors, filed a bankruptcy petition, or been declared bankrupt;

(w) Has been a principal of a firm which failed in business, made a compromise with creditors, filed a bankruptcy petition, was declared bankrupt, had a trustee appointed under the Securities Investors Protection Act, or had a direct payment procedure initiated; or

(x) Has been discharged or permitted to resign based on allegations of:

(A) Violations of investment-related statutes, regulations, rules, or investment industry standards of conduct;

(B) Fraud or the wrongful taking of property; or

(C) Failure to supervise in connection with investment-related statutes, regulations, rules, or investment industry standards of conduct.

Stat. Auth.: ORS 59.175 & 59.285

Stats. Implemented: ORS 59.175 & 59.205

Hist.: CC 5-1986(Temp), f. & ef. 1-16-86; CC 1-1987, f. & ef. 2-4-87; Renumbered from 815-030-0072; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 7-2000; f. & cert. ef. 6-2-00

#### **441-175-0150**

##### **Termination or Cancellation of Salesperson or Investment Adviser Representative License**

(1) A salesperson's or investment adviser representative's license with a broker-dealer, state or federal covered investment adviser, issuer or owner, ("employer"), may be terminated at any time by either the salesperson or investment adviser representative, or the employer.

(2) The employer shall provide the director and the terminated person with written notice of the termination on a Form U-5 within 30 days of the termination, accurately describing the reason for the termination pursuant to ORS 59.370(2), with notice to the director being provided as follows:

(a) If the employer is a FINRA broker-dealer, the notice shall be filed with the CRD;

(b) If the employer is a state or federal covered investment adviser and the investment adviser representative's application was filed through IARD, the notice shall be filed with IARD;

(c) All other employers shall file the notice with the director.

(3) The salesperson or investment adviser representative may provide the director and the former employer with written notice of the termination in any form at any time.

(4) The status of the license of a salesperson or investment adviser representative licensed pursuant to OAR chapter 441, division 175 is dependent upon the status of the employer. Therefore, without further action by the director:

(a) The suspension of the license or notice of the employer suspends the license of the salesperson or investment adviser representative, however, the end of suspension of the license or notice of the employer automatically reinstates the license of the salesperson or investment adviser representative;

(b) The revocation, cancellation, withdrawal or expiration of the license or notice of the employer cancels the license of the salesperson or investment adviser representative;

(c) The suspension of the registration of securities suspends the license of the salesperson licensed to the issuer or owner of the securities; and

(d) The revocation, cancellation, withdrawal or expiration of the registration of securities cancels the license of the salesperson licensed to the issuer or owner of the securities.

(5) Pursuant to OAR 441-014-0060, the director may immediately suspend or refuse to renew a salesperson or investment adviser representative license, without prior opportunity for a hearing, upon a showing of a danger to the public health or safety; however, the affected party shall be entitled to a post-action hearing.

Stat. Auth.: ORS 59.175, 59.185, 59.285 & 59.370

Stats. Implemented: ORS 59.175, 59.185 & 59.225

Hist.: CC 6-1986(Temp), f. & ef. 1-16-86; CC 1-1987, f. & ef. 2-4-87; Renumbered from 815-030-0073; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 7-2000; f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 12-2001, f. 12-27-01, cert. ef. 1-1-02; FCS 1-2012, f. & cert. ef. 7-9-12

#### **441-175-0160**

##### **Renewal of FINRA Broker-Dealer and Salesperson Licenses**

(1) The licenses of a FINRA broker-dealer and all affiliated salespersons expire on December 31, unless otherwise renewed pursuant to this rule.

(2) To renew a license, a FINRA broker-dealer must submit the following items to the FINRA/CRD:

(a) A broker-dealer renewal fee as set in OAR 441-175-0002; and

(b) A salesperson renewal fee as set in OAR 441-175-0002 for each salesperson to be renewed.

(3) Failure to file a complete renewal application prior to December 31 shall result in termination of the broker-dealer license and all affiliated salesperson licenses as of December 31.

(4) If a FINRA broker-dealer satisfies the director that failure to file a complete renewal application prior to December 31 was due to inadvertent oversight and, the FINRA broker-dealer does complete the renewal application by January 31, the director shall reinstate the effected licenses.

Stat. Auth.: ORS 59.185 & 59.285

Stats. Implemented: ORS 59.185

Hist.: CC 7-1986(Temp), f. & ef. 1-16-86; CC 1-1987, f. & ef. 2-4-87; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0074; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; Administrative Correction 12-4-97; FCS 7-2000; f. & cert. ef. 6-2-00; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 1-2012, f. & cert. ef. 7-9-12

#### **441-175-0165**

##### **Renewal of the Licenses of Non-FINRA Broker-Dealers or State Investment Advisers, and Their Salespersons or Investment Adviser Representatives**

(1) The licenses of a non-FINRA broker-dealer or state investment adviser (employer), and the licenses of their salespersons or investment adviser representatives, expire 12 months following the date of original licensing or last renewal of the license of the employer unless otherwise renewed pursuant to this rule. Provided, however, that any license of a state investment adviser or investment adviser representative who has filed an application through IARD will expire on December 31 of each year unless renewed through IARD.

(2) In order to prevent automatic expiration of an order of licensing or renewal, an applicant for renewal should file a complete application no less than 30 days prior to the expiration date of the current order of licensing or renewal. Applications not timely filed will be processed, but no assurance can be given that an order of renewal will be issued prior to expiration of a previous order.

(3) Incomplete applications will not be processed.

(4) To renew a license, a state or federal covered investment adviser which has previously licensed through IARD must submit the following items to the IARD, to the extent the IARD is capable of accepting those items, and otherwise to the director:

(a) An employer renewal fee as set in OAR 441-175-0002;

(b) A renewal fee as set in OAR 441-175-0002 for each licensed investment adviser representative;

(c) Any amendments to Form ADV or Form U-4, pursuant to OAR 441-175-0105, which have not previously been submitted.

(5) To renew a license, a non-FINRA broker-dealer must submit the following items to the director:

(a) A non-FINRA broker-dealer renewal form;

(b) An amended Form BD or ADV, pursuant to OAR 441-175-0105, if there have been material changes since the most recent filing of the appropriate form;

(c) The name of the person who is the supervisor of the employer's operations. When a new supervisor is appointed, the employer must file the change with the director;

(d) A salesperson renewal form for each salesperson to be renewed, signed by both the salesperson and the employer;

(e) An employer renewal fee as set in OAR 441-175-0002, except as provided in section (7) of this rule;

(f) A salesperson renewal fee as set in OAR 441-175-0002 for each salesperson to be renewed, except as provided in section (7) of this rule; and

(6) If the applicant for renewal is an Oregon based state investment adviser, the renewal applicant must submit the following financial information:

(a) If the investment adviser has or will have custody of client funds or securities, or will require payment of advisory fees six months or more in advance and in excess of \$500 per client, the latest annual balance sheet which must be audited by an "independent accountant," as defined pursuant to OAR 441-175-0010(8);

(b) For all other investment advisers, the latest annual balance sheet which may be audited, reviewed or compiled, prepared by an "independent accountant," as defined pursuant to OAR 441-175-0010(8); and

(c) If the latest annual balance sheet and statement of income or operations is not current within 90 days of renewal, an interim balance sheet must be submitted.

(7) Any federal or state investment adviser transitioning onto IARD shall pay a prorated renewal fee for the employer and any previously licensed investment adviser representative in the year of the transition calculated from the month the existing notice filing or license expires, as shown in the following table: [Table not included. See ED. NOTE.]

[ED. NOTE: Table referenced are available from the agency.]

Stat. Auth.: ORS 59.175(1), 59.205(2) & 59.285

Stats. Implemented: ORS 59.175(1), 59.185 & 59.205

Hist.: FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 8-1994, f. & cert. ef. 6-1-94; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 8-2010, f. 6-22-10, cert. ef. 7-1-10; FCS 1-2012, f. & cert. ef. 7-9-12

#### **441-175-0171**

##### **Use of Trade Name or Assumed Business Name**

(1) Each person holding a license or applying for a license issued under ORS 59.005 to 59.370, who desires to operate under a trade name or an assumed business name must submit the following to the Director for each name to be used:

(a) A completed application, with an original signature, on a form approved by the Director; and

(b) A non-refundable filing fee as set in OAR 441-175-0002.

(2) An order issued by the Director authorizing the licensee to operate under the trade name or assumed business name shall remain in effect until the order is:

(a) Suspended or revoked pursuant to ORS 59.205; or

(b) Cancelled pursuant to ORS 59.225.

(3)(a) Any person using a trade name or assumed business name pursuant to an order issued by the Director must, within 30 days after any change of information, notify the Director in writing of any change in address, contact name, phone number or fax number.

(b) Any person making a change in the trade name or assumed business name must submit a new notice and filing fee as provided in Section (1) of this rule.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.015(8), 59.175(7) & 59.175(8)

Hist.: FCS 2-1999, f. & cert. ef. 11-8-99; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

#### **441-175-0175**

##### **Internet Communications**

(1) Scope of rule. This rule applies to dissemination by firms or individuals of information about securities-related services or products on the Internet, except for any firms or individuals located in Oregon. As used in this section, the term "Internet" is to be construed liberally to include all proprietary or common carrier electronic systems or similar media.

(2) Solely disseminating information on the Internet concerning securities-related services or products offered by a firm or individual shall not be deemed to be "transacting business" in this state for purposes of ORS 59.165(1), provided the Internet communication:

(a) Is limited to general information on products or services;

(b) Prominently and conspicuously states that the firm or individual may only transact business in this state if first licensed or excluded from licensing requirements;

(c) Clearly states that follow-up, individualized responses to persons in this state using any contact method by such firm or individual, that involve either the effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, will not be made absent compliance with Oregon licensing requirements or a valid exclusion from licensing; and

(d) Contains mechanisms, including and without limitation, technical firewalls or other implemented policies and procedures, designed reasonably to ensure that prior to any subsequent, direct communication with prospective customers or clients in this state, said firm or individual has completed any applicable licensing or notice filing process in this state, or qualifies for an exclusion from such requirement.

(3) In the case of an individual who is a broker-dealer salesperson or an investment adviser representative, the Internet communication must further:

(a) Be authorized by the firm with which the individual is affiliated;

(b) Clearly disclose the affiliation with the broker-dealer or investment adviser firm;

(c) Be within the scope of authority granted to the individual by his or her firm; and

(d) Be reviewed and approved for content by a principal of the broker-dealer or investment adviser firm.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.165

Hist.: FCS 7-2000, f. & cert. ef. 6-2-00

## **DIVISION 195**

### **RECORDS AND REPORTS**

#### **441-195-0010**

##### **Customer and Account Records by Broker-Dealers**

(1) Every broker-dealer shall make and keep current a record for each account with a natural person as a customer or owner, which record shall state the customer's or account owner's name, address, tax identification or social security number, telephone number, date of birth, employment status (including occupation and whether the customer is an associated person of a broker-dealer), annual income, net worth (excluding value of primary residence), the account's investment objectives, and whether the account includes the signatures of the associated person regularly handling the account and a supervisor designated pursuant to OAR 441-205-0210(2). In the case of a joint account, the account record must include personal information for each joint owner who is a natural person; however, financial information for the individual joint owners may be combined. For accounts in existence on the effective date of this amended rule, this information must be obtained no later than May 2, 2006.

(2) Any item of information required by section (1) of this rule need not be contained in the customer's record if, after reasonable inquiry, the customer declines, neglects, or is unable to furnish or update such item of information and a statement to that effect is placed in such record.

(3) Every broker-dealer shall make and keep current a record indicating that:

(a) No later than May 2, 2006 for customers existing as of May 2, 2003, and no later than 30 days of the opening of an account for new customers since May 2, 2003, and thereafter at intervals no greater than 36 months, each customer or account owner was furnished with a copy of the account record or an alternate document with all information required by section (1) of this rule. This document may be mailed with the account statement, and may exclude any tax identification number and date of birth. The broker-dealer shall include an explanation of any terms regarding investment objectives, and shall include or accompany the document with prominent statements that the customer or owner should mark any corrections and return the account record or alternate document to the broker-dealer, and that the customer or owner should notify the broker-dealer of any future changes to information contained in the account record;

(b) For each account record updated to reflect a customer or account owner change of name or address, the broker-dealer sent a notification of that change to the customer's old address, or to each joint owner, and the associated person, if any, responsible for that account, no later than 30 days after the broker-dealer received notice of the change;

(c) For each change in the account's investment objectives the broker-dealer has furnished to each customer or owner and the associated person, if any, responsible for that account a copy of the updated customer account record or alternate document with all information required to be furnished in subsection (a) of this section no later than 30 days after the broker-dealer received notice of the change or after the account was updated for any reason other than the broker-dealer receiving notice of the change. The broker-dealer may elect to send this notification with the next statement scheduled to be mailed to the customer or owner;

(d) Each customer or account owner was furnished with a copy of each written agreement entered into on or after May 2, 2003 pertaining to that account and that, if requested by the customer or account owner, the customer or account owner was furnished with a fully executed copy of each agreement;

(e) Each customer of the broker-dealer has been provided with a notice containing the address and telephone number of the broker-

dealer's department to which any account-related complaints may be directed.

(4) Every broker-dealer shall make and keep current a record with respect to each discretionary account which shall include the dated signature of each customer or account owner granting the authority and the dated signature of each natural person to whom discretionary authority was granted.

(5) The account record requirements in section (1) of this rule and the furnishing requirement in subsection (3)(a) of this rule apply only to accounts for which the broker-dealer is, or within the preceding 36 months has been, required to make a suitability determination under federal securities laws or the requirements of a self-regulatory organization of which it is a member.

(6) Every broker-dealer shall make and keep current, as to each office, the books and records described in this rule. For purposes of this rule, "office" means any location where one or more associated persons regularly conduct the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security.

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.195

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0195 and 815-030-0081; FCS 1-2004, f. & cert. ef. 5-19-04

#### **441-195-0020**

##### **Business Records by Broker-Dealers**

(1) Every broker-dealer shall make and keep current the following books and records relating to its business:

(a) Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. Such records shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered;

(b) Ledgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts;

(c) Ledger accounts (or other records) itemizing separately as to each cash and margin account of every customer and of such broker-dealer and partners thereof, all purchases, sales, receipts, and deliveries of securities and commodities for such accounts and all other debits and credits to such account;

(d) Ledgers (or other records) reflecting the following:

(A) Securities in transfer;

(B) Dividends and interest received;

(C) Securities borrowed and securities loaned;

(D) Monies borrowed and monies loaned (together with a record of the collateral therefor and any substitutions in such collateral); and

(E) Securities failed to receive and failed to deliver.

(e) A securities record or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in safekeeping) carried by such broker-dealer for its account or for the account of its customers or brokers and showing the location of all securities long and the offsetting position to all securities short, including long security count differences and short security count differences classified by the date of the physical count and verification in which they were discovered and, in all cases, the name or designation of the account in which each position is carried;

(f) A memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. Such memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof, the account for which entered, the time the order was received, the time of entry, the price at which executed, the identity of each associated person, if any, responsible for the account, the identity of any other person who entered or accepted the order on behalf of the customer or, if a customer entered the order on an electronic system, a notation of that entry, and, to the extent feasible, the time of execution or cancellation. The memorandum need not show the identity of any person, other than the associated person responsible for the account, who may have entered or accepted the order if the order is entered into an electronic system that generates the memorandum and if that system is not capable of receiving an

entry of the identity of any person other than the responsible associated person; in that circumstance, the broker-dealer shall produce upon request by the director a separate record which identifies each other person. Orders entered pursuant to the exercise of discretionary power by such broker-dealer, or any employee thereof, shall be so designated. The term "Instruction" shall include instructions between partners and employees of a broker-dealer. The term "Time of Entry" shall mean the time when such broker-dealer transmits the order or instruction for execution;

(g) A memorandum of each purchase and sale of securities for the account of such broker-dealer showing the price and, to the extent feasible, the time of execution; and, in addition, where such purchase or sale is with a customer other than a broker-dealer, a memorandum of each order received, showing the time of receipt, the terms and conditions of the order and of any modification thereof, the account in which it was entered, the identity of each associated person, if any, responsible for the account, the identity of any other person who entered or accepted the order on behalf of the customer or, if a customer entered the order on an electronic system, a notation of that entry. The memorandum need not show the identity of any person other than the associated person responsible for the account who may have entered or accepted the order if the order is entered into an electronic system that generates the memorandum and if that system is not capable of receiving an entry of the identity of any person other than the responsible associated person; in that circumstance, the broker-dealer shall produce upon request by the director a separate record which identifies each other person. An order with a customer other than a broker-dealer entered pursuant to the exercise of discretionary authority by the broker-dealer, or associated person thereof, shall be so designated;

(h) Copies of confirmations of all purchases and sales of securities and copies of notices of all other debits and credits for securities, cash, and other items for the account of customers and partners of such broker-dealer;

(i) A record in respect of each cash and margin account with such broker-dealer containing the name and address of the beneficial owner of such account and, in the case of a margin account, the signature of such owner; provided that, in the case of a joint account or an account of a corporation, such records are required only in respect of the person or persons authorized to transact business for such account;

(j) A record of all puts, calls, spreads, straddles, and other options in which such broker-dealer has any direct or indirect interest or which such broker-dealer has granted or guaranteed, containing, at least, an identification of the security and the number of units involved;

(k) A record of the proof of money balances of all ledger accounts in the form of trial balances, and a record of the computation of aggregate indebtedness and net capital, as of the trial balance date;

(l) A questionnaire or application for employment executed by each partner, officer, director, branch manager, or any employee, except any person associated with a broker-dealer whose functions are solely clerical or ministerial, which questionnaire or application shall be approved in writing by an authorized representative of such broker-dealer and shall contain at least the following information with respect to such person:

(A) The associated person's name, address, Social Security number, date of birth and the starting date of the associated person's employment or other association with the broker-dealer;

(B) A complete consecutive statement of all the associated person's business connections for at least the preceding ten years, including whether the employment was part-time or full-time;

(C) A record of any denial of membership or registration, and of any disciplinary action taken, or sanction imposed upon the associated person by any federal or state agency, or by any national securities exchange or national securities association, including any finding that the associated person was a cause of any disciplinary action or had violated any law;

(D) A record of any denial, suspension, expulsion or revocation of membership, or registration of any broker-dealer with which the associated person was associated in any capacity when such action was taken;

(E) A record of any permanent or temporary injunction entered against the associated person or any broker-dealer with which the associated person was associated in any capacity at the time such injunction was entered;

(F) A record of any arrest or indictment for any felony, or any misdemeanor pertaining to securities, commodities, banking, insurance or real estate (including, but not limited to, acting or being associated with a broker-dealer, investment company, investment adviser, futures sponsor, bank, or savings and loan association), fraud, false statements or omissions, wrongful taking of property or bribery, forgery, counterfeiting or extortion, and the disposition of the foregoing;

(G) A record of any other name or names by which the associated person has been known or which the associated person has used; provided, however, that if such associated person has been registered as a registered representative of such broker-dealer, or the associated person's employment has been approved by, the Financial Industry Regulatory Authority, the American Stock Exchange LLC, the NASDAQ OMX BX, the Chicago Stock Exchange, Inc., the New York Stock Exchange, Inc., the NASDAQ OMX PHLX, LLC, the Chicago Board Options Exchange, Inc., the National Stock Exchange, Inc. or the International Securities Exchange, then retention of a full, correct, and complete copy of any and all applications for such registration or approval shall be deemed to satisfy the requirements of section (1) of this rule;

(m) Fingerprint records together with any information received from the United States Attorney General or its designee for every person required to be fingerprinted under the Securities Exchange Act of 1934;

(n) A record as to each associated person of each written customer complaint received by the broker-dealer concerning that associated person. The record shall include the complainant's name, address, and account number; the date the complaint was received; the name of any other associated person identified in the complaint; a description of the nature of the complaint; and the disposition of the complaint. Instead of the record, a broker-dealer may maintain a copy of each original complaint in a separate file by the associated person named in the complaint along with a record of the disposition of the complaint;

(o) A record listing every associated person of the broker-dealer which shows, for each associated person, every office of the broker-dealer where the associated person regularly conducts the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security for the broker-dealer, and the Central Registration Depository number, if any, and every internal identification number or code assigned to that person by the broker-dealer;

(p) A record as to each associated person listing each purchase and sale of a security attributable, for compensation purposes, to that associated person. The record shall include the amount of compensation if monetary and a description of the compensation if non-monetary. In lieu of making this record, a broker-dealer may elect to produce the required information promptly upon request of the director;

(q) A record of all agreements pertaining to the relationship between each associated person and the broker-dealer including a summary of each associated person's compensation arrangement or plan with the broker-dealer, including commission and concession schedules and, to the extent that compensation is based on factors other than remuneration per trade, the method by which the compensation is determined;

(r) A record, which need not be separate from the advertisements, sales literature, or communications, documenting that the broker-dealer has complied with, or adopted policies and procedures reasonably designed to establish compliance with, applicable federal requirements and rules of a self-regulatory organization of which the broker-dealer is a member that require advertisements, sales literature, or any other communications with the public by a broker-dealer or its associated persons be approved by a principal;

(s) A record for each office listing, by name or title, each person at that office who, without delay, can explain the types of records the firm maintains at that office and the information contained in those records;

(t) A record listing each principal of the broker-dealer responsible for establishing policies and procedures that are reasonably designed to ensure compliance with any applicable federal requirements or rules of a self-regulatory organization of which the broker-dealer is a member that require acceptance or approval of a record by a principal.

(u) The following record regarding any internal broker-dealer system of which such broker-dealer is the sponsor:

(A) A record of the broker-dealer's customers that have access to the system (identifying any affiliations between such customers and the broker-dealer);

(B) Daily summaries of trading in the system, including securities for which transactions have been executed through use of such system and transaction volume (separately stated for trading occurring during hours when consolidated trade reporting facilities are and are not in operation); and

(C) Time-sequenced records of each transaction effected through the system, including date and time executed, price, size, security traded, counterparty identification information, and method of execution (if the system allows alternative means or locations for execution, such as routing to another market, matching with limit orders, or executing against the quotations of the broker-dealer sponsoring the system).

(2) This rule shall not be deemed to require a member of a national securities exchange to make or keep such records of transactions cleared for such member by another member as are customarily made and kept by the clearing member.

(3) This rule shall not be deemed to require a broker-dealer to make or keep such records as are required by section (1) of this rule reflecting the sale of U.S. Tax Savings Notes, U.S. Defense Savings Stamps, or U.S. Defense Savings Bonds, Series E, F, and G.

(4) The records specified in section (1) of this rule shall not be required with respect to any cash transaction of \$100 or less involving only subscription rights or warrants which by their terms expire within 90 days after the issuance thereof.

(5) Every broker-dealer shall make and keep current, as to each office, the books and records described in subsections (1)(a), (1)(f), (1)(g), and (1)(l) through (1)(s) of this rule. For purposes of this rule, "office" means any location where one or more associated persons regularly conduct the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security.

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.195

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0195.1-1 and 815-030-0085; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 1-2012, f. & cert. ef. 7-9-12

#### **441-195-0030**

##### **Records to be Preserved by Certain Broker-Dealers**

(1) Every broker-dealer subject to OAR 441-195-0020 shall preserve for a period of not less than six years all records required to be made pursuant to 441-195-0020(1)(a), (b), (c), (e), (f), (s), (t), and analogous records created pursuant to 441-195-0020(5). The records for the most recent two years shall be kept in an easily accessible place.

(2) Every such broker-dealer shall preserve for a period of not less than three years, with the most current two years being kept in an easily accessible place:

(a) All records required to be made pursuant to OAR 441-195-0020(1)(d), (f), (g), (h), (i), (j), (n), (p), (r), (u), and analogous records made pursuant to 441-195-0020(5);

(b) All checkbooks, bank statements, canceled checks, and cash reconciliations;

(c) All bills receivable or payable (or copies thereof), paid or unpaid, relating to the business of such broker-dealer, as such;

(d) Originals of all communications received and copies of all communications sent (and any approvals thereof) by such broker-dealer (including interoffice memoranda and communications) relating to its business as such, including all communications which are subject to rules of a self-regulatory organization of which the broker-dealer is a member regarding communications with the public. As used in this subsection, the term communications includes sales scripts;

(e) All trial balances, computations of aggregate indebtedness and net capital (and working papers in connection therewith), financial statements, branch office reconciliations and internal audit working papers, relating to the business of such broker-dealer, as such;

(f) All guarantees of accounts and all powers of attorney and other evidence of the granting of any discretionary authority given in respect of any account, and copies of resolutions empowering an agent to act on behalf of a corporation;

(g) All written agreements (or copies thereof) entered into by such broker-dealer relating to its business as such, including agreements with respect to any account;

(h) All notices relating to an internal broker-dealer system provided to the customers of the broker-dealer that sponsors such internal broker-dealer system. Notices, whether written or communicated through the internal broker-dealer trading system or other automated means, shall be preserved under this subsection if they are provided to all customers with access to an internal broker-dealer system, or to one or more classes of customers. Examples of notices to be preserved under this subsection include, but are not limited to, notices addressing hours of system operations, system malfunctions, changes to system procedures, maintenance of hardware and software, and instructions pertaining to access to the internal broker-dealer system.

(3) Every broker-dealer shall preserve for a period of not less than six years after the closing of any customer's account any account cards or records which relate to the terms and conditions with respect to the opening and maintenance of such account.

(4) Every broker-dealer shall preserve during the life of the enterprise and of any successor enterprise all partnership articles or, in the case of a corporation, all Articles of Incorporation or Charter, minute books and stock certificate books (or, in the case of any other form of legal entity, all records such as articles of organization or formation, and minute books used for a purpose similar to those records required for corporations or partnerships), all Forms BD, all Forms BDW, all amendments to these forms, and all licenses or other documentation showing the registration of the broker-dealer with any securities regulatory authority.

(5) Every broker-dealer shall maintain and preserve in an easily accessible place:

(a) All records required under OAR 441-195-0020(1)(l) and (1)(o) until at least three years after the associated person has terminated the associated person's employment and any other connection with the broker-dealer;

(b) All records required under OAR 441-195-0020(1)(m) until at least three years after the termination of employment or association of those persons required to be fingerprinted under the Securities Exchange Act of 1934;

(c) All account record information required pursuant to OAR 441-195-0010(1), (3) and (4) until at least six years after the earlier of the date the account was closed or the date on which the information was replaced or updated;

(d) Each report which a securities regulatory authority has requested or required the broker-dealer to make and furnish to it pursuant to an order or settlement, and each securities regulatory authority examination report until three years after the date of the report;

(e) Each compliance, supervisory, and procedures manual, including any updates, modifications, and revisions to the manual, describing the policies and practices of the broker-dealer with respect to compliance with applicable laws and rules, and supervision of the activities of each natural person associated with the broker-dealer until three years after the termination of the use of the manual;

(f) All reports produced to review for unusual activity in customer accounts until eighteen months after the date the report was generated. In lieu of maintaining the reports, a broker-dealer may produce promptly the reports upon request by the director. If a report was generated in a computer system that has been changed in the most recent eighteen month period in a manner such that the report cannot reproduced using historical data in the same format as it was originally generated, the report may be produced by using the historical data in the current system, but must be accompanied by a record explaining each system change which affected the reports.

(6) The records required to be maintained and preserved pursuant to OAR 441-195-0010, 441-195-0020 and this rule may be immediately produced or reproduced on microfilm, microfiche, or any similar medium, or on any digital storage medium or system, and may be maintained and preserved for the required time in that form. If such substitution for hard copy is made by a broker-dealer, it shall:

(a) At all times have available for examination of its records facilities for immediate, easily readable projection or production of the media or images and for producing easily readable images;

(b) Arrange the records and index in such a manner as to permit the immediate location of any particular record;

(c) Be ready at all times to provide, and immediately provide, any facsimile enlargement which may be requested; and

(d) Store separately from the original one other copy of the substitute storage media for the time required.

(7) If a person who has been subject to OAR 441-195-0020 ceases to be licensed pursuant to ORS 59.165 or such other statute dealing with licensing, such person shall, for the remainder of the periods of time specified in this rule, continue to preserve the records which it theretofore preserved pursuant to this rule.

(8) Every broker-dealer shall furnish promptly to the director legible, true, complete, and current copies of those records of the broker-dealer that are required to be preserved under this rule, or any other records of the broker-dealer that are requested by the director.

(9) Records for the most recent two year period required to be made pursuant to OAR 441-195-0010(6) and subsections (2)(d) and (5)(d) of this rule which relate to an office shall be maintained at the office to which they relate. If an office is a private residence where only one associated person (or multiple associated persons who reside at that location and are members of the same immediate family) regularly conducts business, and it is not held out to the public as an office nor are funds or securities of any customer of the broker-dealer handled there, the broker-dealer need not maintain records at that office, but the records must be maintained at another location within the same state as the broker-dealer may select. Rather than maintain the records at each office, the broker-dealer may choose to produce the records promptly at the request of the director at the office to which they relate or at another location agreed to by the director.

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.195

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0195.1-2 and 815-030-0090; FCS 1-2004, f. & cert. ef. 5-19-04

#### **441-195-0040**

##### **Books and Records to Be Maintained by Investment Advisers**

(1) Every investment adviser shall make and keep true, accurate, and current the following books and records relating to his investment advisory business:

(a) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger;

(b) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts;

(c) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from a client concerning the purchase, sale, receipt or delivery of a particular security and of any modification or cancellation of any such order or instruction. Such memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed such order; and shall show the account for which entered, the date of entry and the bank or broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated;

(d) All checkbooks, bank statements, canceled checks and cash reconciliations of the investment adviser;

(e) All bills or statements (or copies thereof) paid or unpaid, relating to the business of the investment adviser as such;

(f) All trial balances, financial statements and internal audit working papers relating to the business of such investment adviser;

(g) Originals of all written communications received and copies of all written communications sent by such investment adviser relating to:

(A) Any recommendation made or proposed to be made and any advice given or proposed to be given;

(B) Any receipt, disbursement or delivery of funds or securities; or

(C) The placing or execution of any order to purchase or sell any security; provided, however, that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser; and provided that, if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication, or other investment advisory service to more than ten persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent, except that if such notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy

of such notice, circular or advertisement a memorandum describing the list and the source thereof;

(h) A list or other record of all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities, or transactions of any client;

(i) All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser, or copies thereof;

(j) All written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such;

(k) A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication recommending the purchase or sale of a specific security which the investment adviser circulates or distributes, directly or indirectly, to ten or more persons (other than investment supervisory clients or persons connected with such investment adviser), and if such notice, circular, advertisement, newspaper articles, investment letter, bulletin, or other communication does not state the reasons for such recommendation, a memorandum of the investment adviser indicating the reasons therefor.

(2) If an investment adviser has custody or possession of securities or funds of any client, the records required to be made and kept under section (1) of this rule shall include:

(a) A journal or other record showing all purchases, sales, receipts, and deliveries of securities (including certificate numbers) for such accounts and all other debits and credits to such accounts;

(b) A separate ledger account for each such client showing all purchases, sales receipts and deliveries of securities, the date and price of each such purchase or sale and all debits and credits;

(c) Copies of confirmations of all transactions effected by or for the account of any such client;

(d) A record for each security in which any such client has a position, which record shall show the name of each such client having any interest in such security, the amount of the interest of each such client and the location of each such security.

(3) Every investment adviser who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:

(a) Records showing separately for each such client the securities purchased and sold and the date, amount and price of each such purchase or sale;

(b) For each security in which any such client has a current position, information from which the investment adviser can promptly furnish the name of each such client and the current amount of the interest of such client.

(4) Any books or records required by this section may be maintained by the investment adviser in such manner that the identity of any client to whom such investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

(5)(a) All books and records required to be made under the provisions of section (1) to subsection (3)(a) of this rule, inclusive, of this rule shall be maintained and preserved in an easily accessible place for a period of not less than six years from the end of the fiscal year during which the last entry was made on such record. The records for the most recent two years shall be kept in an appropriate office of the investment adviser;

(b) Charter documents, minute books and stock certificate books of the investment adviser and of any predecessor shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.

(6) An investment adviser, before ceasing to conduct or discontinue business as an investment adviser, shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this rule for the remainder of the period specified in this rule.

(7) The records required to be maintained and preserved pursuant to this rule may be immediately produced or reproduced on microfilm and may be maintained and preserved for the required time in that form. If such microfilm substitution for hard copy is made by an investment adviser, he shall:

(a) At all times have available for examination of his records facilities for immediate, easily readable projection of the microfilm and for producing easily readable facsimile enlargements;

(b) Arrange the records and index and file the films in such a manner as to permit the immediate location of any particular records;

(c) Be ready at all times to provide, and immediately provide, any facsimile enlargement which may be requested; and

(d) Store separately from the original one other copy of the microfilm for the time required.

(8)(a) Any book or other record made, kept, maintained and preserved in compliance with OAR 441-195-0020 and 441-195-0030, which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this rule, shall satisfy the requirements of this rule;

(b) A record made and kept pursuant to any provision of section (1) of this rule, which contains all the information required under any other provision of section (1) need not be maintained in duplicate in order to meet the requirements of the other provisions of section (1) of the rule.

(9) As used in this rule, the terms "Power of Attorney" and "Discretionary Authority" do not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.195

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0195.1-3 and 815-030-0095

#### **441-195-0050**

##### **Reports by Broker-Dealers and Investment Advisers**

(1) General Rule. Every broker-dealer and every investment adviser who takes any discretionary authority from any investment advisory client to execute transactions or has custody of any investment advisory client's securities or funds, shall file reports of financial conditions containing the information required by a form to be supplied or approved by the Director, as follows:

(a) The report shall be filed annually reflecting the financial condition as of the end of the fiscal year;

(b) Whenever the Director so requires, an interim report shall be filed as of the date and within the period specified by the Director.

(2) Nature and Form of Reports. Each report of financial condition filed pursuant to section (1) of this rule shall be prepared and filed in accordance with the following requirements:

(a) The report required by subsections (1)(a) and (b) of this rule of a broker-dealer or investment adviser shall be certified by a certified public accountant or a public accountant who shall be in fact independent; provided, however, that such report need not be certified if such broker-dealer or investment adviser is a member of the National Association of Securities Dealers and since the date of the previous financial statement or report filed pursuant to this rule:

(A) Said broker-dealer or investment adviser has not transacted a business in securities directly with or for other than members of a national securities exchange, has not carried any margin account, credit balance or security for any person other than a general partner and has not been required to file a certified financial statement with any national securities exchange; or

(B) His or its securities business has been limited to acting as broker (agent) for the issuer, said broker-dealer has promptly transmitted to such issuer all funds and promptly delivered to the subscriber all securities received in connection therewith and said broker-dealer has not otherwise held funds or securities for or owed money or securities to customers; or

(C) His or its securities has been limited to buying and selling evidences of indebtedness secured by mortgage, deed of trust, or other lien upon real estate or leasehold interest and said broker-dealer has not carried any margin account, credit balance or security for any securities customer. A broker-dealer or investment adviser who files a report which is not certified shall include in the oath or affirmation required by subsection (2)(b) of this rule a statement of the facts and circumstances relied upon as a basis for exemption from the certification requirements.

(b) Attached to the report shall be an oath or affirmation that, to the best knowledge and belief of the person making such oath or affirmation:

(A) The financial statement and supporting schedules are true and correct; and

(B) Neither the broker-dealer nor investment adviser, nor any partner, officer or director, as the case may be, has any proprietary interest in any account classified solely as that of a customer. The oath or affirmation shall be made before a person duly authorized to administer such oaths or affirmations. If the broker-dealer or investment adviser is a sole proprietorship, the oath or affirmation shall be made by the proprietor; if a partnership, by a general partner; or if a corporation, by a duly authorized officer.

(3) Extension of Time for Filing Reports. In the event any broker-dealer or investment adviser finds that he cannot file his report for any year within the time specified in section (1) of this rule without undue hardship, he may file with the Director an application for an extension of time to a specified date which shall not be more than 90 days after the date as of which financial condition is reported. The application shall state the reasons for the requested extension and shall contain an agreement to file the report on or before the specified date. The application shall be deemed granted unless the Director, within ten days after receipt thereof, enters an order denying the application.

(4) Exemption. The provisions of section (1) of this rule shall not apply to any broker-dealer registered under the Securities Exchange Act of 1934, provided that such broker-dealer files with, or transmits for filing to, the Director a copy of such report on Form X-17A-5 (or any form in substitution therefor) filed with the Securities and Exchange Commission and verified as provided in section (2) of this rule, not later than the date on which such report is required to be filed with the Securities and Exchange Commission.

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.195

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0195.2 and 815-030-0100

#### **441-195-0060**

##### **Notice of Complaint**

(1) Each broker-dealer and each investment adviser who has filed a complaint against any of its partners, officers, directors, or associated persons registered in Oregon, with any law enforcement agency, any other regulatory agency having jurisdiction over the securities industry, or with any bonding company regarding any loss arising from alleged acts of such person, shall send a copy of such complaint to the Director within ten days following its filing with such other agency or bonding company.

(2) A copy of any finding, censure, fine, suspension, or expulsion made as a result of any such complaint shall be filed with the Director within ten days following such action.

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.195, 59.205 & 59.235

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0195.2-1, 7-1-76 and 815-030-0105

#### **441-195-0070**

##### **Discretionary Authority**

(1) No broker-dealer, or any associated person, shall exercise any discretionary power or authority for any customer unless such customer has given prior written authorization to exercise such power or authority to a stated associated person or persons.

(2) This rule shall not apply to transactions in which the broker-dealer's discretion is limited to the price at which or the time when an order given by a customer for the purchase or sale of a definite amount of a specified security shall be executed.

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.135 & 59.205

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0200 and 815-030-0110

### **DIVISION 205**

#### **DENIAL, SUSPENSION, OR REVOCATION OF LICENSE**

#### **441-205-0010**

##### **Dishonest, Fraudulent, Unfair and Unethical Practices**

As used in section (2) of ORS 59.205, the terms "dishonest, fraudulent, or illegal practices or conduct," and "unfair or unethical practices or conduct," separately or in any combination thereof, shall include, but not be limited to, those acts defined herein as "manipulative, deceptive, or fraudulent device or contrivance" or "fraudulent, deceptive or manipulative act or practice."

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.205(2)

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0205.2 and 815-030-0115

#### **441-205-0020**

##### **General Definition**

"Manipulative, Deceptive, or Fraudulent Device or Contrivance" and "Fraudulent, Deceptive, or Manipulative Act or Practice" are defined to include:

(1) Any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(2) The making of any untrue statement of a material fact and any omission to state a material fact necessary in order to make the statements made in the light of the circumstances under which they are made not misleading.

(3) Any representation by a person that the registration of any person with the Director or the failure of the Director to deny or revoke such registration indicates in any way that the Director has passed upon or approved the financial standing, business, or conduct of any person or the merits of any security or any transaction or transactions therein.

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.205(2)

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0205.2-1 and 815-030-0120

#### **441-205-0030**

##### **Confirmation of Transaction**

The term "Manipulative, Deceptive, or Fraudulent Device or Contrivance" as used in these rules is defined to include:

(1) Any act of any broker-dealer designed to effect with or for the account of a customer any transaction in, or to induce the purchase or sale by such customer of any security (other than U.S. Tax Savings Notes, U.S. Defense Savings Stamps, or U.S. Defense Savings Bonds, Series E, F, and G), unless such broker-dealer, at or before the completion of each such transaction, gives or sends to such customer at a bona fide address written notification disclosing:

(a) Whether he is acting as a broker-dealer for such customer, as a broker-dealer for his own account, as a broker-dealer for some other person, or as a broker-dealer for both such customers and some other persons; and

(b) In any case in which he is acting as a broker-dealer for such customer or for both such customer and some other person, either the name of the person from whom the security was purchased or to whom it was sold for such customer and the date and time when such transaction took place or the fact that such information will be furnished upon the request of such customer and the source and amount of any commission or other remuneration received or to be received by him in connection with the transaction.

(2) As used in these rules, the term "Bona Fide Address" means the last-known home address, business address, or post office box of a customer. Copies of the notification may be mailed to an accountant, adviser, bank, or such other person or firm as authorized in writing by the customer. The address of a broker-dealer or the address of an associated person or employee (unless the transaction is for the account of the associated person or employee) is not a "Bona Fide Address" for a customer within the meaning of these rules.

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.205(2)

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0205.2-2 and 815-030-0125

#### **441-205-0040**

##### **Disclosure of Control**

The term "Manipulative, Deceptive, or Other Fraudulent Device or Contrivance," as used in these rules, is hereby defined to include any act of any broker-dealer controlled by, controlling, or under common control with, the issuer of any security, designed to effect with or for the account of a customer any transaction in, or to induce the purchase or sale by such customer of, such security, unless such broker-dealer, before entering into any contract with or for such customer for the purchase or sale of such security, discloses to such customer the existence of such control and unless such disclosure, if not made

in writing, is supplemented by the giving or sending of written disclosure at or before the completion of the transaction.

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.205(2)

Hist.: CC 12, f. 7-12-73 ef. 9-1-73; Renumbered from 815-030-0205.2-3 and 815-030-0130

**441-205-0050****Disclosure of Interest in Distributions**

The term “Manipulative, Deceptive or Other Fraudulent Device or Contrivance,” as used in these rules, is hereby defined to include any act of any broker-dealer who is acting for a customer or for both such customer and some other person, or of any broker-dealer who receives or has promise of receiving a fee from a customer for advising such customer with respect to securities, designed to effect with or for the account of such customer any transaction in, or to induce the purchase or sale by such customer of, any security in the primary or secondary distribution of which such broker-dealer is participating or is otherwise financially interested unless such broker-dealer at or before the completion of each such transaction, gives or sends to such customer written notification of the existence of such participation or interest.

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.205(2)

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0205.2-4 and 815-030-0135

**441-205-0060****Sales at the Market**

The term “Manipulative, Deceptive, or Other Fraudulent Device or Contrivance,” as used in these rules, is hereby defined to include any representation made to a customer by a broker-dealer that such security is being offered to such customer “At the Market” or at a price related to the market price, unless such broker-dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created, or controlled by him, or by any person for whom he is acting or with whom he is associated in such distribution, or by any person controlled by, controlling or under common control with him.

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.205(2)

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0205.2-5 and 815-030-0140

**441-205-0070****Use of Pro Forma Balance Sheets**

The term “Manipulative, Deceptive, or Other Fraudulent Device or Contrivance,” as used in these rules, is hereby defined to include the use of financial statements purporting to give effect to the receipt and application of any part of the proceeds from the sale or exchange of securities, unless the assumptions upon which each such financial statement is based are clearly set forth as part of the caption to each such statement in type at least as large as that used generally in the body of the statement.

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.205(2)

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0205.2-6 and 815-030-0145

**441-205-0080****Disclosure and Other Requirements When Extending or Arranging Credit in Certain Transactions**

(1) It shall constitute a “Fraudulent, Deceptive, or Manipulative Act or Practice,” as used in these rules, for any broker-dealer to offer or sell any security to, or to attempt to induce the purchase of any security by, any person in connection with which such broker-dealer, directly or indirectly, offers to extend any credit to or to arrange any loan for such person, or extends any credit to or participates in arranging any loan for such person, unless such broker-dealer, before any purchase, loan or other related element of the transaction is entered into:

(a) Delivers to such person a written statement setting forth the exact nature and extent of:

(A) Such person’s obligations under the particular loan arrangement, including among other things, the specific charges which such person will incur under such loan in each period during which the loan may continue or be extended;

(B) The risks and disadvantages which such person will incur in the entire transaction, including the loan arrangement; and

(C) All commissions, discounts, and other remuneration received and to be received, in connection with the entire transaction, including the loan arrangement, by the broker-dealer, by any person controlling, controlled by, or under common control with the broker-dealer and by any other person participating in the transaction; and

(b) Obtains from such person information concerning his financial situation and needs, reasonably determines that the entire transaction, including the loan arrangement, is suitable for such person and delivers to such person a written statement setting forth the basis upon which the broker-dealer made such determination.

(2) This rule shall not apply to any credit extended or any loan arranged by any broker-dealer subject to the provisions of Regulation T (issued by the Board of Governors of the Federal Reserve System), if such credit is extended or such loan is arranged, in compliance with the requirements of such regulation, only for the purpose of purchasing or carrying the security offered or sold.

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.205(2)

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0205.2-7 and 815-030-0150

**441-205-0090****Identification of Quotations**

(1) It shall constitute a “Fraudulent, Deceptive, or Manipulative Act or Practice,” as used in these rules, for any broker-dealer to effect any transaction in, or induce or attempt to induce the purchase or sale of any security by making a fictitious quotation.

(2) It shall constitute an attempt to induce the purchase or sale of a security by making a “Fictitious Quotation,” within the meaning of these rules, for any broker-dealer to furnish or submit, directly or indirectly, any quotation for a security to an inter-dealer-quotation system, unless:

(a) The inter-dealer-quotation system is informed, if such is the case, that the quotation is furnished or submitted:

(A) By a correspondent broker-dealer for the account or in behalf of another broker-dealer and, if so, the identity of such other broker-dealer; and/or

(B) In furtherance of one or more other arrangements (including a joint account, guarantee of profit, guarantee against loss, commission, markup, markdown, indication of interest and accommodation arrangement) between or among broker-dealers and, if so, the identity of each broker-dealer participating in any such arrangement or arrangements; provided, however, that the provisions of this subparagraph shall not apply if only one of the broker-dealers participating in any such arrangement or arrangements furnishes or submits a quotation with respect to the security to an inter-dealer-quotation system.

(b) The inter-dealer-quotation system to which the quotation is furnished or submitted makes it a general practice to disclose with each published quotation, by appropriate symbol or otherwise, the category or categories (paragraphs (2)(a)(A) and/or (B) of this rule) in furtherance of which the quotation is submitted, and the identities of all other broker-dealers referred to in paragraphs (2)(a)(A) and (B) of this rule where such information is supplied to the inter-dealer-quotation system under the provisions of subsection (2)(a) of this rule.

(3) It shall constitute an attempt to induce the purchase or sale of a security by making a “Fictitious Quotation,” within the meaning of these rules, for a broker-dealer to enter into any correspondent or other arrangement (including a joint account, guarantee of profit, guarantee against loss, commission, markup, markdown, indication of interest and accommodation arrangement) in furtherance of which two or more broker-dealers furnish or submit quotations with respect to a particular security, unless such broker-dealer informs all broker-dealers furnishing or submitting such quotations of the existence of such correspondent and other arrangements and the identity of the parties thereto.

(4) For purposes of this rule:

(a) The term “Inter-Dealer-Quotation System” shall mean any system of general circulation to broker-dealers in Oregon which regularly disseminates quotations of identified broker-dealers, but shall not include a quotation sheet prepared and distributed by a broker-dealer in the regular course of his business and containing only quotations of such broker-dealer;

(b) The term "Quotation" shall mean any bid or offer, or any indication of interest (such as OW or BW) in any bid or offer;

(c) The term "Correspondent" shall mean a broker-dealer who has a direct line of communication to another broker-dealer located in a different city or geographic area.

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.205(2)

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0205.2-8 and 815-030-0155

#### **441-205-0100**

##### **Discretionary Accounts**

(1) The term "Fraudulent, Deceptive, or Manipulative Act or Practice," as used in these rules, is hereby defined to include any act of any broker-dealer or associated person designed to effect with or for any customer's account with respect to which he is vested with any discretionary power, any transactions of purchase or sale which are excessive in size or frequency in view of the financial resources and character of such account.

(2) The term "Fraudulent, Deceptive, or Manipulative Act or Practice," as used in these rules, is hereby defined to include any act of any broker-dealer designed to effect with or for any customer's account with respect to which such broker-dealer or associated person is vested with any discretionary power any transaction of purchase or sale, unless immediately after effecting such transaction such broker-dealer makes a record of such transaction, which record includes the name of such customer; the name, amount and price of the security; and the date and time when such transaction took place.

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.205(2)

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0205.2-9 and 815-030-0160

#### **441-205-0110**

##### **Hypothecation of Customer's Securities**

(1) General Provisions. The term "Fraudulent, Deceptive, or Manipulative Act or Practice," as used in these rules, is hereby defined to include the direct or indirect hypothecation by a broker-dealer, or his arranging for or permitting, directly or indirectly, the continued hypothecation of any securities carried for the account of any customer under circumstances:

(a) That will permit the commingling of securities carried for the account of any such customer with securities carried for the account of any other customer, without first obtaining the written consent of each such customer to such hypothecation;

(b) That will permit such securities to be commingled with securities carried for the account of any person other than a bona fide customer of such broker-dealer under a lien for a loan made to such broker-dealer; or

(c) That will permit securities carried for the account of customers to be hypothecated, or subjected to any lien or liens or claims of the pledgee or pledgees, for a sum which exceeds the aggregate indebtedness of all customers in respect of securities carried for their accounts; except that this clause shall not be deemed to be violated by reason of an excess arising on any day through the reduction of the aggregate indebtedness of customers on such day; provided that funds or securities in an amount sufficient to eliminate such excess are paid or placed in transfer to pledgee for the purpose of reducing the sum of the liens or claims to which securities carried for the account of customers are subject as promptly as practicable after such reduction occurs, but before the lapse of one-half hour after the commencement of banking hours on the next banking day at the place where the largest principal amount of loans of such broker-dealer are payable and, in any event, before such broker-dealer on such day has obtained or increased any bank loan collateralized by securities carried for the account of customers.

(2) Definitions. For the purposes of this rule:

(a) The term "Customer" shall not be deemed to include any general or special partner or any director or officer of such broker-dealer, or any participant, as such, in any joint, group, or syndicate account with such broker-dealer or with any partner, officer, or director thereof;

(b) The term "securities carried for the account of any customer" shall be deemed to mean:

(A) Securities received by or on behalf of such broker-dealer for the account of any customer;

(B) Securities sold and appropriated by such broker-dealer to a customer, except that, if such securities were subject to a lien when appropriated to a customer, they shall not be deemed to be "Securities Carried for the Account of Any Customer" pending their release from such lien as promptly as practicable;

(C) Securities sold, but not appropriated, by such broker-dealer to a customer who has made any payment therefor, to the extent that such broker-dealer owns and has received delivery of securities of like kind, except that, if such securities were subject to a lien when such payment was made, they shall not be deemed to be "Securities Carried for the Account of Any Customer" pending their release from such lien as promptly as practicable.

(c) "Aggregate Indebtedness" shall not be deemed to be reduced by reason of uncollected items. In computing aggregate indebtedness, related guaranteed and guarantor accounts shall be treated as a single account and considered on a consolidated basis, and balances in accounts carrying both long and short positions shall be adjusted by treating the market value of the securities required to cover such short positions as though such market value were a debit; and

(d) In computing the sum of the liens or claims to which securities carried for the account of customers of a broker-dealer are subject, any rehypothecation of such securities by another broker-dealer who is subject to this rule shall be disregarded.

(3) Exemption for Cash Accounts. The provisions of subsection (1)(a) of this rule shall not apply to any hypothecation of securities carried for the account of a customer in a special cash account within the meaning of section 4(c) of Regulation T of the Board of Governors of the Federal Reserve System; provided that, at or before the completion of the transaction of purchase of such securities for, or of sale of such securities to such customer, written notice is given or sent to such customer disclosing that such securities are or may be hypothecated under circumstances which will permit the commingling thereof with securities carried for the account of other customers.

(4) Exemption for Clearing Liens. The provisions of subsections (1)(b) and (c), and section (6) of this rule shall not apply to any lien or claim of the clearing corporation, or similar department or association, of a national securities exchange or a registered national securities association, for a loan made and to be repaid on the same calendar day, which is incidental to the clearing of transactions in securities or loans through such corporation, department, or association; provided, however, that for the purpose of subsection (1)(c) of this rule, "Aggregate Indebtedness of All Customers in Respect of Securities Carried for Their Accounts" shall not include indebtedness in respect of any securities subject to any lien or claim exempted by this paragraph.

(5) Exemption for Certain Liens on Securities of Noncustomers. The provisions of subsection (1)(b) of this rule shall not be deemed to prevent such broker-dealer from permitting securities not carried for the account of a customer to be subjected:

(a) To a lien for a loan made against securities carried for the account of customers; or

(b) To a lien for a loan made and to be repaid on the same calendar day. For the purpose of this exemption, a loan shall be deemed to be "made against securities carried for the account of customers" if only securities carried for the account of customers are used to obtain or to increase such loan or as substitutes for other securities carried for the account of customers.

(6) Notice and Certification Requirements. No person subject to this rule shall hypothecate any security carried for the account of a customer unless, at or prior to the time of each such hypothecation, he gives written notice to the pledgee that the security pledged is carried for the account of a customer and that such hypothecation does not contravene any provision of this rule, except that, in the case of an omnibus account, the broker-dealer for whom such account is carried may furnish a signed statement to the person carrying such account that all securities carried therein by such broker-dealer will be securities carried for the account of his customers and that the hypothecation thereof by such broker-dealer will not contravene any provision of this rule. The provisions of this clause shall not apply to any hypothecation of securities under any lien or claim of a pledgee securing a loan made and to be repaid on the same calendar day.

(7) The fact that securities carried for the accounts of customers and securities carried for the accounts of others are represented by one or more certificates in the custody of a clearing corporation or other

subsidiary organization of either a national securities exchange or of a registered national securities association, or of a custodian bank, in accordance with a system for the central handling of securities established by a national securities exchange or a registered national securities association, pursuant to which system the hypothecation of such securities is effected by bookkeeping entries without physical delivery of such securities, shall not, in and of itself, result in a commingling of securities prohibited by subsection (1)(a) or (b) of this rule, whenever a participating broker-dealer hypothecates securities in accordance with such system; provided, however, that:

(a) Any such custodian of any securities held by or for such system shall agree that it will not for any reason, including the assertion of any claim, right, or lien of any kind, refuse or refrain from promptly delivering any such securities (other than securities then hypothecated in accordance with such system) to such clearing corporation or other subsidiary organization or as directed by it, except that nothing in such agreement shall be deemed to require the custodian to deliver any securities in contravention of any notice of levy, seizure, or similar notice or order, or judgment, issued or directed by a governmental agency or court or officer thereof, having jurisdiction over such custodian, which on its face affects such securities;

(b) Such systems shall have safeguards in the handling, transfer, and delivery of securities and provisions for fidelity bond coverage of the employees and agents of the clearing corporation or other subsidiary organization and for periodic examinations by independent public accountants; and

(c) The provisions of section (7) of this rule shall not be effective with respect to any particular system unless the agreement required by subsection (a) of this section and the safeguards and provisions required by subsection (b) of this section shall have been deemed adequate by the Director or the Securities and Exchange Commission for the protection of investors, and unless any subsequent amendments to such agreements, safeguards, or provisions shall have been deemed adequate by the Director or the Securities and Exchange Commission for the protection of investors.

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.205(2)

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0205.2-10 and 815-030-0165

#### **441-205-0120**

##### **Transmission or Maintenance of Payments Received in Connection With Underwritings**

It shall constitute a "Fraudulent, Deceptive, or Manipulative Act or Practice," as used in these rules, for any broker-dealer participating in any distribution of securities, other than a firm commitment underwriting, to accept any part of the sale price of any security being distributed unless:

(1) The money or other consideration received is promptly transmitted to the persons entitled thereto; or

(2) If the distribution is being made on an "all-or-none" basis, or subject to an order of the Director under ORS 59.085(3)(b), or on any other basis which contemplates that payment is not to be made to the person on whose behalf the distribution is being made until some further event or contingency occurs:

(a) The money or other consideration received is promptly deposited in a separate bank account, as agent or trustee for the persons who have the beneficial interests therein, until the appropriate event or contingency has occurred, and then the funds are promptly transmitted or returned to the persons entitled thereto; or

(b) All such funds are promptly transmitted to an escrow agent who has agreed in writing to hold all such funds in escrow for the persons who have the beneficial interests therein and to transmit or return such funds directly to the persons entitled thereto when the appropriate event or contingency has occurred.

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.205(2)

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0205.2-11 and 815-030-0170

#### **441-205-0130**

##### **Fair Dealing with Customers**

The term "Manipulative, Deceptive, or Other Fraudulent Act or Practice," as used in these rules, is hereby defined to include:

(1) Recommending speculative low-priced securities to customers without knowledge of or attempt to obtain information con-

cerning the customers' other securities holdings, their financial situation, and other necessary data.

(2) Trading in mutual fund shares on a short-term basis.

(3) Recommending the purchase of securities or the continuing purchase of securities in amounts which are inconsistent with the reasonable expectation that the customer has the financial ability to meet such a commitment.

(4) In any transaction for or with a customer failing to use reasonable diligence to ascertain the best inter-dealer market for the subject security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions.

(5) In any transaction for or with a customer, interjecting a third party between a broker-dealer and the best available market, except in cases where the broker-dealer can demonstrate that, to his knowledge at the time of the transaction, the total cost or proceeds of the transaction, as confirmed to the broker-dealer acting for or with the customer, was better than the prevailing inter-dealer market for the security.

(6) Failing to make a bona fide public distribution at the public offering price of securities of a public offering which immediately trade at a premium in the secondary market, regardless of whether such securities are acquired by the broker-dealer as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member, or otherwise.

(7) Establishment of fictitious accounts in order to execute transactions which otherwise would be prohibited, such as the purchase of "Hot Issues."

(8) Causing the execution of transactions which are unauthorized by customers or the sending of confirmations in order to cause customers to accept transactions not actually agreed upon.

(9) Giving, permitting to be given, or offering to give, directly or indirectly, anything of value to any person for the purpose of influencing or rewarding the action of such person in connection with the publication or circulation in any newspaper, investment service, or similar publication, of any matter which has, or is intended to have, an effect upon the market price of any security; provided that this rule shall not be construed to apply to matter which is clearly distinguishable as paid advertising.

(10) Guaranteeing a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer.

(11) Sharing directly or indirectly in the profits or losses in any account of a customer carried by the broker-dealer or any other broker-dealer, unless such broker-dealer or person associated with a broker-dealer obtains prior written authorization from the broker-dealer carrying the account; and unless such a broker-dealer or person associated with such broker-dealer shares in the profits or losses in any account of such customer only in direct proportion to the financial contributions made to such account by either the broker-dealer or person associated with a broker-dealer; provided, however, that this subsection shall not apply to accounts of the immediate family of such broker-dealer or person associated with a broker-dealer. For purposes of this rule, "Immediate Family" shall include parents, mother-in-law or father-in-law, husband or wife, children or any relative to whose support the broker-dealer or person associated with a broker-dealer otherwise contributes directly or indirectly.

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.205(2)

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0205.2-12 and 815-030-0175

#### **441-205-0135**

##### **Sales of Securities or Investment Advisory Services at Financial Institutions or Trust Companies**

(1) This rule applies exclusively to securities sales activity conducted by a broker-dealer or salesperson, and to investment advisory services conducted by an investment adviser or investment adviser representative, on the premises of a financial institution or trust company as defined in ORS 706.008 and the premises of any Oregon-based service corporation of a financial institution or trust company. This rule does not alter or eliminate the obligations of a securities licensee to comply with all other securities laws and rules.

(2) A broker-dealer, salesperson, investment adviser or investment adviser representative shall not conduct securities sales or advisory activities on the premises of a financial institution or trust company unless the licensee complies initially and continuously with the following requirements:

(a) The activities shall be conducted, wherever practical, in a physical location distinct from the areas where the financial institution's or trust company's activities are conducted;

(b) The securities sales or advisory activities shall be identified in a manner that is clearly distinguished from the financial institution's or trust company's activities, including clearly displaying the name of the licensed firm conducting the securities activities;

(c) Contractual or other arrangements between the financial institution or trust company and licensee must be governed by a written agreement that sets forth:

(A) The responsibilities of the parties;

(B) The compensation arrangements;

(C) That a qualified securities supervisor will properly supervise the activities of the salesperson or investment adviser representative; and

(D) A requirement that securities regulators be permitted access during normal business hours to the area of the premises where securities sales or advisory activities are conducted and records are kept for purposes of routine or for-cause examinations or investigations of the securities sales or advisory activities;

(d) At or before a salesperson or investment adviser representative opens a customer account, the licensee shall:

(A) Disclose, both orally and in writing, that the securities products or services offered:

(i) Are not insured by the Federal Deposit Insurance Corporation (FDIC) or National Credit Union Association (NCUA), as applicable;

(ii) Are not deposits or other obligations of the financial institution or trust company;

(iii) Are not guaranteed by the financial institution or trust company; and

(iv) Are subject to investment risks, including possible loss of any principal that is invested;

(B) Obtain a written acknowledgment of receipt of the disclosures required by paragraph (2)(d)(A) of this rule from each customer during the account opening process; and

(C) Provide clear and accurate explanations of coverage including a clear and accurate description of any guarantee provided with the insurance, if making any written or oral representations concerning insurance coverage other than FDIC or NCUA insurance;

(e) All confirmations and account statements provided to customers must clearly indicate that the services are provided by the broker-dealer or investment adviser, as applicable;

(f) Except as permitted in subsections (2)(g) and (2)(h) of this rule, the disclosures described in paragraph (2)(d)(A) of this rule must be incorporated into:

(A) Advertisements and sales literature that announce the location of a financial institution where broker-dealer or investment advisory services are provided;

(B) Advertisements and sales literature distributed by or for the regulated person on the premises of a financial institution or trust company; and

(C) Correspondence, including electronic mail, with a current or potential customer;

(g) A broker-dealer or investment adviser may use the following shorter logo format disclosures in advertisements, sales literature, and written communications, including material published or designed for use in radio or television broadcasts, ATM screens, billboards, signs, posters and brochures, provided that the applicable disclosures are displayed in a conspicuous manner:

(A) Not FDIC or NCUA Insured;

(B) No Bank or Credit Union Guarantee;

(C) May Lose Value;

(h) As long as the omission of the disclosures required by paragraph (2)(d)(A) of this rule would not cause the advertisement or sales literature to be misleading in light of the context in which the material is presented, the broker-dealer or investment adviser is not required to provide disclosures for the following:

(A) Radio broadcasts of 30 seconds or less;

(B) Electronic billboard-type time and temperature, or ticker tape signs; and

(C) Signs such as banners and posters when used only as location indicators;

(i) Recommendations by a regulated person concerning nondeposit investment products with a name similar to that of a financial institution or trust company may occur only pursuant to policies and procedures reasonably designed to minimize risk of customer confusion.

(3) The broker-dealer or investment adviser must promptly notify the financial institution or trust company of the termination of a salesperson or investment adviser representative conducting securities sales or investment advisory activities on the premises of the financial institution or trust company, and the reason for the termination.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.135, 59.195, 59.205

Hist.: FCS 4-2007, f. 10-11-07, cert. ef. 1-1-08

#### **441-205-0140**

##### **Suitability of Recommendations**

It shall constitute a "Fraudulent, Deceptive, or Manipulative Act or Practice," as used in these rules, for any broker-dealer or associated person to recommend to a customer the purchase, sale, or exchange of any security, unless such broker-dealer or associated person shall have reasonable grounds to believe that the recommendation is suitable for such customer on the basis of information furnished by such customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs and any other information known by such broker-dealer or associated person.

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.205(2)

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0205.2-13; CC 2-1981, f. & ef. 6-2-81; Renumbered from 815-030-0180

#### **441-205-0145**

##### **Unethical Business Practices of State Investment Advisers and Their Investment Adviser Representatives**

(1) A person who is a State Investment Adviser or an Investment Adviser Representative for a State Investment Adviser is a fiduciary and has a duty to act primarily for the benefit of the Adviser's clients. The provisions of this rule apply to state investment advisers and their investment adviser representatives. While the extent and nature of this duty varies according to the nature of the relationship between an investment adviser and its clients and the circumstances of each case, a state investment adviser or its investment adviser representatives shall not engage in unethical business practices, including the following:

(a) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser.

(b) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without first obtaining written discretionary authority from the client unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

(c) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account if that adviser in such situations can directly benefit from the number of securities transactions effected in a client's account.

(d) Placing an order to purchase or sell a security for the account of a client without authority to do so.

(e) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.

(f) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds.

(g) Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser.

(h) Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

(i) Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact. This prohibition does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service.

(j) Charging a client an unreasonable advisory fee.

(k) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

(A) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; or

(B) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees.

(l) Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered.

(m) Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client.

(n) Entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, and whether the contract grants discretionary power to the adviser.

(o) Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of this rule or the Oregon Securities Law.

(p) Indicating, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of the Oregon Securities Law, this rule, or the Investment Advisers Act of 1940.

(2) The conduct set forth above is not inclusive. Engaging in other conduct such as non-disclosure, incomplete disclosure, or deceptive practices shall be deemed a dishonest, fraudulent or unethical business practice.

Stat. Auth.: ORS 59.285  
Stats. Implemented: ORS 59.205  
Hist.: FCS 7-2000, f. & cert. ef. 6-2-00

#### **441-205-0165**

##### **Investment Adviser Brochure**

It shall constitute a "Fraudulent, Deceptive, or Manipulative Act or Practice" as used in these rules for any investment adviser to enter into or offer to enter into an investment advisory contract, or in any way perform an investment advisory contract, if the investment adviser:

(1) Fails to provide the customer with a written disclosure statement which may be either a copy of Part II of Form ADV or a written document containing at least the information required by Part II of Form ADV:

(a) At least 48 hours prior to entering into any written or oral investment advisory contract with a customer; or

(b) At the time of entering into any advisory contract, if the customer has a right to terminate the contract without penalty within five business days after entering the contract.

(2) Fails to offer an existing customer a copy of the written disclosure statement, without charge, at least annually.

Stat. Auth.: ORS 59.175(1), 59.205(2) & 59.285  
Stats. Implemented: ORS 59.205(2)  
Hist.: FCS 8-1994, f. & cert. ef. 6-1-94

#### **441-205-0170**

##### **Compensation of Investment Advisers**

(1) The term "Fraudulent, Deceptive, or Manipulative Act or Practice," as used in these rules, is hereby defined to include entering

into, extending, or renewing any investment advisory contract, or in any way performing any investment advisory contract entered into, extended or renewed after the effective date of this rule, if such contract:

(a) Provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client, except as permitted in section (3) of this rule;

(b) Fails to provide, in substance, that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract; or

(c) Fails to provide, in substance, that the investment adviser, if a partnership, will notify the other party to the contract of any change in the membership of such partnership within a reasonable time after such change.

(2) As used in this rule, "Investment Advisory Contract" means any contract or agreement whereby a person agrees to act as investment adviser or to manage any investment or trading account for a person other than an investment company, as defined in the Investment Company Act of 1940, as amended.

(3) An investment adviser may enter into, perform, renew or extend an investment advisory contract that provides for compensation to the investment adviser on the basis of a share of the capital gains upon, or the capital appreciation, of the funds, or any portion of the funds, if the contract does not contain a management fee exceeding 1% of the total funds to be managed pursuant to the contract and the contract is with a person who is:

(a) A natural person who or a company that immediately after entering into the contract has at least \$750,000 under the management of the investment adviser;

(b) A natural person who or a company that the investment adviser entering into the contract (and any person acting on his behalf) reasonably believes, immediately prior to entering into the contract, either:

(A) Has a net worth (together, in case of a natural person, with assets held jointly with a spouse) of more than \$1,500,000; or

(B) Is a qualified purchaser as defined in Section (4) of this rule; or

(c) A natural person who immediately prior to entering into the contract is:

(A) The president, any vice president in charge of a principal business unit, division, or function, any other officer who performs a policy-making function or any other person who performs similar policy-making functions for the investment adviser, any director, trustee, general partner or person serving in a similar capacity of the investment adviser; or

(B) An employee of the investment adviser (other than an employee performing solely clerical, secretarial or administrative functions with regard to the investment adviser) who, in connection with his or her regular functions or duties, participates in the investment activities of such investment adviser, providing that such employee has been performing such functions and duties for or on behalf of the investment adviser, or substantially similar functions or duties for or on behalf of another company for at least 12 months.

(4) A qualified purchaser is:

(a) Any natural person who owns not less than \$5,000,000 in investments;

(b) Any person, acting for its own account or the accounts of other qualified purchasers, who in the aggregate owns and invests on a discretionary basis, not less than \$25,000,000 in investments;

(c) Any company that owns not less than \$5,000,000 in investments and that is owned directly or indirectly by or for 2 or more natural persons who are related as siblings or spouse (including former spouse), or direct lineal descendants by birth or adoption, spouses of such person, the estates of such person or foundations, charitable organizations, or trusts established by or for the benefit of such person; and

(d) Any trust that is not covered by (4)(c), was not formed for the specific purpose of acquiring the securities offered and for which the trustee or other person authorized to make decisions with respect to the trust and each person who has contributed assets to the trust is a person described in (a), (b), or (c).

Stat. Auth.: ORS 59.285  
Stats. Implemented: ORS 59.205(2)  
Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-2005.2-14 and 815-030-0185; FCS 12-2001, f. 12-27-01, cert. ef. 1-1-02

**441-205-0180**

**Custody or Possession of Funds or Securities of Clients by Investment Advisers**

(1) It shall constitute a "Fraudulent, Deceptive, or Manipulative Act or Practice," within the meaning of these rules, for any investment adviser who has custody or possession of any funds or securities in which any client has any beneficial interest, to do any act or take any action, directly or indirectly, with respect to any such funds or securities, unless:

(a) All such securities of each such client are segregated, marked to identify the particular client who has the beneficial interest therein, and held in safekeeping in some place reasonably free from risk of destruction or other loss; and

(b)(A) All such funds of such clients are deposited in one or more bank accounts which contain only clients' funds;

(B) Such account or accounts are maintained in the name of the investment adviser as agent or trustee for such clients; and

(C) The investment adviser maintains a separate record for each such account which shows the name and address of the bank where such account is maintained, the dates and amounts of deposits in and withdrawals from such account and the exact amount of each client's beneficial interest in such account; and

(c) Such investment adviser, immediately after accepting custody or possession of such funds or securities from any client, notifies such client in writing of the place and manner in which such funds and securities will be maintained, and thereafter, if and when there is any change in the place or manner in which such funds or securities are being maintained, gives each such client written notice thereof; and

(d) Such investment adviser sends to each client, not less frequently than once every three months, an itemized statement showing the funds and securities in the custody or possession of the investment adviser at the end of such period; and

(e) All such funds and securities of clients are verified by actual examination at least once during each calendar year by an independent public accountant. A certificate of such accountant, stating that he has made an examination of such funds and securities and describing the nature and extent of such examination, shall be filed with the Director promptly after such examination.

(2) This rule shall not apply to an investment adviser also registered as a broker-dealer under ORS 59.165.

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.205(2)

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0205.2-15 and 815-030-0190

**441-205-0190**

**Disclosure of Capacity**

It shall constitute a "Manipulative, Deceptive, or Other Fraudulent Act or Practice," within the meaning of these rules, for an investment adviser acting as principal for his own account, knowingly to sell any security to or purchase any security from a client for whom he is acting as investment adviser, or acting as broker-dealer for a person other than such client, knowingly to effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before the completion of the transaction the capacity in which he is acting and obtaining the consent of the client to such transaction.

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.205(2)

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0205.2-16 and 815-030-0196

**441-205-0200**

**Advertisements by Investment Advisers**

(1) It shall constitute a "Fraudulent, Deceptive, or Manipulative Act or Practice," within the meaning of these rules, for any investment adviser, directly or indirectly, to publish, circulate, or distribute any advertisement:

(a) Which refers, directly or indirectly, to any testimonial of any kind concerning the investment adviser or concerning any advice, analysis, report or other service rendered by such investment adviser; or

(b) Which refers, directly or indirectly, to past specific recommendations of such investment adviser which were or would have been profitable to any person; provided, however, that this shall not prohibit an advertisement which sets out or offers to furnish a list of

all recommendations made by such investment adviser within the immediately preceding period of not less than one year if such advertisement and such list if it is furnished separately:

(A) State the name of each such security recommended, the date and nature of each such recommendation (e.g., whether to buy, sell, or hold), the market price at that time, the price at which the recommendation was to be acted upon and the market price of each such security as of the most recent practicable date; and

(B) Contain the following cautionary legend on the first page thereof in print or type as large as the largest print or type used in the body or text thereof: "**It should not be assumed that the recommendations made in the future will be profitable or will equal the performance of the securities in this list;**" or

(c) Which represents, directly or indirectly, that any graph, chart, formula, or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making his own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use; or

(d) Which contains any statement to the effect that any report, analysis, or other service will be furnished free or without charge, unless such report, analysis or other service actually is or will be furnished entirely free and without any condition or obligation, directly or indirectly; or

(e) Which contains any untrue statement of a material fact, or which is otherwise false or misleading.

(2) For the purposes of this rule, the term "Advertisement" shall include any notice, circular, letter, or other written communication addressed to more than one person, or any notice or other announcement in any publication or by radio or television which offers:

(a) Any analysis, report, or publication concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or

(b) Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security or which security to buy or sell; or

(c) Any other investment advisory service with regard to securities.

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.205(2)

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-205-0210.2-17 and 815-030-0201

**441-205-0210**

**Supervision of Associated Persons**

(1) Every broker-dealer shall exercise diligent supervision over the securities activities of all of his associated persons.

(2) Every associated person of the broker-dealer shall be subject to the supervision of a supervisor designated by such broker-dealer. The supervisor may be the broker-dealer in the case of a sole proprietor, or a partner, officer, office manager, or any other qualified associated person.

(3) As part of his responsibility under this rule, every broker-dealer shall establish, maintain, and enforce written procedures, a copy of which shall be kept in each business office, which shall set forth the procedures adopted by the broker-dealer to comply with the following duties imposed by this rule, and shall state at which business office or offices the broker-dealer keeps and maintains the records required by OAR 441-195-0010:

(a) The review and written approval by the designated supervisor of the opening of each new customer account;

(b) The frequent examination of all customer accounts to detect and prevent irregularities or abuses, including a review for churning and switching of securities in customers' accounts, as well as unsuitable recommendations and sales of unregistered securities;

(c) The prompt review and written approval by the designated supervisor of all securities transactions by associated persons and all correspondence pertaining to the solicitation or execution of all securities transactions by associated persons;

(d) The review of back office operations, i.e., all systems and procedures, including the currency and accuracy of books and records, the

status and causes of "Fails to Receive" and "Fails to Deliver," net capital, credit extensions and financial reports;

(e) The review of form, content, and filing of all correspondence related in any way to the purchase or sale or solicitation for the purchase or sale of securities;

(f) The review and written approval by the designated supervisor of the delegation by any customer of discretionary authority with respect to his account to a stated associated person or persons of the broker-dealer and the prompt written approval of each discretionary order entered on behalf of that account; and

(g) The prompt review and written approval of the handling of all customer complaints. As used in these rules, a "Complaint" is considered to be any written statement by a customer, or by any person acting for a customer, which complains about the activities of the broker-dealer or any associated person in connection with the solicitation or execution of a transaction or the disposition of funds of that customer.

(4) Every broker-dealer who has designated more than one supervisor pursuant to section (2) of this rule shall designate from among his partners, officers, or other qualified associated persons, a person or group of persons who shall periodically inspect each business office of the broker-dealer to insure that the written procedures are enforced.

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.205(13)

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-205-0210.12 and 815-030-0205

## **DIVISION 225**

### **CANCELLATION, WITHDRAWAL, OR SUSPENSION OF LICENSE**

#### **441-225-0010**

##### **Cancellation, Withdrawal and Suspension of the License for Broker-Dealers, Mortgage Brokers, Investment Advisers, and Salespersons**

(1) The procedure for cancellation of a license for failure to maintain a bond as required by ORS 59.175(4) is:

(a) Upon notification from the surety of notice of intent to cancel the surety bond, the Securities Section shall send written notice to the licensee. This notice shall be sent by certified mail within three business days of receipt of notification from the surety. Failure to send the notice within three business days will not preclude cancellation under subsection (1)(b) of this rule;

(b) Cancellation of the license will occur if an effective bond is not received by 5 p.m. Pacific Time seven business days after the bond cancellation date. The cancellation of the license shall be effective as of the bond cancellation date;

(c) An effective bond is one that commences no later than the cancellation date of the previous bond.

(2) A person whose license has been cancelled may obtain a license in Oregon by new application.

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.175(4) & 59.225(1)

Hist.: FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0078

#### **441-225-0020**

##### **Termination of Order Authorizing Use of Assumed Business Name or Trade Name**

The status of an order authorizing use of an assumed business name or a trade name pursuant to OAR 441-175-0171 is dependent upon the license status of the licensee. Therefore, without further action by the Director:

(1) The suspension of the license suspends the order to use the assumed business name or trade name; however, the end of suspension of the license automatically reinstates the order authorizing use of the assumed business name or trade name; and

(2) The revocation, cancellation, withdrawal or expiration of the license cancels the order authorizing use of the assumed business name or trade name.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.165

Hist.: FCS 7-2000, f. & cert. ef. 6-2-00

#### **441-225-0030**

##### **License Conditions or Restrictions**

(1) If the Director makes a finding as specified in ORS 59.205 or 59.215 and determines, in the public interest, that the license of an applicant should be conditioned or restricted, the Director may issue the license:

(a) Under the condition that the licensee be subject to heightened supervision by the employing firm for a specified period of time;

(b) Under the condition that the licensee retake and pass a specified competency examination within a specified period of time;

(c) Limiting the licensee to conducting business in a specified area of the industry;

(d) Restricting the licensee from conducting business in a specified area of the industry; or

(e) Restricting the licensee from acting as a supervisor for salespersons or investment adviser representatives conducting business in Oregon.

(2) If the Director makes a finding as specified in ORS 59.205 or 59.215 and determines, in the public interest, that the license of a licensee should be conditioned or restricted, the Director may issue an order modifying the license:

(a) To impose a condition that the licensee is subject to heightened supervision by the employing firm for a specified period of time;

(b) To impose a condition that the licensee retake and pass a specified competency examination within a specified period of time;

(c) To limit the licensee to conducting business in a specified area of the industry;

(d) To restrict the licensee from conducting business in a specified area of the industry; or

(e) To restrict the licensee from acting as a supervisor for salespersons or investment adviser representatives conducting business in Oregon.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.175, 59.215 & 59.215

Hist.: FCS 9-2001, f. & cert. ef. 9-28-01

## **DIVISION 300**

### **COMMODITIES**

#### **441-300-0010**

##### **Depository Receipts**

(1) As used in ORS 645.020, an instrument evidencing receipt of precious metals must comply with ORS Chapter 77 (Warehouse Receipts, Bills of Lading and Other Documents of Title).

(2) In addition to stating the quantity, the receipt must state the quality of precious metal, which shall not be less than minimum investment fineness:

(a) In the case of the following metals minimum investment fineness is:

(A) Gold — .995;

(B) Silver — .999;

(C) Platinum — .9995; and

(D) Palladium — .999.

(b) In the case of the following metals in coin form, minimum investment fineness is:

(A) Gold — .900;

(B) Silver — .900;

(C) Platinum — .999; and

(D) Palladium — .999.

Stat. Auth.: ORS 645.020 & 645.205

Stats. Implemented: ORS 645.020

Hist.: FCS 2-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 4-1988, f. 3-22-88, cert. ef. 3-25-88; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92

#### **441-300-0020**

##### **Authorized Depositories**

Pursuant to ORS 645.020(2)(a)(D), the Director designates the following depositories:

(1) Chase Manhattan Bank, 1 Chase Manhattan Plaza, New York, NY 10081.

(2) CitiBank, 399 Park Avenue, New York, NY 10043.

(3) Iron Mountain Depository Corporation, 26 Broadway, New York, NY 10004.

(4) Irving Trust Company, 1 Wall Street, New York, NY 10015.

(5) Republic National Bank of New York, 450 5th Avenue, New York, NY 10018.

(6) Swiss Bank Corporation, 4 World Trade Center, New York, NY 10048.

(7) Marine Midland Bank of New York, 130 Chambers Street, New York, NY 10007.

(8) Wilmington Trust Company, Rodney Square North, Wilmington, DE 19890.

(9) Bank of Delaware, 300 Delaware Avenue, Wilmington, DE 19899.

Stat. Auth.: ORS 645.020 & 645.205

Stats. Implemented: ORS 645.020

Hist.: FCS 2-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 4-1988, f. 3-22-88, cert. ef. 3-25-88; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92

## **DIVISION 325**

### **FRANCHISES**

#### **441-325-0010**

##### **Definitions**

All words and phrases in OAR chapter 441, division 325, have meaning given them in ORS 650.005.

Stat. Auth.: ORS 650

Stats. Implemented: ORS 650.005

Hist.: CC 17, f. 5-21-74, ef. 6-11-74; CC 20, f. 12-12-74, ef. 1-11-75; CC 28, f. 4-9-76, ef. 4-16-76; CC 9-1981, f. & ef. 11-23-81; Renumbered from 815-040-0050; FCS 17-1988(Temp), f. & cert. ef. 11-21-88; FCS 6-1989, f. & cert. ef. 5-17-89; FCS 5-2008, f. & cert. ef. 6-26-08

#### **441-325-0020**

##### **Pre-Sale Disclosure Requirements**

(1) No franchisor shall sell or offer to sell a franchise in this state unless the franchisor delivers to the prospective franchisee a disclosure document required by **16 CFR pt. 436**.

(2) The franchisor must deliver the disclosure document and all proposed agreements relating to the sale of the franchise to the prospective franchisee at least 14 calendar days before the prospective franchisee executes any agreement with the franchisor relating to the sale of the franchise or at least 14 calendar days before the prospective franchisee tenders or is required to tender to the franchisor any consideration for the franchise including refundable deposits, whichever occurs first.

(3) Failure to timely provide the disclosure document and all proposed agreements required under this rule is a violation of ORS 650.020(1).

(4) Compliance with this rule shall not be construed to exempt any person engaged in the sale of a franchise in this state from making such other disclosures as are material.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 650.050

Stats. Implemented: ORS 650.020

Hist.: CC 17, f. 5-21-74, ef. 6-11-74; Renumbered from 815-040-0055; FCS 17-1988(Temp), f. & cert. ef. 11-21-88; FCS 6-1989, f. & cert. ef. 5-17-89; FCS 9-1994, f. & cert. ef. 8-1-94; FCS 1-1995(Temp), f. & cert. ef. 3-29-95; FCS 5-2008, f. & cert. ef. 6-26-08

#### **441-325-0030**

##### **Exemptions to Disclosure Requirements**

The sale of or offer to sell a franchise is exempt from OAR 441-325-0020 if any of the following circumstances apply:

(1) The sale or offer to sell is exempt or excluded from delivery of a disclosure document under 16 CFR § 436.8(a).

(2) The sale or offer to sell is a renewal, extension, amendment or modification of an existing franchise agreement if there is:

(a) No interruption in the operation of the franchise relationship;

(b) No material change adverse to the franchisee in the franchise relationship; and

(c) No material change adverse to the franchisee in the disclosure information previously furnished to the franchisee.

(3) The sale or offer to sell is the sale of or offer to sell one or more additional franchises to an existing franchisee and the franchisor furnished a disclosure document to the franchisee in connection with the prior sale and there has been no material change adverse to the franchisee in the disclosure information previously furnished to the franchisee;

(4) The sale or offer to sell is a sale or offer to sell by a franchisee for the franchisee's own account of a franchise or an entire area franchise if:

(a) The sale or offer to sell is not effected by or through the franchisor. A sale is not effected by or through a franchisor merely because the franchisor has a right to approve or disapprove a different franchisee, requires the tender of a reasonable transfer fee, or requires appropriate documents executed;

(b) The franchisor does not aid in the sale;

(c) The sale is an isolated sale, and not a part of a plan of distribution of franchises; and

(d) At least 14 calendar days before the prospective purchaser executes any agreement with the franchisor relating to the sale, or tenders or is required to tender to the franchisee any consideration for the franchise or area franchise including any refundable deposit, whichever occurs first, the selling franchisee or subfranchisor has provided the prospective purchaser full access to the books, records, and disclosure documents of the franchise business.

(5) The sale or offer to sell is by a court appointed fiduciary or pursuant to a court order.

Stat. Auth.: ORS 650.050

Stats. Implemented: ORS 650.005, 650.020 & 650.050

Hist.: CC 17, f. 5-21-74, ef. 6-11-74; CC 9-1981, f. & ef. 11-23-81; Renumbered from 815-040-0060; FCS 17-1988(Temp), f. & cert. ef. 11-21-88; FCS 6-1989, f. & cert. ef. 5-17-89; FCS 5-2008, f. & cert. ef. 6-26-08

#### **441-325-0040**

##### **Offer or Sale of Franchise**

The offer or sale of a franchise by a franchisee for his own account or the offer or sale of the entire area franchise owned by a subfranchisor for his own account, is exempted from the provisions of ORS chapter 650 if sale is not effected by or through a franchisor, and the franchisor does not participate or aid in the sale thereof. A sale is not effected by or through a franchisor merely because a franchisor has a right to approve or disapprove a different franchisee.

Stat. Auth.: ORS 650.050

Stats. Implemented: ORS 650.005, 650.020

Hist.: CC 17, f. 5-21-74, ef. 6-11-74; Renumbered from 815-040-0065; FCS 5-2008, f. & cert. ef. 6-26-08

#### **441-325-0050**

##### **Relationship to Securities Law**

A franchisor must meet the requirements of ORS 59.005 to 59.451, 59.991 and 59.995 if any part of a franchise offering may be considered a security.

Stat. Auth.: ORS 650.050

Stats. Implemented: ORS 59.015

Hist.: CC 17, f. 5-21-74, ef. 6-11-74; Renumbered from 815-040-0070; FCS 17-1988(Temp), f. & cert. ef. 11-21-88; FCS 6-1989, f. & cert. ef. 5-17-89; FCS 5-2008, f. & cert. ef. 6-26-08

## **DIVISION 446**

### **DEALER LICENSING**

#### **441-446-0100**

##### **Purpose and Scope**

OAR 441-446-0100 through 441-446-0300 contains the definitions, rules and requirements pertaining to businesses that engage in the business of selling manufactured structures. With the implementation of these rules, the division intends to repeal the administrative rules adopted by the Department of Motor Vehicles to the extent that they regulate dealers of manufactured structures.

Stat. Auth.: 2003 SB 468 & ORS 446.666

Stats. Implemented: ORS 446.666

Hist.: BCD 10-2005, f. 4-29-05, cert. ef. 5-1-05; Renumbered from 918-030-0400, FCS 7-2008 f. & cert. ef. 7-28-08

#### **441-446-0110**

##### **Definitions**

As used in OAR 441-446-0100 through 0300 and ORS Chapter 446, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Corrected license" means a manufactured structures dealer license or a limited manufactured structures dealers license that has been modified from the information supplied in the original application, i.e. name change, or address change.

(2) “Dealer” means a person who is required to be licensed pursuant to ORS 446.691, 446.696, 446.701 or 446.706.

(3) “Dealership,” “place of business,” or “business location,” means a location within the State of Oregon, where a dealer engages in the business of selling manufactured structures.

(4) “Location,” “main business location,” or “main dealership,” means a location identified and listed as the dealer’s main business location on the original business license application.

Stat. Auth.: ORS 183.335

Stats. Implemented: ORS 183.335

Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06; Renumbered from 918-030-0410, FCS 7-2008 f. & cert. ef. 7-28-08

#### 441-446-0200

##### Dealer Licensing

(1) To apply for a dealer license, supplemental license, temporary license, or limited license, a person must submit a completed division approved application form and a division approved surety bond.

(2) For the purposes of this section, a supplemental or corrected license shall have the same expiration as the limited or dealer license.

Stat. Auth.: ORS 446.666

Stats. Implemented: ORS 446.666 & 446.716

Hist.: BCD 10-2005, f. 4-29-05, cert. ef. 5-1-05; Renumbered from 918-030-0420, FCS 7-2008 f. & cert. ef. 7-28-08

#### 441-446-0210

##### Dealer Requirements

(1) A dealer shall file all required applications for ownership documents and trip permits, or ensure required applications are completed and filed, in a manner prescribed by the division.

(2) A manufactured structure dealer selling manufactured homes for installation in Oregon, shall present each potential buyer of a new manufactured home with a division standard disclosure statement to read and sign prior to the completion of the sales contract of any new manufactured home. A dealer shall give one copy of the disclosure, signed by the buyer and the dealer, to the buyer and retain one copy in the dealer’s files for not less than five years from the date of sale. Copies of signed disclosures shall be made available to the division upon request.

(3) Dealers are required to maintain accurate records for a period of five years. Records required to be maintained include but are not limited to:

(a) A legible copy of any disclosure statement provided to a purchaser;

(b) A legible copy of any trip permit issued by the dealer;

(c) A record of the names and addresses of all contractors retained or hired by the dealer to engage in any aspect of manufactured structure installation or service work and a record identifying the manufactured structures on which each contractor performed work;

(d) Records of any correction notices the dealer has sent to a manufacturer for repairs arranged by the dealer;

(e) A record of any alterations a dealer made to a manufactured structure prior to sale or as a part of a sales agreement;

(f) A legible copy of all records relating to a sale, including but not limited to confirmation orders, diagrams, purchase options, written agreements, financing applications, financing agreements, change orders, price changes, ownership documents, and applications to record a structure in deed records; and

(g) Records associated with consignment sales.

(4) In addition to the bond or letter of credit requirements in ORS 446.726, a dealer shall authorize their bond or letter of credit company to notify the division upon any change to or cancellation of the insurance required for their dealer license, and notify the division of any change to or cancellation of the bond or letter of credit required for their dealer license.

(5) A dealer shall within 10 business days, notify the division of any name, ownership, address changes or additions, through a division approved form including any change of registration status with the Secretary of State, and obtain all required licenses.

(6) Dealers shall exercise due care and diligence that is consistent with industry practice in all transactions involving a manufactured structure and shall not, by act or omission, endanger the economic welfare or the health or safety of the public through such transactions.

(7) A dealer shall not engage in conduct which demonstrates habitual disregard for the law.

Stat. Auth.: ORS 446.666

Stats. Implemented: ORS 446.225, 446.260, 446.666, 446.691, 446.696, 446.701, 446.706, 446.716, 446.726, 446.736, 446.741 & 446.751

Hist.: BCD 10-2005, f. 4-29-05, cert. ef. 5-1-05; Renumbered from 918-030-0430, FCS 7-2008 f. & cert. ef. 7-28-08

#### 441-446-0300

##### Violations

Additional grounds for manufactured structure dealer license, denial, suspension, revocation or placement on probation, may include:

(1) Failure to maintain records or any other requirements under OAR 441-446-0210;

(2) Conduct which constitutes a Class A misdemeanor or any felony arising out of actions related to the selling, brokering, trading or exchanging of manufactured structures or conviction of such Class A misdemeanor of felony; or

(3) Conduct which constitutes an unlawful practice under ORS 646.608;

(4) Failure to maintain the required bond insurance or letter of credit; and

(5) A pattern of violations of any provisions of ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, and 446.561 to 446.756 or any rules adopted thereunder.

Stat. Auth.: ORS 446.741

Stats. Implemented: ORS 446.666, 446.741, 446.746, 446.751 & 446.756

Hist.: BCD 10-2005, f. 4-29-05, cert. ef. 5-1-05; Renumbered from 918-030-0490, FCS 7-2008 f. & cert. ef. 7-28-08

## DIVISION 500

### BANKING

#### Definitions

#### 441-500-0020

##### Fees for Banks, Trust Companies, Savings Banks, Extranational Institutions, Savings Associations and Call for Reports

(1) Definitions.

(a) As used in this rule, “assets” means;

(A) The average assets of an Oregon based insured institution;

or

(B) The average Oregon assets of an extranational institution.

(b) For the purposes of determining averages in subsections

(1)(a):

(A) Average assets for an Oregon based insured institution shall be determined from the quarterly Call Reports of Condition and Income filed with the applicable federal supervisory agency for the calendar year immediately preceding the due date of the fee assessment; and

(B) Average Oregon assets in for an extranational institution shall be determined from the quarterly reports of Oregon Assets filed with the Director for the calendar year immediately preceding the due date of the assessment.

(2) Call for Reports. To the extent any report used to determine the fee assessment is not required to be filed or made available to the Director under other Banking Rules, the specific reports shall be provided by the insured institution or extranational institution upon the call of the Director to allow the fee assessments to be determined.

(3) Subject to section (10) of this rule, the annual fee assessment under ORS 706.530 for an insured institution subject to the jurisdiction of the Director, including a savings association, is: If assets are:

(a) Less than \$10 million, \$800 plus .000275 of all assets;

(b) \$10 million or more but less than \$25 million, \$1,625 plus .000200 of all assets;

(c) \$25 million or more but less than \$100 million, \$2,895 plus .000153 of all assets;

(d) \$100 million or more but less than \$500 million, \$9,795 plus .000090 of all assets;

(e) \$500 million or more but less than \$1 billion, \$22,795 plus .000066 of all assets;

(f) \$1 billion or more but less than \$2 billion, \$24,795 plus .000064 of all assets;

(g) \$2 billion or more but less than \$3 billion, \$26,795 plus .000063 of all assets;

(h) \$3 billion or more but less than \$4 billion, \$29,795 plus .000062 of all assets;

(i) \$4 billion or more, \$33,795 plus .000061 of all assets.

(4) Subject to section (10) of this rule, the annual fee assessment determined in section (3) of this rule shall include a risk-based assessment calculated on the basis of the CAMELS rating assigned to the insured institution as of December 31 in the calendar year immediately preceding the due date of the risk-based assessment. The rate of the risk-based assessment is as follows: [Table not included. See ED. NOTE.]

(5) Subject to section (10) of this rule, the annual regulatory fee assessment under ORS 706.530 for each trust company subject to the Director's jurisdiction is \$2,000 plus:

(a) .000060826 of the first \$150 million in managed assets; and .000030413 of managed assets greater than \$150 million;

(b) .0000152065 of the first \$150 million in custodial assets; and .0000076075 of custodial assets greater than \$150 million.

(6) Subject to section (10) of this rule, the annual regulatory fee assessment under ORS 706.530 and 713.090 for each extranational institution is: If Oregon assets are:

(a) Less than \$10 million, \$845 plus .000310 of all assets;

(b) \$10 million or more but less than \$25 million, \$2,545 plus .000140 of all assets;

(c) \$25 million or more but less than \$100 million, \$3,545 plus .000100 of all assets;

(d) \$100 million or more but less than \$500 million, \$6,745 plus .000068 of all assets;

(e) \$500 million or more, but less than \$1 billion, \$10,245 plus .000061 of all assets;

(f) \$1 billion or more but less than \$2 billion, \$15,245 plus .000056 of all assets;

(g) \$2 billion or more, \$17,245 plus .000055 of all assets.

(7) The fees assessed by this rule are not subject to prorate or refund.

(8) If no fee is assessed during any year under sections (3) or (5) of this rule because an insured institution did not have Oregon assets during the calendar year immediately preceding the due date of the assessment, the insured institution may be charged for actual cost, if the Director participates in any examination of the institution during the same calendar year. Actual cost shall be determined in the same way as provided in OAR 441-500-0030.

(9) All fees assessed under sections (3) to (6) of this rule are due and payable on April 1 of each calendar year.

(10)(a) The Director may by order reduce the fees assessed for any specific year.

(b) When a fee is assessed under sections (3) to (6) of this rule, the assessment shall not be less than:

(A) \$5,000 for an insured institution, including a savings association, under section (3);

(B) \$2,500 for a trust company under section (5) and an extranational institution under section (6).

(11) The charges for special examination and special attention provided in OAR 441-500-0030 are in addition to and not in lieu of the fees assessed by this rule.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 705.620

Stats. Implemented: ORS 706.530

Hist.: FID 2-1986, f. & ef. 3-7-86; FID 3-1986, f. & ef. 5-15-86; FID 4-1986, f. & ef. 7-25-86; FCS 2-1988, f. 1-29-88, cert. ef. 2-1-88; Renumbered from 805-002-0100; FCS 1-1989, f. 1-18-89, cert. ef. 2-1-89; FCS 1-1993, f. & cert. 2-23-93; FCS 4-1994, f. & cert. ef. 4-25-94; FCS 1-1998, f. & cert. ef. 3-31-98, Renumbered from 441-505-0020; FCS 6-2007, f. & cert. ef. 10-22-07; FCS 1-2008, f. & cert. ef. 1-28-08; FCS 2-2009, f. & cert. ef. 2-3-09; FCS 9-2009, f. 9-15-09, cert. ef. 9-25-09; FCS 2-2010, f. & cert. ef. 3-16-10

#### **441-500-0030**

##### **Charges for Special Examinations and Special Attention for Banks, Trust Companies, Savings Banks, Extranational Institutions and Savings Associations**

(1) Applicability. This rule applies to a banking institution, non-Oregon institution, savings institution and a holding company of an Oregon bank and trust company, but not a federal bank.

(2) In addition to the schedule of fees adopted in OAR 441-500-0020, "Actual costs" as charged for special examinations includes:

(a) \$75 an hour for each of the Director's staff assigned to the special examination for time performing the examination, writing reports and related administrative tasks;

(b) Reasonable actual cost to the Director for a consultant hired for the particular assignment or for other state staff assigned to the matter; and

(c) Reasonable actual travel and per diem costs incurred by the Director or staff.

Stat. Auth.: ORS 706.544 & 715.045

Stats. Implemented: ORS 706.544 & 715.045

Hist.: FID 2-1986, f. & ef. 3-7-86; Renumbered from 805-002-0110; Suspended by FCS 3-1997(Temp), f. 10-6-97; FCS 1-1998, f. & cert. ef. 3-31-98, Renumbered from 441-505-0030; FCS 1-2008, f. & cert. ef. 1-28-08

## **DIVISION 505**

### **BANKING SECTION (IN GENERAL)**

#### **441-505-1110**

##### **References to Federal Statutes and Regulations**

Pursuant to ORS 706.015, references in the Bank Act to Federal statutes and regulations shall be construed to refer to statutes or regulations in effect on June 30, 2007, unless specifically provided otherwise in the Bank Act.

Stat. Auth.: ORS 706.015

Stats. Implemented: ORS 706.015

Hist.: FCS 1-2003, f. & cert. ef. 10-06-03; FCS 6-2007, f. & cert. ef. 10-22-07

#### **441-505-1120**

##### **Report of Oregon Deposits**

(1) Reporting Unit. This rule applies to:

(a) All Oregon commercial banks and Oregon savings banks;

(b) All non-Oregon institutions and federal banks that hold deposits of the State of Oregon or any political subdivision thereof where the institution or bank meets the requirements of ORS 714.045; and

(c) All insured institutions or trust companies authorized to take deposits in this state or to do trust business in this state that certify under ORS 295.005(2)(c) to the State Treasurer that the insured institutions or trust companies will furnish reports of Oregon deposits.

(2) Report date. A report shall be filed with the Director showing deposits as of June 30 of each year. A report filed electronically with the federal supervisory agency is considered filed with the Director.

(3) Report Form and Contents. A copy of the Summary of Deposits filed with the FDIC shall be used for reporting deposits, provided that:

(a) An Oregon chartered commercial or savings bank shall file its complete Summary of Deposits Report; and

(b) Non-Oregon institutions and federal banks complying with this rule shall provide deposits for each Oregon branch.

(4) The director reserves the right to call for additional deposit reports by Order.

Stat. Auth.: ORS 714.075

Stats. Implemented: ORS 714.075

Hist.: FCS 3-1997(Temp), f. & cert. ef. 10-6-97; FCS 1-1998, f. & cert. ef. 3-31-98, Renumbered from 441-510-0341; FCS 6-2007, f. & cert. ef. 10-22-07

#### **441-505-1130**

##### **Call Reports**

(1) Reporting Unit. This rule applies to banks, other than federal banks; and extranational institutions engaged in banking business in this state.

(2) Reports Called For. The Director calls for a quarterly report of condition, earnings and dividends.

(3) Report Form and Contents. The report shall be a copy of the Federal Financial Institutions Examination Council report of condition and income form that the institution is required to file with its federal regulator (hereafter "Report").

(a) A reporting unit that submits a hard copy Report to its federal supervisory agency shall concurrently file a copy of the same report with the Director.

(b) A reporting unit that files its Report electronically with the federal supervisory agency shall notify the Director in writing that it makes such electronic filings. Only one notice to the Director is required, unless the reporting unit changes its method of reporting to the respective federal supervisory agency, in which case it shall notify the Director of the change.

Stat. Auth.: ORS 706.630

Stats. Implemented: ORS 706.630  
Hist.: FCS 3-1997(Temp), f. & cert. ef. 10-6-97; FCS 1-1998, f. & cert. ef. 3-31-98, Renumbered from 441-510-0342; FCS 6-2007, f. & cert. ef. 10-22-07

**441-505-1150**

**Report of Trust Assets**

(1) Reporting Unit. All companies doing trust business in Oregon and all Oregon banks having trust company powers shall file a Report of Fiduciary Activity ("Report") with the Director.

(2) The Report shall be a copy of Schedule RC-T — Fiduciary and Related Services to the Federal Financial Institutions Examination Council call report form which the institution is required to file with its federal supervisory agency.

(3) The Report shall be filed with the Director with the same frequency and concurrently with the federal filing. Reports filed electronically with the federal supervisory agency are considered filed with the Director. Trust companies not affiliated with a depository institution must file a hard copy of the Report with the Director.

Stat. Auth.: ORS 706.630  
Stats. Implemented: ORS 706.630(4)  
Hist.: FCS 3-1997(Temp), f. & cert. ef. 10-6-97; FCS 1-1998, f. & cert. ef. 3-31-98, Renumbered from 441-510-0344; FCS 1-2002, f. & cert. ef. 5-23-02; FCS 6-2007, f. & cert. ef. 10-22-07

**441-505-1160**

**Trust Company Financial Statements**

(1) All companies doing trust business in Oregon must file with the Director annual financial statements prepared in accordance with generally accepted accounting principles.

(2) The financial statements must be reviewed by an independent accountant. If the company for its own business purposes has audited financial statements prepared, a copy of the audited financial statements may be filed.

(3) The financial statements must be filed no later than 120 days after the end of the company's fiscal year.

(4) A depository institution doing trust business in Oregon is not required to file financial statements for its trust business separate from its annual financial statements filed with the director.

Stat. Auth.: 706.790  
Stats. Implemented: 706.630  
Hist.: FCS 6-2007, f. & cert. ef. 10-22-07

**441-505-2020**

**Exchange of Real Property for Stock**

(1) An Oregon commercial bank, trust company or savings bank that applies for permission to accept real property in exchange for stock at the initial formation of capital shall file the following documents with the Director before accepting or committing to accept real property and improvements in exchange for stock:

(a) An appraisal within the scope of licensure of a General Appraiser or Residential Appraiser certified by the Oregon Appraiser Certification and Licensure Board, or like person approved by the Director in the case of real property located outside of this state, that is dated or updated within 30 days of the application, provided there is no material change to the appraised property within the 30 day period;

(b) Commitments or sales of stock for cash received to the date of the application; and

(c) A business plan adopted by the board:

(A) That includes the intended use or disposition of the property within a period that is consistent with the Bank Act for such property; and

(B) That shows a prudent and reasonable business purpose for such an exchange.

(2) The Director shall consider the business plan, capital adequacy, liquidity and management capabilities in determining whether the proposal is prudent and reasonable.

Stat. Auth.: ORS 707.050  
Stats. Implemented: ORS 707.050  
Hist.: FCS 1-1998, f. & cert. ef. 3-31-1998

**441-505-3010**

**Insurance Activity Report**

(1) Applicability.

(a) Except as provided in subsection (b) of this section, this rule applies to:

(A) All Oregon banks, Oregon savings banks and Oregon trust companies that acquire subsidiaries or invest in companies that engage in or intend to engage in insurance agency activities as a licensee under ORS 744.002; and

(B) All bank holding companies that are subject to ORS 715.075.

(b) Any entity described in subsection (a) that received permission from the Director to conduct insurance activities prior to the effective date of this rule is not required to reapply for permission but is required to comply with the reporting requirements in section (4) of this rule.

(2) Application for Permission. Applicant shall file a written request for permission with the Director. The request shall:

(a) Describe the activities to be performed;

(b) Identify the persons who will provide the services, including a description of any arrangement with third party companies;

(c) Provide a business plan for this activity; and

(d) If a subsidiary or investment in a separate insurance agency is involved, additionally describe the details of the transaction including amount to be invested and identity of additional shareholders, if any.

(3) The Director shall issue to the applicant, upon completion of the review, an order granting or denying permission to engage in insurance activities.

(4) Report. All entities engaged in insurance activities under this rule shall file a report with the Director.

(a) The report shall be on the Director's Form, "REPORT OF INSURANCE ACTIVITIES" and shall disclose for the preceding calendar year:

(A) Total number of insurance policies sold;

(B) Insurance policies sold in each class of insurance described in ORS 744.062(1);

(C) Total premium income from insurance policies sold;

(D) Total commission income from insurance policies sold;

(E) Number of annuity policies sold as a replacement of the customer's existing annuity policy;

(F) Number of annuity policies sold under the Internal Revenue Service section 1035 exchange provisions;

(G) Number of annuity policies sold to customers aged 70 years or older; and

(H) Amendments since the last reporting period to the institution's business plan for insurance activity.

(b) The report shall be filed annually no later than March 31 of each year.

Stat. Auth.: ORS 708A.120(7) & 716.594  
Stats. Implemented: ORS 708A.120(7) & 716.594

Hist.: FCS 10-1988, f. & cert. ef. 4-18-88; Renumbered from 805-002-0055; Suspended by FCS 3-1997(Temp), f. 10-6-97; FCS 1-1998, f. & cert. ef. 3-31-98, Renumbered from 441-505-0000; FCS 6-2007, f. & cert. ef. 10-22-07

**441-505-3020**

**Property Acquired for or Used for Place of Business; Disposition if Not Used**

(1) An institution shall sell or dispose of real property referred to in ORS 708A.175:

(a) Purchased for future location or expansion of its business, if the real estate is not so used within two years after the date of acquisition; or

(b) Formerly used as a place to carry on the business of the institution, if it is not reused for a business purpose within two years after the business use is discontinued.

(2) The Director may grant an extension of the two-year period if justified by an asset utilization plan which is consistent with the institution's business plan.

(3) The Director shall also consider the capital adequacy, liquidity, profitability, cash flow and management capabilities in determining whether the proposal is prudent and reasonable.

Stat. Auth.: ORS 708A.175  
Stats. Implemented: ORS 708A.175

Hist.: BB 13, f. & ef. 3-5-76, Renumbered from 805-024-0115; FCS 1-1998, f. & cert. ef. 3-31-98, Renumbered from 441-580-0030; FCS 2-2004, f. & cert. ef. 8-5-04

**441-505-3030**

**Appraisal Required**

(1) The carrying (book) value of real estate acquired by an institution pursuant to ORS 708A.175 shall be established by a real prop-

erty appraisal that is current at the time of such acquisition. An appraisal is current if dated no more than one year prior to the acquisition.

(2) The real property appraisal must be reviewed by appropriate institution officers to determine whether it is a reliable indicator of the value and condition of the real estate acquired and complies with applicable standards for preparation of such appraisals.

(3) If the carrying (book) value of the real estate exceeds the appraised value on acquisition the difference shall be immediately charged off.

(4) ORS 708A.590, as relevant, shall thereafter be followed.

Stat. Auth.: ORS 706.790

Stats. Implemented: ORS 708A.175(3)

Hist.: BB 13, f. & ef. 3-5-76, Renumbered from 805-024-0130; FCS 1-1998, f. & cert. ef. 3-31-98, Renumbered from 441-580-0050; FCS 6-2007, f. & cert. ef. 10-22-07

#### **441-505-3040**

##### **Real Estate Sales Contracts**

Property sold under a contract of sale shall be carried as Real Estate Sold Under Contract until the contract is paid out or sold.

Stat. Auth.: ORS 706.790

Stats. Implemented: ORS 708A.195

Hist.: BB 13, f. & ef. 3-5-76, Renumbered from 805-024-0140; FCS 1-1998, f. & cert. ef. 3-31-98, Renumbered from 441-580-0060

#### **441-505-3046**

##### **Contents of Foreclosure Notices**

The sender of a notice form required by 2008 Or Laws, ch. 19, § 20 and as amended by 2009 Or Laws ch. 864, § 1 (Enrolled Senate Bill 628) must enter in the form and format adopted by this rule:

(1) The statewide telephone contact number for handling consumer queries as 800-SAFENET (800-723-3638)

(2) The telephone number of the Oregon State Bar's Lawyer Referral Service as 503-684-3763;

(3) The Oregon State Bar's Lawyer Referral Service toll-free number as 800-452-7636;

(4) The website address of the Oregon State Bar as <http://www.osbar.org>;

(5) The website address for the organization providing more information and a directory of legal aid programs as <http://www.oregonlawhelp.org>;

(6) The toll-free consumer mortgage foreclosure information number as 800-SAFENET (800-723-3638); and

(7) Information on federal loan modification programs as <http://www.makinghomeaffordable.gov/>.

Stat. Auth.: ORS 86.737

Stats. Implemented: ORS 86.737

Hist.: FCS 9-2008, f. 10-15-08, cert. ef. 10-16-08; FCS 6-2009(Temp), f. 8-21-09 thru 2-17-10; FCS 11-2009, f. 12-2-09, cert. ef. 12-7-09; FCS 13-2011(Temp), f. & cert. ef. 12-15-11 thru 6-12-12; Administrative correction, 6-27-12

#### **441-505-3050**

##### **Guidelines for Exceeding Restrictions on Ownership of Real and Personal Property Used in Business**

(1) A request for authorization to exceed the limitations of ORS 708A.560 shall contain:

(a) Details of the proposal;

(b) The reasons relied on for exceeding the limitations;

(c) An asset utilization plan which is consistent with the institution's business plan; and

(d) Such additional information required by the Director.

(2) The Director shall also consider the capital adequacy, liquidity, profitability, cash flow and management capabilities in determining whether the proposal is prudent and reasonable.

Stat. Auth.: ORS 708A.560

Stats. Implemented: ORS 708A.560

Hist.: BB 4-1978, f. 7-18-78, ef. 7-20-78; Renumbered from 805-024-0160; FCS 1-1998, f. & cert. ef. 3-31-98, Renumbered from 441-580-0080

#### **441-505-3070**

##### **Combining Loans to Separate Borrowers**

(1) For purposes of ORS 708A.295, the phrase "obligations in the name of one person for the benefit of another person" shall include the following situations:

(a) When proceeds of an obligation to a borrower are to be used for the direct benefit of the other person, as defined by OAR 441-505-3075, to the extent of the proceeds so used; or

(b) When a common enterprise exists between the borrower and the other person, as defined by OAR 441-505-3080.

(2) For the purposes of calculating if the loans and other obligations of a person to an Oregon commercial bank outstanding at any time exceed 15 percent of the Oregon commercial bank's capital, the Oregon commercial bank shall include or aggregate obligations meeting the requirements under ORS 441-505-3075 or 441-505-3080 with obligations made to a borrower in the borrower's individual capacity.

(3) Obligations that are outstanding prior to the effective date of this rule may be renewed or extended as long as no additional funds, other than those funds the Oregon commercial bank agreed to lend prior to the effective date of this rule, are granted to either person in violation of 441-505-3070 to 441-505-3080.

Stat. Auth.: ORS 706.790

Stats. Implemented: ORS 708A.295

Hist.: FCS 4-2009, f. & cert. ef. 8-7-09

#### **441-505-3075**

##### **Existence of a Direct Benefit**

(1) The amount of money received from an obligation incurred by a borrower will be considered to be for the direct benefit of another person and will be attributed to the other person when the amount of money received is transferred to another person, or the assets purchased with the money received are transferred to another person.

(2) This rule does not apply to bona fide transactions made in good faith where the money received from a loan obligation is used to acquire property, goods, or services.

Stat. Auth.: ORS 706.790

Stats. Implemented: ORS 708A.295

Hist.: FCS 4-2009, f. & cert. ef. 8-7-09

#### **441-505-3080**

##### **Existence of a Common Enterprise**

A common enterprise will be deemed to exist and obligations of separate borrowers will be aggregated when any of the following occur:

(1) When the expected source of repayment for each obligation is the same for each borrower and neither borrower has another source of income from which the obligation (together with the borrower's other obligations) may be fully repaid. An employer will not be treated as a source of repayment under this paragraph because of wages and salaries paid to an employee, unless the standards of section (2) of this rule are met;

(2) When obligations are incurred:

(a) By borrowers who are related directly or indirectly through common control, including where one borrower is directly or indirectly controlled by another borrower; and

(b) Substantial financial interdependence exists between or among the borrowers. "Substantial financial interdependence" exists when 50 percent or more of one borrower's gross receipts or gross expenditures on an annual basis are derived from transactions with the other borrower. Gross receipts and expenditures include gross revenues/expenses, inter-company loans, dividends, capital contributions, and similar receipts or payments;

(3) When separate persons borrow from a bank to acquire a business enterprise of which those borrowers will own more than 50 percent of the voting securities or voting interests, in which case a common enterprise is deemed to exist between the borrowers for purposes of combining the acquisition loans; or

(4) When the Director determines, based upon an evaluation of the facts and circumstances of particular transactions, that a common enterprise exists.

Stat. Auth.: ORS 706.790

Stats. Implemented: ORS 708A.295

Hist.: FCS 4-2009, f. & cert. ef. 8-7-09

#### **441-505-3085**

##### **Lending Limit Rules for Loans to Partnerships**

(1) Obligations to a partnership, joint venture, or association are obligations to each member of the partnership, joint venture, or association. This rule does not apply to limited partners in limited partnerships or to members of joint ventures or associations if the partners or members, by the terms of the partnership or membership agreement, are not held generally liable for the obligations or actions of the partnership, joint venture, or association, and those provisions are valid under applicable law.

(2)(a) Obligations to members of a partnership, joint venture, or association are not attributed to the partnership, joint venture, or association unless either OAR 441-505-3075 or 441-505-3080 is met. Both 441-505-3075 and 441-505-3080 are met between a member of a partnership, joint venture or association and such partnership, joint venture or association, when obligations are made to the member to purchase an interest in the partnership, joint venture or association.

(b) Obligations to members of a partnership, joint venture, or association are not attributed to other members of the partnership, joint venture, or association unless either OAR 441-505-3075 or 441-505-3080 are met.

Stat. Auth.: ORS 706.790  
Stats. Implemented: ORS 708A.295  
Hist.: FCS 4-2009, f. & cert. ef. 8-7-09

#### **441-505-3090**

##### **Interest Rate Swap Transactions**

(1) An Oregon commercial bank may engage in interest rate swap transactions as intermediary with and on behalf of the bank's customers and pledge bank assets to secure the transactions if the bank receives prior written approval from the Director of the Department of Consumer and Business Services and the following conditions are met to the director's satisfaction:

(a) The bank demonstrates to the director that it has the requisite knowledge and expertise to effectively analyze and engage in such transactions;

(b) The bank's board of directors has considered and adopted specific written policies and procedures governing such transactions, including but not limited to risk limits; and

(2) The aggregate risk exposure, at any time, to each counterparty shall not exceed the bank's legal lending limit.

Stat. Auth.: ORS 706.790  
Stats. Implemented: ORS 706.795  
Hist.: FCS 5-2012(Temp), f. 8-7-12, cert. ef. 8-8-12 thru 2-4-13

#### **441-505-4010**

##### **Exemption for Banking Institutions**

(1) An exemption is created under ORS 709.030(4) from the trust company certificate of authority and deposit requirements for:

(a) A non-Oregon institution or extranational institution when the entities are involved in any activity described in section (2) of this rule; and

(b) A non-Oregon institution or extranational institution that indirectly engages in any activity covered in subsection (2) of this rule because of its beneficial interest in a pool of notes secured by real estate mortgages or trust deeds.

(2) The exemption applies to:

(a) The taking, acquiring, holding and enforcement of notes secured by real estate mortgages or trust deeds or making commitments to purchase such notes;

(b) The foreclosing of mortgages and trust deeds in the courts of this state, acquiring the mortgaged property, holding and operating the property for a period not exceeding five years or disposal of the property.

Stat. Auth.: ORS 709.030(4)(g)  
Stats. Implemented: ORS 709.030(4)(g)  
Hist.: FCS 1-1998, f. & cert ef. 3-31-98; FCS 6-2007, f. & cert. ef. 10-22-07; FCS 9-2009, f. 9-15-09, cert. ef. 9-25-09

#### **441-505-4020**

##### **Exemption for Out of State Trust Company**

An exemption from the trust company certificate of authority and deposit requirements is created under ORS 709.030(4) for an out-of-state trust company that:

(1) Has no office in this state;

(2) Is regulated in its home state by an authority comparable to the Division of Finance and Corporate Securities; and

(3) Does not engage in soliciting trust business in Oregon.

Stat. Auth.: ORS 709.030(4)(g)  
Stats. Implemented: ORS 709.030(4)(g)  
Hist.: FCS 1-1998, f. & cert ef. 3-31-98; FCS 6-2007, f. & cert. ef. 10-22-07

#### **441-505-4030**

##### **Trust Company Exemption; Court Appointed Fiduciaries**

(1) As authorized by ORS 709.030(4)(g), an exemption from trust company certificate of authority requirements under 709.005(1) is hereby created for any person appointed as a personal representa-

tive, trustee or conservator by a court of competent jurisdiction, provided that the court requires the person to post a bond suitable to the size of the estate for which the appointment is made.

(2) As authorized by ORS 709.030(4)(g), an exemption from trust company certificate of authority requirements under 709.005(1) is hereby created for any person appointed as a Personal Representative, as defined in 111.005, or as a Special Administrator as described in 113.005, by a court of competent jurisdiction.

Stat. Auth.: ORS 706.795 & 709.030  
Stats. Implemented: ORS 708A.535 & 709.030  
Hist.: FCS 3-2002, f. & cert. ef. 10-25-02; FCS 6-2007, f. & cert. ef. 10-22-07

#### **441-505-6010**

##### **Deposits Required by Extranational Institutions**

(1) The deposit required to be posted by extranational institutions under ORS 713.025(2) shall be:

(a) Five percent of the total liability of each office in this state to Oregon based depositors, plus all acceptances, but excluding accrued expenses and amounts due to and other liabilities of offices, branches, agencies and subsidiaries of the extranational institution; and

(b) An additional \$2,500,000 for the protection of depositors and the public interest.

(2) The requirements of subsection (1)(a) shall be adjusted quarterly by the institution with notice to the Director, based on growth or loss of Oregon based deposits for the ending quarter, provided the amount of change is in excess of \$25,000.

Stat. Auth.: ORS 713.025  
Stats. Implemented: ORS 713.025(2)  
Hist.: FCS 1-1998, f. & cert ef. 3-31-98

### **DIVISION 646**

### **IDENTITY THEFT**

#### **441-646-0010**

##### **Definitions**

As used in ORS 646A.600 to 646A.628 and this division 646, unless the context requires otherwise:

(1) "Continuing violation" means the same activity extending longer than one day that violates the Oregon Consumer Identity Theft Protection Act.

(2) "Harm," for purposes of the notification requirement, is limited to monetary loss.

Stat. Auth.: ORS 646A.626  
Stats. Implemented: ORS 646A.604; 646A.624  
Hist.: FCS 10-2008, f. & cert. ef. 11-5-08

#### **441-646-0020**

##### **Expenses of Providing Notification**

(1) A person may calculate the expenses of providing notification by including reasonable and necessary expenses for:

(a) Staff time to generate a contact list of affected consumers;

(b) Paper to be used to print the notice;

(c) Printing or photocopying costs;

(d) Envelopes to be used to mail the notice; and

(e) First-class postage.

(2) A person may not include the following costs to calculate the expenses of providing notification:

(a) Attorney fees to draft or review the notice; or

(b) Toll-free telephone line to be made available to consumers with additional questions.

Stat. Auth.: ORS 646A.626  
Stats. Implemented: ORS 646A.604  
Hist.: FCS 10-2008, f. & cert. ef. 11-5-08

#### **441-646-0030**

##### **Use of Social Security Number**

(1) Materials or documentation of a transaction or service are requested by a consumer when the consumer initiated the contact with the person that mails the documents to the consumer, such as a loan application started by the consumer by telephone, tax returns prepared from information the consumer left with a tax preparer, or periodic updated or renewal materials for a product or service purchased by the consumer.

(2) A person that prints a Social Security number on materials mailed to a consumer concerning a transaction or service requested by

the consumer may not print the Social Security number on any part of the materials visible to the general public.

(3) When the consumer does not initiate contact with the person, and there is no federal or state law requiring the Social Security number to be printed on the materials, a person may not print the consumer's unredacted Social Security number on materials mailed to the consumer.

(4) A person may use or print a Social Security number for internal verification or administrative purposes, including materials sent outside of the person's business, when the SSN is not visible to, or accessible by, the general public.

(5) Persons are strongly encouraged to use a number other than the consumer's Social Security number to identify the consumer. If a person does use the consumer's Social Security number for identification, the person's plan to safeguard personal information under ORS 646A.622, including Social Security numbers, must specify reasonable procedures that:

(a) Prevent unauthorized access to the Social Security number; and

(b) Require electronic or physical transmission of the Social Security number to persons outside of the person's business to be accomplished through secure means, such as encryption or the use of a redacted Social Security number.

Stat. Auth.: ORS 646A.626

Stats. Implemented: ORS 646A.620, 646A.622

Hist.: FCS 10-2008, f. & cert. ef. 11-5-08

#### **441-646-0040**

##### **Safeguarding of Personal Information**

Protecting the security, confidentiality and integrity of personal information extends to:

(1) Electronic and paper methods of storing personal information;

(2) Electronic, paper and verbal methods of transmitting personal information; and

(3) All methods of disposing of personal information.

Stat. Auth.: ORS 646A.626

Stats. Implemented: ORS 646A.622

Hist.: FCS 10-2008, f. & cert. ef. 11-5-08

### **DIVISION 710**

#### **CREDIT UNIONS (IN GENERAL)**

#### **441-710-0000**

##### **Definitions**

As used in Oregon Administrative Rules chapter 441, divisions 710 and 720:

(1) "Abandoned premises" means former credit union premises from the date of relocation to new quarters, and property originally acquired for future expansion for which such use is no longer contemplated.

(2) "Banker's acceptance" means a time draft that is drawn on and accepted by a bank and that represents an irrevocable obligation of the bank.

(3) "Borrowing repurchase transaction" means a transaction in which the credit union agrees to sell a security to a counterparty and to repurchase the same or an identical security from that counterparty at a specified future date and at a specified price.

(4) "CUSO" or "credit union service organization" means an agency, association or corporation in which a credit union is authorized by ORS 723.602(5) to invest or to which it is authorized by 723.602(5) to loan funds. A CUSO may be organized for one or more of the purposes described in 723.006 or 723.602(5).

(5) "Eligible obligation" means a loan or group of loans.

(6) "Federal funds transaction" means a short-term or open-ended unsecured transfer of immediately available funds by one depository institution to another depository institution or entity.

(7) "Fixed assets" means premises and furniture, fixtures and equipment.

(8) "Furniture, fixtures and equipment" means all office furnishings (e.g., tables, chairs, desks, file cabinets, curtains, drapes, rugs, etc.), office machines, computer hardware and software, automated terminals, heating and cooling equipment.

(9) "Investment in fixed assets" means:

(a) Any investment in real property (improved or unimproved) which is being used or is intended to be used as premises;

(b) Any leasehold improvement on premises;

(c) The aggregate of the lease payments pursuant to a lease agreement on fixed assets; or

(d) Any investment in furniture, fixtures and equipment.

(10) "Investment repurchase transaction" means a transaction in which an investor agrees to purchase a security from a counterparty and to resell the same or an identical security to that counterparty at a specified future date and at a specified price.

(11) "Members of the immediate family" means:

(a) All of the following relatives of the member: grandparents, parents, spouse, children, stepchildren, grandchildren, brothers, sisters, half-brothers, half-sisters, aunts and uncles;

(b) The domestic partner of a member provided the domestic partner and the primary member attest that the following conditions apply:

(A) They share the same regular and permanent address;

(B) Have a close personal relationship; and

(C) Have agreed to be jointly responsible for basic living expenses and each others common welfare; and

(c) The immediate family members of those persons described in subsections (11)(a) and (11)(b) of this rule.

(12) "Mobile facility" means a movable physical facility held out by the credit union as a place of business.

(13) "NCUA" means the National Credit Union Administration.

(14) "Paid-in and unimpaired capital and surplus" means shares and deposits plus post-closing, undivided earnings, but does not include regular reserves or special reserves required by statute, administrative rule or special agreement between the credit union and the director or its share insurer.

(15) "Premises" means any office, branch office, service center, parking lot, other facility or real estate where the credit union transacts or will transact business.

(16) "Student loan" means a loan granted to finance attendance at an institution of higher education or at a vocational school, which is secured by and on which payment of the outstanding principal and interest has been deferred in accordance with the insurance or guarantee of the federal government, a state government, or any agency of either.

Stat. Auth.: ORS 723.102

Stats. Implemented: ORS 723.152, 723.156 & 723.172

Hist.: BB 4-1982, f. 8-24-82, ef. 9-1-82; BB 1-1984, f. & ef. 2-8-84; Renumbered from 805-072-0005; FCS 2-2005, f. & cert. ef. 8-25-05

##### **Membership**

#### **441-710-0020**

##### **Membership in General**

The rules in this section create procedures for establishing and expanding the membership of a credit union. These rules do not invalidate or change the field of membership of any credit union approved prior to March 31, 2000.

Stat. Auth.: ORS 723.102

Stats. Implemented: ORS 723.172

Hist.: FCS 2-1989, f. 1-18-89, cert. ef. 2-1-89; Renumbered from 805-072-0050; FCS 6-2000, f. & cert. ef. 3-31-00; FCS 2-2005, f. & cert. ef. 8-25-05

#### **441-710-0035**

##### **Community Charter Applications**

A credit union applying for a community charter must complete an application to include at least the following information:

(1) Written authorization for the application signed by the Board of Directors.

(2) Bylaws or amendment to bylaws showing current and revised field of membership.

(3) Identification of the area the credit union wishes to serve and the total population of the proposed community. Quote source for the population figures.

(4) If the area to be served consists of more than one precinct, district, city, county, or other defined boundaries, a detailed description of how the persons in the area interact or share interests.

(5) Map of proposed well-defined local community, neighborhood or rural district.

(6) Most recent monthly financial statement, including income and expense statement; and

(7) Business plan showing how credit union will provide service to proposed community, pro forma financial statements for the first three years of operation including assumptions used, and facility locations. The plan should include information on services and products offered by the institution.

(8) If the credit union applying for a community charter wishes to continue credit union services to a former group or former groups in accordance with ORS 723.172, the credit union must comply with the application requirements set forth in OAR 441-710-0071.

Stat. Auth.: ORS 723.102

Stats. Implemented: ORS 723.172(2) & 723.172(5)

Hist.: FCS 6-2000; f. & cert. ef. 3-31-00; FCS 12-2010, f. 11-29-10, cert. ef. 12-1-10

#### **441-710-0037**

##### **Procedures for Amending Bylaws on Community Charter Field of Membership**

(1) When a credit union wishes to expand its field of membership, it shall amend its bylaws to describe the geographic boundaries to be added to the field of membership. The proposed amendment to the bylaws and the application for approval of the amendment filed with the Director shall include:

(a) The bylaw that defines the field of membership of the credit union with the text of the proposed amendment to the bylaw showing the new language underlined and deleted language, if any, bracketed;

(b) Map of proposed well-defined local community, neighborhood or rural district, showing both the existing field of membership and the proposed field of membership to be added;

(c) The credit union's most recent financial statement;

(d) An updated plan of business for the credit union that takes into account the implications of the anticipated increased membership, deposits, responsibilities and effect on capital level of the credit union;

(e) An updated budget; and

(f) Any other evidence in support of the application.

(2) Any requirement in section (1) of this rule may be waived as it relates to a particular application, if the Director determines that complying with the requirement is not necessary for the purposes of carrying out the provisions of ORS Chapter 723.

Stat. Auth.: ORS 723.102

Stats. Implemented: ORS 723.022 & 723.172(8)

Hist.: FCS 6-2000; f. & cert. ef. 3-31-00

#### **441-710-0070**

##### **Procedures for Amending Bylaws on Field of Membership**

(1) When a credit union wishes to expand its field of membership, it shall amend its bylaws to describe the group or groups to be added to the field of membership. The proposed amendment to the bylaws and the application for approval of the amendment filed with the Director shall include:

(a) The bylaw that defines the field of membership of the credit union with the text of the proposed amendment to the bylaw showing the new language underlined and deleted language, if any, bracketed;

(b) The credit union's most recent financial statement;

(c) An updated plan of business for the credit union that takes into account the implications of the anticipated increased membership, deposits, responsibilities and effect on capital level of the credit union;

(d) An updated budget;

(e) If the amendment proposes to add a separate employment group to the field of membership; the names and addresses of individuals who represent the group;

(f) If the amendment proposes to add a group with a separate bond of occupation or association, the credit union shall submit evidence:

(A) That the group does not contain more than 3,000 members;

(B) That the group could not feasibly or reasonably establish a new credit union due to a lack of volunteer resources, financial resources or other factors important to the likelihood of successful formation of a new credit union; or

(C) That the group proposes to transfer to the credit union in connection with a merger, consolidation or transfer approved by the director, or in connection with the liquidation of another credit union.

(g) Any other evidence in support of the application, including relevant correspondence from the group to be added.

(2) Any requirement in section (1) of this rule may be waived by the Director if the requirement is not necessary for the purposes of that application.

Stat. Auth.: ORS 723.102

Stats. Implemented: ORS 723.022, 723.156 & 723.172

Hist.: FCS 2-1989, f. 1-18-89, cert. ef. 2-1-89; Renumbered from 805-072-0075;

FCS 6-2000; f. & cert. ef. 3-31-00; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 2-2005, f. & cert. ef. 8-25-05

#### **441-710-0071**

##### **Application to Serve Former Occupational Groups and Associational Members**

(1) In accordance with ORS 723.172, all community credit unions that wish to continue credit union services to an occupational or associational group or groups shall file an application to serve the these groups on a form provided by the director. The application form shall require the community credit union to supply the following information:

(a) The credit union's name; the date of conversion; and the communities it serves.

(b) The names of the former occupational or associational group or groups that the credit union wishes to serve and information showing that the occupational or associational group or groups have offices within the credit union's community boundaries.

(c) Information showing that the occupational or associational group or groups were within the credit union's field of membership before it converted to a community charter and the date when the bylaws were amended to include the occupational or associational group or groups in the credit union's field of membership.

(d) Information showing the number of individuals within the occupational group or groups or association or associations that do not live or work within the credit union's geographic boundaries, and the basis for credit union membership such as whether the individuals are directors, officers, employees, members, partners, personal representatives, trustees or volunteers of the corporation, limited liability company, partnership or association, trust, estate or other entity.

(e) Information showing that the credit union has the ability to serve the new credit union members who do not live or work within the community boundaries without sacrificing safety and soundness requirements including addressing the implications of how increased credit union membership, deposits, and responsibilities may effect the credit union's capital or net worth ratio.

Stat. Auth.: ORS 723.172

Stats. Implemented: 2009 SB 438 §3

Hist.: FCS 12-2010, f. 11-29-10, cert. ef. 12-1-10

#### **441-710-0075**

##### **Underserved Areas**

(1) A credit union may apply to the Director to add any underserved, well-defined local community, neighborhood or rural district to its field of membership if:

(a) The area is underserved by other depository institutions; and

(b) The credit union is prepared and able to establish and maintain an office or facility within the area to be added.

(c) "Underserved by other depository institutions" means the aggregate number of depository institution branches per capita is below the state average as established by the Director on an annual basis as of December 31.

(d) "Office or facility" means a place where shares are accepted for members' accounts, loan applications are accepted and loans are disbursed. This definition includes:

(A) A credit union owned branch;

(B) A shared branch that belongs to a shared branching network;

(C) A mobile branch;

(D) An office operated on a regularly scheduled weekly basis; or

(E) A credit union owned electronic facility that meets, at a minimum, the requirements of this subsection. An ATM, by itself, does not constitute an "office or facility."

(2) A credit union applying to add an underserved area to its field of membership must complete and submit to the Director an application to include at least the following information:

(a) Copy of the Board of Director minutes approving the request for expansion to an underserved area;

(b) Bylaws or amendment to bylaws showing the current and revised field of membership;

(c) Identification of the area the credit union wishes to serve and the population of the proposed community. Quote the source for the population figures;

(d) Map of proposed area;

(e) Data and the source of that data that demonstrates the area is underserved by other depository institutions.

(f) Most recent monthly financial statement, including income and expense statement;

(g) Business plan showing how the credit union will provide service to the underserved area; and

(h) Information on the proposed office or facility location as required by ORS 723.172(7)(b).

(3) The credit union may establish that the well-defined local community, neighborhood or rural district is underserved by other depository institutions by showing that the area:

(a) Encompasses or is located in an empowerment zone or enterprise community designated under section 1391 of the Internal Revenue Code of 1986; or

(b) Meets at least one of the following objective criteria of economic distress developed by the Community Development Financial Institutions Fund:

(A) The percentage of the population living in poverty is at least 20%.

(B) The median family income shall be at or below 80% of:

(i) The Metropolitan Area median family income or the National Metropolitan Area median family income, whichever is greater for an Investment Area within a Metropolitan area; or

(ii) The statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater for an Investment Area outside a Metropolitan area;

(C) The unemployment rate as reported in the most recently completed Unemployment Rates Report by the Oregon Department of Employment or the decennial census published by the US Bureau of the Census, whichever is more current, is at least 1.5 times the national average;

(D) In areas located outside of a Metropolitan Area:

(i) The county population loss in the period between the most recent decennial census and the previous decennial census is at least 10%; or

(ii) The county net migration loss (outmigration minus immigration) over the five year period preceding the most recent decennial census is at least 5%; or

(E) The area to be added is an "investment area," as defined in section 103(16) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702).

(4) After the application is complete, the Director's staff will review the application, determine whether the various criteria of the Director are met and determine whether the granting of the application will adversely impact the safety and soundness of the applicant. The Director will approve or deny the application accordingly and provide the applicant with the Director's determination and the reasons for the determination.

(5) An applicant whose application is denied will have the right to a contested case hearing and rights of appeal pursuant to the provisions of ORS Chapter 183.

Stat. Auth.: ORS 723.102

Stats. Implemented: ORS 723.172

Hist.: FCS 5-2002, f. 11-6-02 cert. ef. 11-14-02; FCS 2-2005, f. & cert. ef. 8-25-05

#### **441-710-0085**

##### **Guidelines for a Low-Income Designated Credit Union**

(1) A credit union may be designated by the director as a low-income credit union if the director determines it is in the public interest that the director designate the credit union as a low-income credit union and the credit union demonstrates that:

(a) A majority of current members of the credit union:

(A) Make less than 80 percent of the average for all wage earners as established by the most recently published U.S. Department of Labor's Bureau of Labor Statistics;

(B) Have a household income at or below 80 percent of the median household income for the nation as established by the most recently published Census Bureau data; or

(C) Are enrolled as full-time or part-time students in a college, university, high school, or vocational school; or

(b) The community charter credit union's field of membership is limited to geographic areas in which a majority of the residents, if members of the credit union, would fall within the low income criteria described in subsection (a) of this section.

(2) A credit union designated by the director as a low-income credit union may accept:

(a) Payments from a non-member that is a natural or nonnatural person to hold shares (including deposits) in the credit union, provided:

(A) The non-member shares do not exceed the greater of 20 percent of the total number of shares of the credit union or \$1,500,000, unless a greater amount has been approved by the director with NCUA concurrence; and

(B) The non-member is informed prior to a payment being made that a non-member share does not provide the holder with membership or voting rights in the credit union.

(b) Payments on secondary capital accounts if:

(A) The board of directors of the credit union has adopted and the credit union follows a written plan meeting the requirements of section (5) of this rule;

(B) The payments are from nonnatural persons, that may be non-members of the credit union, for an uninsured non-share account;

(C) The director approves the written plan;

(D) At or before the time the credit union first receives a payment on secondary capital, the credit union provides to the secondary capital account holder a written disclosure statement meeting the requirements of section (6) of this rule; and

(E) The director has not removed the designation of the credit union as a low-income credit union.

(3) Secondary capital accounts must be issued with a fixed maturity of not less than five years.

(4) A low-income credit union may use secondary capital for any purpose permitted by law.

(5) Each plan for secondary capital must include:

(a) A detailed statement specifying the credit union's need for, maximum amount of, sources and intended uses of the secondary capital;

(b) The terms of a secondary capital account, including maturity, basis for determining interest or dividend rate and calculation disclosures, withdrawal restrictions, and balance requirements;

(c) The credit union's loan and investment policies;

(d) A demonstration that the planned uses of secondary capital conform to the low-income credit union's strategic plan, business plan, and budget;

(e) A pro forma income statement and balance sheet, including any off-balance sheet items, covering a minimum of the next two years reflecting the issuance and uses of the amount of secondary capital described in subsection (a) of this section;

(f) An explanation of how the credit union will provide for liquidity to repay secondary capital upon maturity of the accounts; and

(g) A copy of the credit union's proposed disclosure statement meeting the requirements of section (6) of this rule.

(6) Each secondary capital account disclosure statement must be signed by the account holder and include:

(a) A statement that a secondary capital account does not provide the holder with membership or voting rights in the credit union;

(b) A statement that funds in a secondary capital account are not insured by the National Credit Union Share Insurance Fund or any other governmental or private entity;

(c) The terms of the secondary capital account, including the maturity, dividend rate and calculation disclosure, withdrawal restrictions and account balance requirements;

(d) A statement that the secondary capital may not be pledged as security on a loan or other obligation to the low-income credit union or any other party;

(e) A statement that funds, including interest accrued and paid into the secondary capital account, may be used, pro rata with all other secondary capital, to cover operating losses realized by the low-income credit union that exceed its net available reserves (exclusive of secondary capital and allowance accounts for loan and lease losses), and if so used, will not be restored; and

(f) A statement that any claim by a secondary capital account holder against the low-income credit union will be subordinate to all other claims, including shareholders, creditors and the National Credit Union Share Insurance Fund.

(7) Secondary capital may not be pledged by the account holder as security on a loan or other obligation to the low-income credit union or any other party.

(8)(a) A low-income credit union that issues secondary capital accounts pursuant to section (2) of this rule must record the funds on its balance sheet in an equity account entitled "uninsured secondary capital account."

(b) For accounts with remaining maturities of less than five years, the low-income credit union must reflect the net worth value of the accounts in its financial statement according to the following schedule:

(A) Four to less than five years remaining, 80% of the original balance;

(B) Three to less than four years remaining, 60% of the original balance;

(C) Two to less than three years remaining, 40% of the original balance;

(D) One to less than two years remaining, 20% of the original balance;

(E) Less than one year remaining, 0% of the original balance.

(c) The low-income credit union must reflect the full amount of the secondary capital on deposit in a footnote to its financial statement.

(9) In the event of a merger or other voluntary dissolution of the low-income credit union, other than a merger into another low-income credit union:

(a) Secondary capital accounts must be closed and paid out to the respective account holders to the extent they are not needed to cover losses at the time of merger or dissolution; and

(b) Non-member shares must be closed and paid out to the respective share holders.

(10)(a) The director may periodically review the low-income qualifications of a credit union. The designation of a credit union as a low-income credit union may be removed by the director:

(A) At the request of the credit union if the director determines that the action will not adversely affect the members of the credit union and that the action would be in the public interest; or

(B) If, following notice to the credit union and opportunity for a hearing under ORS chapter 183, the director determines that the credit union no longer meets the criteria to be a low-income credit union and that removal of the designation is in the public interest.

(b) Immediately following removal of the designation as a low-income credit union, the credit union must give written notice of the removal of the designation to all:

(A) Credit union members;

(B) Non-members holding shares; and

(C) Secondary capital account holders.

(c) The written notice to all non-members and secondary account holders must include information:

(A) That the credit union is no longer eligible to receive payments on non-member shares or secondary capital;

(B) That all non-member shares and secondary capital accounts will be closed;

(C) That all secondary capital accounts will be redeemed with no early withdrawal penalty; and

(D) Of the date of redemption, which must be 90 days after the effective date of removal of the designation as a low-income credit union, or at the maturity date of a secondary capital account, whichever occurs first.

Stat. Auth.: ORS 723.102, Sec. 5, Ch. 343, 2007 OL

Stats. Implemented: Sec. 5, Ch. 343, 2007 OL

Hist.: FCS 7-2007, f. 11-2-07, cert. ef. 1-1-08

### **Powers**

#### **441-710-0240**

##### **Limitations on Ownership of Fixed Assets**

Under ORS 723.152(4), a credit union has the power to acquire, lease, hold and dispose of property necessary or incidental to its operations. A credit union's ownership of fixed assets is limited as described by OAR 441-710-0240 to 441-710-0270.

Stat. Auth.: ORS 723.102

Stats. Implemented: ORS 723.152

Hist.: BB 4-1982, f. 8-24-82, ef. 9-1-82; Renumbered from 805-072-0305; FCS 2-2005, f. & cert. ef. 8-25-05

#### **441-710-0260**

##### **Investment in Fixed Assets**

(1) A credit union shall not, without the prior approval of the Director, invest in fixed assets if the aggregate of all such investments exceeds five percent of total assets.

(2) A credit union shall submit such statements and reports as the Director may require in support of a request for approval of an investment in fixed assets in excess of the limit specified by section (1) of this rule. Such reports and statements shall include, but need not be limited to:

(a) A narrative, describing the proposal in terms of costs, usage, location and method of financing;

(b) Current financial data; and

(c) A pro forma projected balance sheet and statements of income and expenses for each of the ensuing three years based upon the assumption that the proposal will be approved.

(3) If the Director determines that the proposal will not adversely affect the credit union, an aggregate dollar amount or percentage of assets will be approved for investment in fixed assets for that credit union.

Stat. Auth.: ORS 723.102

Stats. Implemented: ORS 723.152

Hist.: BB 4-1982, f. 8-24-82, ef. 9-1-82; Renumbered from 805-072-0315; FCS 2-2005, f. & cert. ef. 8-25-05

#### **441-710-0270**

##### **Investment in Premises**

(1) When real property is acquired for future expansion, at least partial utilization should be accomplished within a reasonable period, which shall not exceed three years unless otherwise approved in writing by the Director. After real property acquired for future expansion has been held for one year, a board resolution with definitive plans for utilization must be available for inspection by the Director's examiners.

(2) Investments in premises will be recorded on the credit union's books in accordance with generally accepted accounting principles. The cost of land shall be carried on the books of the credit union in an account separate from the cost of improvements thereon.

Stat. Auth.: ORS 723.102

Stats. Implemented: ORS 723.152

Hist.: BB 4-1982, f. 8-24-82, ef. 9-1-82; Renumbered from 805-072-0320; FCS 2-2005, f. & cert. ef. 8-25-05

#### **441-710-0325**

##### **Housing Agency Low Income Rental Housing Fund Client Trust Accounts**

(1) Every financial institution as defined in ORS 706.008, authorized by law to offer client trust accounts established pursuant to ORS 696.241 and to accept deposits to such accounts in Oregon may:

(a) Make available to its depositors, client trust accounts, hereafter designated as Housing Agency Low Income Rental Housing Fund Accounts ("Housing Fund Accounts"); and

(b) Pay interest on all funds deposited in each Housing Fund Account at the same rate payable on similar accounts.

(2) Each Housing Fund Account shall be created and maintained according to written agreement between the financial institution and participating depositor. Each agreement shall authorize the financial institution to pay all interest earned, net of fees and expenses imposed by the financial institution, to the Housing Agency Low Income Rental Housing Fund designated in Chapter 916, Oregon Laws 1989 and Chapter 716, Oregon Laws 1991.

(3) Fees and Expenses:

(a) Each Housing Fund Account may be subject to fees and expenses which are reasonable and are customarily assessed by the financial institution for similar accounts;

(b) In no event shall a financial institution collect fees and expenses from a Housing Fund Account in excess of earned interest.

(4) Interest Remittances and Reports:

(a) Each participating financial institution shall remit to the Housing Agency any interest earned on each Housing Fund Account, net of reasonable fees and expenses. Remittance, if any, shall be made at least quarterly;

(b) Remittance may be made in a single aggregate installment representing net interest payable from all Housing Fund Accounts maintained by the financial institution;

(c) Each participating financial institution shall report to the Housing Agency information as to every Housing Fund Account maintained by the financial institution. The information shall be in writing and include identity of the Housing Fund Account by name, account number, interest earned, fees and charges, and net interest remitted, if any. Reports shall be made at least quarterly and may accompany any remittances.

(5) If a financial institution is required to produce tax information returns (Form 1099), the financial institution shall designate the State of Oregon Housing Agency Low Income Rental Housing Fund, as payee or recipient. Tax identification information shall be provided by the Housing Agency to participating financial institutions upon request.

Stat. Auth.: ORS 723.102

Stats. Implemented: Ch. 916 OL 1989 & Ch. 716 OL 1991

Hist.: FCS 8-1989, f. 12-14-89, cert. ef. 1-1-90; FCS 2-2005, f. & cert. ef. 8-25-05

### **Reserves**

#### **441-710-0400**

##### **Loans to Officials**

(1) Any single loan to a person described in ORS 723.532(2) or the aggregate of all outstanding loans for which such person is directly or indirectly obligated to repay which exceeds \$100,000 shall be approved by the Board of Directors.

(2) If the credit union has a staff of three persons or less, all loans to a person described in ORS 723.532(2) shall be approved by the Board of Directors.

(3) This rule shall not apply to loans secured by share or deposit accounts.

Stat. Auth.: ORS 723.532

Stats. Implemented: ORS 723.532

Hist.: FCS 3-2001, f. & cert. ef. 2-13-01; FCS 2-2005, f. & cert. ef. 8-25-05

### **Mergers**

#### **441-710-0450**

##### **Mergers of Community Charters**

(1) A community charter credit union may not merge into an occupational or associational credit union unless:

(a) The situation involves a well-defined local community, neighborhood or rural district that is underserved by other depository institutions as referenced in ORS 723.172(7)(a) or is an emergency merger under section (2) of this rule.

(b) The merger does not impact the safety and soundness of the continuing credit union; and

(c) The continuing credit union maintains a service facility within the community boundaries. "Service Facility" means a place where shares are accepted for members' accounts, loan applications are accepted, and loans are disbursed. This definition includes a credit union owned branch, a shared branch that belongs to the shared branching network, a mobile home, an office operated on a regularly scheduled weekly basis, or a credit union owned electronic facility that meets, at a minimum, these requirements. It does not include an ATM.

(2) For purposes of this rule, "emergency merger" involves the director's determination that:

(a) A credit union is insolvent or likely to become insolvent;

(b) Expeditious action is necessary;

(c) Other reasonable alternatives are not available; and

(d) The public interest would best be served by approving the merger.

Stat. Auth.: ORS 723.102

Stats. Implemented: ORS 723.172 & 723.682

Hist.: FCS 6-2000, f. & cert. ef. 3-31-00; FCS 2-2004, f. & cert. ef. 8-5-04; Renumbered from 441-710-0038, FCS 2-2005, f. & cert. ef. 8-25-05

#### **441-710-0460**

##### **Notice to Members of Merger Plan**

(1) After approval of a plan of merger by the board of directors of two or more credit unions, the plan of merger, in summary form, must be presented to the members of the merging credit union(s) prior to the affirmative vote required by ORS 723.682. Unless waived by the director, the summary of the merger plan must contain the following, as applicable:

(a) Current financial reports for each credit union, consisting of the most currently filed NCUA Form 5300 pages reflecting assets and liabilities, income and expenses, and net worth ratio;

(b) A combined financial report as submitted to the director;

(c) An analysis of share values, and any proposed share adjustments;

(d) An explanation of any changes concerning insurance of member accounts;

(e) The reason(s) for the merger;

(f) The name and location of the continuing credit union, including branches, expected to be open after the merger;

(g) A description of the organization of the continuing credit union board of directors and the identity, if known, of its members and committees;

(h) An explanation of any new or expanded products and services to be made available to members, and any services or products expected to be discontinued, as a result of and expected to be effective within 30 days of the closing date of the merger;

(i) A statement of whether any senior management officials (vice president level and above) of the merging credit union are subject to employment agreements, deferred compensation agreements, or other employee benefit arrangements not offered to employees generally, and if so, whether any such agreements or arrangements contain provisions effecting compensation or benefits changes in the event of a merger;

(j) A statement of whether any agreements, plans or arrangements identified in subsection (1)(i) will be modified or superseded in connection with the merger, or whether any senior management officials (vice president and above) of the merging credit union will be offered new employment agreements, deferred compensation arrangements, incentive plans, retirement packages or other employee benefit arrangements not offered to employees generally. Provide a summary description of the arrangements identified in this subsection, disclosed in the aggregate, and not by individual employee, with a brief explanation of how such arrangements differ from existing arrangements of such employees; and

(k) An estimate itemized by general categories of the cost of the merger.

(2) Before dissemination to the members, the merger plan summary described in section (1) will be made available for inspection by the director or the director's employees at the offices of the credit union(s) or by viewing a web site maintained by the credit union(s) to which the director is provided access. The credit union(s) will notify the director when the merger plan summary becomes available for review. The credit union may disseminate the merger plan summary to the members at the time the director grants preliminary approval of the merger or five business days after the merger plan summary is made available for inspection by the director, whichever is later.

(3) The summary may be communicated to members by means of:

(a) United States postal mail;

(b) Electronic mail;

(c) Facsimile;

(d) Access to an Internet web page which may be password-protected if deemed necessary by the credit union;

(e) Permitting members to pick up materials at a main or branch office; or

(f) Any other method identified by the credit union and approved by the director that allows for access by the members to the information.

Stat. Auth.: ORS 723.102

Stats. Implemented: ORS 723.682

Hist.: FCS 5-2004, f. & cert. ef. 11-30-04; Renumbered from 441-710-0045, FCS 2-2005, f. & cert. ef. 8-25-05

### **Supervision and Regulation**

#### **441-710-0500**

##### **Fees and Charges Credit Unions Pay the Director**

(1) Effective March 8, 2011, the annual regulatory fee under ORS 723.114(1), which is due and payable on April 1 of each calendar year, by each credit union, with assets of:

(a) Less than \$10 million, is \$250 plus .000163 of all assets;

(b) \$10 million or more but less than \$20 million, is \$1110 plus .000197 of all assets;

(c) \$20 million or more but less than \$50 million, is \$1170 plus .000188 of all assets;

- (d) \$50 million or more but less than \$100 million, is \$1350 plus .000178 of all assets;
- (e) \$100 million or more but less than \$200 million, is \$7100 plus .000125 of all assets;
- (f) \$200 million or more but less than \$500 million, is \$7900 plus .000120 of all assets;
- (g) \$500 million or more but less than \$1 billion, is \$9400 plus .000116 of all assets;
- (h) \$1 billion or more but less than \$2 billion, is \$10,400 plus .000115 of all assets;
- (i) \$2 billion or more is \$12,400 plus .000113 of all assets.
- (j) If the credit union is a corporate credit union, the fee schedule is \$16,800 plus .0000345 of all assets.

(2) The rate of charge payable by a credit union is \$75 an hour for each examiner used in an examination for extra services provided a credit union under ORS 723.114(2).

(3) Notwithstanding the rate of charge fixed by section (2) of this rule:

(a) If an examiner from the division or the Supervisor is required to travel out of state for an examination or to provide extra service, the rate of charge payable by the credit union is \$75 an hour per person, plus actual expenses for travel and subsistence;

(b) If the examination or the extra service is performed by a consultant hired by contract for the particular work, the charge payable by the credit union is the actual cost to the division of the contract consultant.

(4) In addition to the charges fixed by sections (2) and (3) of this rule, the Director will collect from a credit union any additional costs directly attributable to extra services given the credit union under ORS 723.114(2).

(5) As used in this rule:

(a) "Assets" means the average value of total assets reported by the credit union for the four calendar quarters for the year immediately preceding the due date of the fee. However, if a credit union was not in existence or doing business in this state during all of the prior calendar year "assets" means the average assets reported on the quarterly reports for the quarters for which reports were required to be filed during the calendar year immediately preceding the due date of the fee.

(b) "Extra service" means any special examination or examination in connection with a conversion.

(6) The annual regulatory fee of a credit union that is party to a merger or conversion, or is liquidated or dissolved:

(a) Is not subject to refund in whole or in part if the merger, conversion, liquidation or dissolution occurs prior to the end of the calendar years for which a fee has been paid;

(b) Is not subject to pro ration if the credit union operated during any part of the calendar year during which the merger, conversion, liquidation or dissolution occurred.

(7) An application for a credit union charter under ORS 723.012 must be accompanied by a fee of \$350.

(8) An application to establish an additional place of business under ORS 723.032 must be accompanied by a fee of \$300.

(9) The Director may by order reduce the fees assessed for any specific year.

Stat. Auth.: ORS 705.620, 723.012, 723.032, 723.102 & 723.532  
 Stats. Implemented: ORS 723.114 & 723.532, Ch. 343, 2007 OL  
 Hist.: FID 9-1985, f. & ef. 12-31-85; FCS 2-1988, f. 1-29-88, cert. ef. 2-1-88; Renumbered from 805-072-0010; FCS 1-1989, f. 1-18-89, cert. ef. 2-1-89; FCS 1-1991, f. 1-28-91, cert. ef. 2-15-91; FCS 3-1994, f. 2-1-94, cert. ef. 2-15-94; Administrative correction 9-29-97; FCS 3-2000, f. & cert. ef. 3-9-00; FCS 3-2001, f. & cert. ef. 2-13-01; FCS 1-2005(Temp), f. & cert. ef. 3-4-05 thru 8-30-05; Renumbered from 441-710-0010, FCS 2-2005, f. & cert. ef. 8-25-05; FCS 1-2008, f. & cert. ef. 1-28-08; FCS 3-2011, f. 3-7-11, cert. ef. 3-8-11

#### **441-710-0505**

##### **Amendment and Late Charge Fees**

(1) The fees for amendments authorized by ORS 723.022 are as follows for each submission:

- (a) Amendment of articles of incorporation, \$25;
- (b) Amendment of bylaws, \$25.

(2) The following charges apply to late reports filed by the credit union with the director. The fine is for each day the report is late:

- (a) Quarterly call reports; \$100;

- (b) Supervisory Committee Report, \$10;
  - (c) Examination report reply, \$10;
  - (d) Monthly reports when required by the director, \$10. The reports may include, but are not limited to:
    - (A) Financial statement, including income and expenses;
    - (B) Board of Director minutes.
- Stat. Auth.: ORS 723.022 & 723.106  
 Stats. Implemented: ORS 723.022 & 723.106  
 Hist.: FCS 5-1991(Temp), f. & cert. ef. 9-30-91; FCS 6-1991, f. 10-29-91, cert. ef. 11-1-91; Renumbered from 441-710-0015, FCS 2-2005, f. & cert. ef. 8-25-05

#### **441-710-0510**

##### **Annual Audit; Qualified Persons to Perform; Content; Time for Filing; Reporting Action Taken**

(1) The person performing the comprehensive annual audit required by ORS 723.322 must be qualified by knowledge and experience to perform credit union audits and must be approved by the Director as so qualified.

(2) The audit should test whether or not the accounting systems and methods used by the credit union, and the accounts of the credit union, accurately reflect the condition of the business. The auditor shall prepare the audit report in accordance with the guidelines furnished by the Director. The audit report shall include a management letter; and the management letter shall include, but need not be limited to:

- (a) An evaluation of the soundness of the credit union;
- (b) An evaluation of its internal controls;
- (c) The state of its compliance with applicable statutes and rules;

and

(d) An evaluation of the extent and effectiveness of its use of generally accepted accounting principles.

(3) A copy of the audit, including the management letter, shall be filed with the Director by the auditor within 30 days after the report is delivered to the credit union. Within 65 days after the audit report is received by the credit union, the credit union shall report to the Director the action it has taken or is taking in response to the report.

(4) Each credit union must file a notice with the director within 15 days after the engagement of a new independent auditor, or the resignation or dismissal of the independent auditor previously engaged. The notice must include the reasons for the event in reasonable detail.

Stat. Auth.: ORS 723.102  
 Stats. Implemented: ORS 723.322  
 Hist.: BB 4-1982, f. 8-24-82, ef. 9-1-82; Renumbered from 805-072-0150; Renumbered from 441-710-0080, FCS 2-2005, f. & cert. ef. 8-25-05

#### **441-710-0515**

##### **Required "Additional Reports" Defined**

(1) As used in ORS 723.106(1), "additional reports" includes call reports of condition, lists of officers and other management officials, Supervisory committee audits, management letters, liquidity reserve reports, and other reports required by the Director.

(2) If a credit union is investing in or has loans outstanding to a CUSO, "additional reports" as used in ORS 723.106(1) includes reports and other information of the CUSO of the kinds described by section (1) of this rule.

Stat. Auth.: ORS 723.102  
 Stats. Implemented: ORS 723.106  
 Hist.: BB 4-1982, f. 8-24-82, ef. 9-1-82; BB 1-1984, f. & ef. 2-8-84; Renumbered from 805-072-0155; Renumbered from 441-710-0090, FCS 2-2005, f. & cert. ef. 8-25-05

#### **441-710-0520**

##### **Reports and Filings When Credit Union Invests in CUSO**

(1) When a credit union first invests in or loans funds to a CUSO, the credit union shall, within 30 days after the funds are first invested or loaned, file with the Director a copy of:

- (a) The charter, articles of association or incorporation, or partnership agreement, of the CUSO;
- (b) The bylaws of the CUSO; and
- (c) The most recent financial statement of the CUSO.

(2) Any amendments of the documents described by section (1) of this rule shall be filed with the Director by the credit union within 30 days after the amendment becomes effective.

(3) While a credit union has funds invested in or loaned to a CUSO, the credit union shall each year file the annual financial state-

ment of the CUSO with the Director within 30 days after the statement is issued.

Stat. Auth.: ORS 723.102  
 Stats. Implemented: ORS 723.106 & 723.602  
 Hist.: BB 1-1984, f. & ef. 2-8-84; Renumbered from 805-072-0156; Renumbered from 441-710-0100, FCS 2-2005, f. & cert. ef. 8-25-05

#### **441-710-0525**

##### **Duty to Report Changes in Accounting Systems, Methods or Procedures**

(1) A credit union shall report to the Director any major change that affects bookkeeping or accounting systems, methods and procedures at least 60 days prior to implementation of the change to permit the Director to schedule examinations appropriately.

(2) Any contract or agreement by a credit union to purchase accounting services shall include a clause acknowledging the right of the Director or authorized representatives to examine any and all records of the credit union on the premises of the servicer.

Stat. Auth.: ORS 723.102  
 Stats. Implemented: ORS 723.116 & 723.152  
 Hist.: BB 4-1982, f. 8-24-82, ef. 9-1-82; Renumbered from 805-072-0160; Renumbered from 441-710-0110, FCS 2-2005, f. & cert. ef. 8-25-05

#### **441-710-0530**

##### **Accrual Accounts, When Required**

Each credit union with assets in excess of \$5 million shall use accrual accounting.

Stat. Auth.: ORS 723.102  
 Stats. Implemented: ORS 723.116  
 Hist.: BB 4-1982, f. 8-24-82, ef. 9-1-82; Renumbered from 805-072-0165; Renumbered from 441-710-0120, FCS 2-2005, f. & cert. ef. 8-25-05

#### **441-710-0535**

##### **Back-Up Records; Off-Site Storage Required**

(1) To insure the viability and reasonable continuity of the credit union in the event of a catastrophe that would destroy or make its records at the place of business useless, every credit union shall store off-site records that could be used to reconstruct the credit union's records. The credit union shall, at the credit union, maintain a log of the records stored off-site.

(2) The adequacy of the plan of each credit union for complying with this rule is subject to the approval of the Director. Each credit union shall submit its plan, and any major revision of its plan, to the Director for approval. The submission shall identify the kinds of records to be stored off-site, the procedure used to collect the records and to transport them to storage, and the place where stored.

Stat. Auth.: ORS 723.116  
 Stats. Implemented: ORS 723.116  
 Hist.: BB 4-1982, f. 8-24-82, ef. 9-1-82; Renumbered from 805-072-0175; Renumbered from 441-710-0140, FCS 2-2005, f. & cert. ef. 8-25-05

#### **441-710-0540**

##### **Contents of Foreclosure Notices**

The sender of a notice form required by 2008 Or Laws, ch. 19, § 20 and as amended by 2009 Or Laws ch. 864, § 1 (Enrolled Senate Bill 628) must enter in the form and format adopted by this rule:

(1) The statewide telephone contact number for handling consumer queries as 800-SAFENET (800-723-3638)

(2) The telephone number of the Oregon State Bar's Lawyer Referral Service as 503-684-3763;

(3) The Oregon State Bar's Lawyer Referral Service toll-free number as 800-452-7636;

(4) The website address of the Oregon State Bar as <http://www.osbar.org>;

(5) The website address for the organization providing more information and a directory of legal aid programs as <http://www.oregonlawhelp.org>

(6) The toll-free consumer mortgage foreclosure information number as 800-SAFENET (800-723-3638); and

(7) Information on federal loan modification programs as <http://www.makinghomeaffordable.gov/>.

Stat. Auth.: ORS 86.737  
 Stats. Implemented: ORS 86.737  
 Hist.: FCS 9-2008, f. 10-15-08, cert. ef. 10-16-08; FCS 6-2009(Temp), f. 8-21-09 thru 2-17-10; FCS 11-2009, f. 12-2-09, cert. ef. 12-7-09; FCS 13-2011(Temp), f. & cert. ef. 12-15-11 thru 6-12-12; Administrative correction, 6-27-12

## **DIVISION 720**

### **CREDIT UNIONS**

#### **Corporate Central Credit Union**

#### **441-720-0100**

##### **Scope and Application**

The scope and application of OAR 441-720-0110 through 441-720-0150 are intended to permit the Oregon chartered corporate central credit union to exercise certain powers conferred on federally chartered corporate credit unions under **12 CFR Part 704**.

Stat. Auth.: ORS 723.102, 723.156 & 723.730  
 Stats. Implemented: ORS 723.730  
 Hist.: FCS 5-1992, f. & cert. ef. 12-21-92

#### **441-720-0110**

##### **Definitions**

The following definitions are adopted for the purposes of this Division:

(1) "Average Daily Assets" means the daily average of net assets calculated on the basis of assets at the close of each day in the period.

(2) "CLF" means Central Liquidity Facility.

(3) "CMO" means Collateralized Mortgage Obligation.

(4) "Capital" means the total of all corporate reserves (regular or statutory reserves, as applicable), all undivided earnings, net income, and membership capital share deposit (or equivalent) accounts.

(5) "Equity Reserves," pursuant to ORS 723.730(1), means regular or statutory reserves, and all undivided earnings, which shall be used to finance expansion, pay dividends, absorb losses or be expended for any other bona fide corporate purpose.

(6) "MCSD" means membership capital share deposit.

(7) "Membership Capital Share Deposit" account means a share, deposit, or other account that:

(a) Is established, at a minimum, as a 12-month notice account;

(b) Is limited to members;

(c) Is not subject to share insurance coverage by the NCUSIF;

and

(d) In the event of liquidation of the corporate central credit union, is payable only after satisfaction of all liabilities of the liquidation estate, including uninsured obligations to shareholders and the NCUSIF. In any event, an MCSD account shall not be repayable until notice that the accountholder credit union intends to withdraw MCSD account funds from the corporate central credit union, except in the case of a credit union that is placed into liquidation, is purchased and assumed, or is merged. MCSD accounts cannot be used to pledge borrowings. If the corporate central credit union issues MCSD accounts, it shall disclose, at least annually to its members, the terms and conditions under which such accounts are issued.

(8) "NCUSIF" means the National Credit Union Share Insurance Fund.

(9) "Net Assets" means total assets less CLF stock subscriptions, CLF loans guaranteed by the NCUSIF, U.S. Central CLF certificates, and member reverse repurchase transactions.

(10) "Primary Capital" means all corporate reserves and undivided earnings.

(11) "REMIC" means Real Estate Mortgage Investment Conduit.

(12) "Risk-Based Capital" means the total of primary capital and secondary capital (up to 100 percent of primary capital).

(13) "Risk-Weighted Assets" means the sum of total balance sheet assets and off-balance sheet credit equivalent amounts multiplied by their appropriate risk weights.

(14) "SEC" means the Securities and Exchange Commission.

(15) "Secondary Capital" means MCSD or equivalent accounts (except for MCSD accounts owned by other corporate central credit unions unless the MCSD account is held by a corporate central credit union whose members are primarily other corporate central credit unions and other organizations recognized under Section 501(c)(6) of the Internal Revenue Code), allowance for loan and lease losses up to a maximum of 1.25 percent of risk-weighted assets, and term subordinated debt weighted by remaining maturity as indicated:

(a) Five years or more until maturity: 100 percent;

(b) Four years to less than five years: 80 percent;

(c) Three years to less than four years: 60 percent;

(d) Two years to less than three years: 40 percent;

(e) One year to less than two years: 20 percent; and

(f) Less than one year remaining maturity: 0 percent. MCS D accounts upon which the account holder has given the corporate central credit union notice of intent to withdraw may no longer be considered secondary capital.

(16) "United States Government-Sponsored Corporations and Enterprises" means agencies originally established or chartered to serve public purposes specified by Congress, but whose obligations are not explicitly guaranteed by the full faith and credit of the United States Government.

Stat. Auth.: ORS 723.102, 723.156 & 723.730

Stats. Implemented: ORS 723.730

Hist.: FCS 5-1992, f. & cert. ef. 12-21-92

#### **441-720-0120**

##### **Risk Weights and Risk Categories**

The following risk weights and risk categories are established for purposes of OAR chapter 441, division 720:

(1) Category One. Zero Percent Risk Weight.

(a) Coin and currency on hand or physically in transit;

(b) Balances due from and claims on Federal Reserve Banks;

(c) Claims on and portions of claims that are unconditionally guaranteed by the United States Government or its agencies;

(d) Claims Collateralized by cash or eligible deposits;

(e) CLF subscriptions, including U.S. Central CLF Certificates, and CLF Pass-Through Loans from the CLF through U.S. Central to the corporate central credit union;

(f) Asset Accounts related to Member Reverse Repurchase Agreements without indemnity obligation;

(g) Claims on or unconditionally guaranteed by sovereign central governments of "AAA" rated countries; and

(h) Accrued interest receivable on any of the above.

(2) Category Two. Twenty Percent Risk Weight:

(a) Items, other than coin and currency, in process of collection;

(b) Claims on or portions of claims guaranteed by United States Government-sponsored corporations and enterprises;

(c) Claims conditionally guaranteed by the United States Government or its agencies or by United States Government-sponsored corporations and enterprises;

(d) Claims or portions of claims (including Repurchase Agreements) collateralized by securities issued by the United States Government or its agencies or by United States Government-sponsored corporations and enterprises;

(e) General obligation claims on state and local governments located in the United States;

(f) Claims on United States depository institutions (including Federal Funds sold) or claims on depository institutions (including Federal Funds sold) chartered in countries rated AAA, other than the United States, provided the depository institution meets at least one of the following conditions:

(A) The institution has a short-term debt rating not lower than A-2 (or equivalent) by any firm recognized by the SEC as qualified to assign risk ratings to various instruments required to be registered with the SEC;

(B) The institution has a long-term debt rating not lower than A- (or equivalent) by any firm recognized by the SEC as qualified to assign risk ratings to various instruments required to be registered with the SEC; or

(C) The institution has an issuer rating not lower than B/C (or equivalent) by any firm recognized by the SEC as qualified to assign risk ratings to various instruments required to be registered with the SEC.

(g) Claims on a corporate central credit union;

(h) Asset accounts related to Member Reverse Repurchase Agreements with indemnity obligations;

(i) Delivery Versus Payment (DVP) Repurchase Transactions in which the corporate central credit union receives the securities collateralizing the transactions, and the corporate central credit union is authorized to invest in these securities;

(j) Tri-party repurchase transactions with broker-dealers having at least \$100 million in capital which are collateralized by securities that the corporate central credit union is authorized to invest in;

(k) Asset-backed securities rated no lower than AAA with remaining weighted average lives of three years or less;

(l) All federally issued CMOs/REMICs and privately issued CMOs/REMICs as defined in Section 3(a)(41) of the Securities Exchange Act of 1934, excluding CMOs/REMICs collateralized by whole loan mortgages, that comply with the following limitations:

(A) An investment in a fixed-rate CMO/REMIC must have an expected average life not to exceed five years given an immediate and sustained increase of 300 basis points in mortgage loan commitment rates. This average life standard shall apply at the time of purchase and on any subsequent review date assuming market interest rates and prepayment speeds at the time that the test is applied. The corporate central credit union shall use the average of the prepayment estimates of several major securities broker-dealers as the prepayment assumption for the underlying mortgages. In computing the expected average life of a CMO/REMIC investment, it must be assumed that the anticipated rate of prepayment remains constant over the remaining life of the mortgage collateral. This limitation does not apply if principal payments of the investment are specifically matched to principal payments of the corresponding liability;

(B) If the CMO/REMIC has a variable interest rate with a cap, then the lesser of the highest interest rate cap or the final interest rate cap during the average life at the time of purchase must be at least 200 basis points above the rate of the corresponding liability that it is matched against. This limitation does not apply if principal payments of the investment are specifically matched to principal payments of the corresponding liability;

(C) Any CMO/REMIC security downgraded below AA-(or equivalent) by the same SEC-recognized rating agency used when the investment was purchased, if material in amount, shall be divested;

(D) Privately issued CMO/REMIC securities shall not exceed five percent of the corporate central credit union's net assets for any single issuer.

(m) Secured loans to credit unions; and

(n) Accrued interest receivable on any of the above.

(3) Category Three. 50 Percent Risk Weight;

(a) Asset-backed securities rated no lower than AAA with remaining weighted average lives greater than three years;

(b) All CMOs/REMICs collateralized by whole loan mortgages that otherwise meet the requirements of paragraphs (2)(l)(A) through (D) of this rule;

(c) Accrued interest receivable on any of the above.

(4) Category Four. 100 percent Risk Weight which is hereby assigned to all other assets including, but not limited to:

(a) Loans to and investments in Credit Union Service Organizations;

(b) Unsecured loans to credit unions;

(c) All fixed assets, including land, buildings, furniture, fixtures, equipment, automobiles, and leasehold improvements;

(d) All Hold-in-Custody Repurchase Agreements;

(e) MCS D deposits in a corporate central credit union;

(f) Stripped Mortgage-Backed Securities;

(g) Residual Interests of CMOs/REMICs;

(h) Zero Coupon Securities with a maturity date more than five years from the purchase settlement date of the security;

(i) Claims, including commercial paper and corporate bonds, on United States chartered corporations and bank holding companies;

(j) Mutual Funds that do not qualify for a lower risk weighting;

(k) Prepaid Assets;

(l) Accounts Receivable and other receivables;

(m) NCUSIF Deposits;

(n) Mortgage servicing rights;

(o) Intangible assets; and

(p) Accrued interest receivable on any of the above.

Stat. Auth.: ORS 723.102, 723.156 & 723.730

Stats. Implemented: ORS 723.730

Hist.: FCS 5-1992, f. & cert. ef. 12-21-92

#### **Corporate Reserves**

#### **441-720-0130**

##### **Minimum Capital Ratio**

(1) The corporate central credit union shall maintain a minimum ratio of risk-based capital to risk-weighted assets as follows:

(a) By no later than December 31, 1992, primary capital shall be at least four percent of risk-weighted assets, or the corporate central credit union will develop and implement a plan acceptable to the

Director for achieving an adequate level of primary capital consistent with the provisions of OAR chapter 441, division 720. This plan shall be submitted to the Director;

(b) By January 1, 1994, total capital shall equal at least eight percent of risk-weighted assets, or the corporate central credit union will develop and implement a plan acceptable to the Director for achieving an adequate level of capital consistent with the provisions of OAR chapter 441, division 720. This plan shall be submitted to the Director.

(2) The Director may modify the corporate central credit union's reserve requirements under special circumstances.

(3) The corporate central credit union's qualifying capital base shall consist of primary and secondary capital of which at least 50 percent shall be composed of primary capital.

(4) For purposes of calculating the amount of secondary capital, term subordinated debt shall not exceed 50 percent of secondary capital.

Stat. Auth.: ORS 723.102, 723.156 & 723.730

Stats. Implemented: ORS 723.730

Hist.: FCS 5-1992, f. & cert. ef. 12-21-92

#### **441-720-0140**

##### **Procedures, Risk-Weight Ratios and Computations**

(1) Procedures. Balances sheet assets and credit equivalent amounts for off-balance sheet items are assigned to a risk-weight category. The total dollar amount in each category shall be multiplied by the risk-weight assigned to that category. The sum of the categories comprises risk-weighted assets.

(2) Frequency. The corporate central credit union shall calculate the ratio of capital to risk-weighted assets each month. A record of such calculation shall be maintained.

(3) Risk Weights for Balance Sheet Assets. Each balance sheet asset shall be assigned a risk weight of 0 percent, 20 percent, 50 percent, and 100 percent as set forth in OAR 441-720-0120.

(4) Other Considerations:

(a) An investment in the shares of a mutual fund is assigned to the risk category appropriate to the highest risk-weighted asset that the fund is permitted to hold. In addition, if the fund engages in the use of forwards, options, futures, or similar activities other than when used to reduce interest rate risk, then investments in the fund will be assigned to the 100 percent risk category; and

(b) Accruals will be assigned the risk-weighting of the underlying asset that they represent.

(5) Credit Conversion Factors for Off-Balance Sheet Items. Off-balance sheet items will be risk-weighted each month using the following credit conversion factors:

(a) Zero Percent Credit Conversion Factor. Unused portions of credit lines with original maturities of six months or less, or which are unconditionally cancelable;

(b) 50 Percent Credit Conversion factor:

(A) Unused portions of credit lines with original maturities exceeding six months; and

(B) Commitments to participate in a loan or loan package;

(c) 100 Percent Credit Conversion Factor:

(A) Irrevocable standby letters of credit guaranteeing financial performance, including VISA letters of credit issued by corporate central credit unions on behalf of their members, or standby letters of credit backing Industrial Revenue Bonds;

(B) Forward Commitments to purchase an asset or perform under a lease contract; and

(C) Securities held in safekeeping loaned with indemnification.

(d) Those items and credit conversion factors addressed on a case-by-case basis by the Director.

(6) Risk-based Capital Ratios:

(a) The primary capital ratio is computed by dividing primary capital by total risk-weighted assets;

(b) The total capital ratio is computed by dividing risk-based capital by total risk-weighted assets; and

(c) Month-end amounts will be used to calculate corporate central credit union capital ratios.

Stat. Auth.: ORS 723.102, 723.156 & 723.730

Stats. Implemented: ORS 723.730

Hist.: FCS 5-1992, f. & cert. ef. 12-21-92

#### **441-720-0150**

##### **Required Reserve Transfers**

(1) The amount that the corporate central credit union is required to transfer or set aside in corporate reserves is based on both the corporate central credit union's primary and total capital ratios.

(2) Ranges of capital ratios have been established as set forth in OAR 441-720-0130. These ratios shall be associated with one of the six corresponding categories set forth in section (5) of this rule in determining the required reserve transfer.

(3) To qualify for a lower reserve transfer category, the capital ratios must fall in both the primary and total capital ratio ranges of the applicable category.

(4) The corporate central credit union shall set aside an amount equal to the appropriate required reserve transfer percentage times the corporate central credit union's average daily assets for the transfer period times the number of days in the transfer period divided by 365. Until January 1, 1994, transfers shall be based on the level of primary capital only.

(5) For purposes of determining the required reserve transfer, the following categories are established:

(a) Category 1. Category 1 requires a corporate reserve transfer percentage of at least 25 basis points of average daily assets when either the primary capital ratio is less than four percent or the total capital ratio is less than eight percent. A corporate reserve transfer percentage greater than 25 basis points of average daily assets is required if needed to bring either or both of the capital ratios up to the minimum acceptable level, or the corporate central credit union would have to obtain approval from the Director to operate below the minimum capital levels;

(b) Category 2. Category 2 requires a corporate reserve transfer percentage of 20 basis points of average daily assets when either the primary capital ratio is greater than four percent and less than six percent or the total capital ratio is greater than eight percent and less than nine percent;

(c) Category 3. Category 3 requires a corporate reserve transfer percentage of 15 basis points of average daily assets when either the primary capital ratio is greater than six percent and less than eight percent or the total capital ratio is greater than nine percent and less than 12 percent;

(d) Category 4. Category 4 requires a corporate reserve transfer percentage of ten basis points of average daily assets when either the primary capital ratio is greater than eight percent and less than 10 percent or the total capital ratio is greater than 12 percent and less than 15 percent;

(e) Category 5. Category 5 requires a corporate reserve transfer percentage of five basis points of average daily assets when either the primary capital ratio is greater than ten percent and less than 12 percent or the total capital ratio percentage is greater than 15 percent and less than 18 percent;

(f) Category 6. Category 6 requires a corporate reserve transfer percentage of zero basis points when the primary capital ratio is greater than 12 percent and the total capital ratio percentage is greater than 18 percent.

(6) Corporate credit unions must provide reserves necessary for full and fair disclosure.

Stat. Auth.: ORS 723.102, 723.156 & 723.730

Stats. Implemented: ORS 723.730

Hist.: FCS 5-1992, f. & cert. ef. 12-21-92

#### **441-720-0160**

##### **Fidelity Bond Coverage for Corporate Credit Union**

A corporate central credit union referred to in ORS 723.730, shall:

(1) On and following January 1, 1998, meet the requirements of **12 CFR 704.18.7**, Fidelity Bond Coverage, except as provided in section (2) of this rule.

(2) For the purpose of meeting Oregon requirements for fidelity bond coverages, all references to the "National Credit Union Administration" or "NCUA" in section (1) and (2) of this rule shall mean the Director of the Department of Consumer and Business Services acting through the Administrator of the Division of Finance and Corporate Securities.

Stat. Auth.: ORS 723.730(2)

Stats. Implemented: ORS 723.730(2)

Hist.: FCS 4-1997, f. 12-12-97, cert. ef. 1-1-98

**Federal Tie-In Rules**

**441-720-0200**

**Purpose, Authority for Federal Tie-In Rules**

ORS 723.156 authorizes the Director to grant to state chartered credit unions powers federally chartered credit unions have notwithstanding state law, if it would serve the public convenience and advantage, and equalize and maintain the quality of competition between state chartered credit unions and federally chartered credit unions. The tie-in rules hereafter adopted are done pursuant to 723.156.

Stat. Auth.: ORS 723.102

Stats. Implemented: ORS 723.156

Hist.: FID 5-1986, f. & cf. 8-27-86; Renumbered from 805-072-0250; Renumbered from 441-710-0160, FCS 2-2005, f. & cert. ef. 8-25-05

**441-720-0210**

**Adoption of Federal Regulations Concerning Purchase, Sale and Pledge of Eligible Obligations**

(1) A credit union may purchase, in whole or in part, within the limitations of the board of directors' written purchase policies:

(a) Eligible obligations of its members, from any source, if either:

(A) They are loans it is empowered to grant; or

(B) They are refinanced with the consent of the borrowers, within 60 days after they are purchased, so that they are loans it is empowered to grant.

(b) Eligible obligations of a liquidating credit union's individual members, from the liquidating credit union;

(c) Student loans, from any source, if the purchaser is granting student loans on an ongoing basis and if the purchase will facilitate the purchasing credit union's packaging of a pool of such loans to be sold or pledged on the secondary market; and

(d) Real estate-secured loans, from any source, if the purchaser is granting real estate secured loans on an ongoing basis and if the purchase will facilitate the purchasing credit union's packaging of a pool of such loans to be sold or pledged on the secondary mortgage market. A pool must include a substantial portion of the credit union's members' loans and must be sold promptly.

(2) A credit union may make purchases in accordance with section (1) of this rule provided:

(a) The board of directors or investment committee approves the purchase;

(b) A written agreement and a schedule of the eligible obligations covered by the agreement are retained in the credit union's office; and

(c) For purchases from a liquidating credit union, any advance written approval required from the director is obtained before consummation of such purchase.

(3) The aggregate of the unpaid balance of eligible obligations purchased under paragraph (a)(A) and subsection (b) of section (1) of this rule may not exceed 5% of the paid-in and unimpaired capital and surplus of the credit union. In calculating this 5% limitation, the credit union can exclude an indirect lending or indirect leasing arrangement that is classified as a loan and not the purchase of an eligible obligation because the credit union makes the final underwriting decision and the sales or lease contract is assigned to the credit union promptly after it is signed by the member and the dealer or leasing company.

(4) A credit union may sell, in whole or in part, to any source, eligible obligations of its members, and obligations and loans purchased in accordance with subsections (b), (c) and (d) of section (1) of this rule, within the limitations of the board of directors' written sale policies, provided:

(a) The board of directors or investment committee approves the sale; and

(b) A written agreement and a schedule of the eligible obligations covered by the agreement are retained in the credit union's office.

(5) A credit union may pledge, in whole or in part, to any source, eligible obligations of its members, and obligations and loans purchased in accordance with subsections (b), (c) and (d) of section (1) of this rule, within the limitations of the board of directors' written pledge policies, provided:

(a) The board of directors or investment committee approves the pledge;

(b) Copies of the original loan documents are retained; and

(c) A written agreement covering the pledging arrangement and identifying the eligible obligations is retained in the credit union's office.

(6) A credit union may agree to service any eligible obligation it purchases or sells in whole or in part.

(7) The total indebtedness owing to any credit union by any person, inclusive of retained and reacquired interests, shall not exceed the loan limit described in ORS 723.512.

Stat. Auth.: ORS 723.102

Stats. Implemented: ORS 723.156, 723.512, 723.526 & 723.602

Hist.: FCS 2-2005, f. & cert. ef. 8-25-05

**Investments**

**441-720-0215**

**Procedures Required Prior to Exercise of Certain Investment Powers**

(1) A credit union shall not exercise the investment powers granted credit unions by OAR 441-720-0220 and 441-720-0225, unless it first adopts investment procedures and policies covering the type of investment programs it intends to engage in.

(2) The investment policies and procedures shall:

(a) Describe the particular type of investment it intends to engage in, summarize the procedures and policies developed for each program and describe investment objectives for the program;

(b) Name the person who will do the investing and any professionals who will be used as adviser; and

(c) Show the ability and training of the person that qualifies the person to do the investing.

Stat. Auth.: ORS 723.102

Stats. Implemented: ORS 723.156 & 723.602

Hist.: FID 5-1986, f. & cf. 8-27-86; Renumbered from 805-072-0260; Renumbered from 441-710-0180, FCS 2-2005, f. & cert. ef. 8-25-05

**441-720-0220**

**Investments in Investment and Borrowing Repurchase Agreements, Bankers Acceptances, Participation in Federal Funds Authorized; Adoption of Federal Statutes, Regulations on Such Investments**

A state credit union is authorized to invest in investment and borrowing repurchase agreements, bankers acceptances and federal funds permissible for federal credit unions as described in the following provisions.

(1) A credit union may sell Federal funds to a financial institution defined in ORS 706.008, as long as the interest or other consideration received from the financial institution is at the market rate for Federal funds transactions.

(2) A credit union may enter into an investment repurchase transaction so long as:

(a) Any securities the credit union receives are permissible investments for federal credit unions;

(b) The credit union, or its agent, either:

(A) Takes physical possession or control of the repurchase securities; or

(B) Is recorded as owner of them through the Federal Reserve Book Entry Securities Transfer System.

(c) The credit union, or its agent, receives a daily assessment of their market value, including accrued interest;

(d) The credit union maintains adequate margins that reflect a risk assessment of the securities and the term of the transaction; and

(e) The credit union has entered into signed contracts with all approved counterparties.

(3) A credit union may enter into a borrowing repurchase transaction so long as:

(a) The transaction meets the requirements of section (2) of this rule;

(b) Any cash the credit union receives is subject to a borrowing limit of 50% of paid-in and unimpaired capital and surplus;

(c) Any investments the credit union purchases with that cash are permissible for credit unions; and

(d) The investments purchased with that cash mature no later than the maturity of the borrowing repurchase transaction.

(4) A credit union may invest in banker's acceptances issued by a financial institution defined in ORS 706.008.

Stat. Auth.: ORS 723.102

Stats. Implemented: ORS 723.156 & 723.602

Hist.: FID 5-1986, f. & cf. 8-27-86; Renumbered from 805-072-0265; Renumbered from 441-710-0190, FCS 2-2005, f. & cert. ef. 8-25-05

**441-720-0225**

**Adoption of Federal Statutes, Rulings, Policy Regarding Mortgage Assumptions**

(1) A state credit union is authorized to exercise the powers to allow nonmembers to assume real estate mortgages of members conferred on a federally chartered credit union as follows:

(a) The assumption is in conjunction with the nonmember's purchase of the member's principal residence;

(b) The nonmember assumes only the remaining unpaid balance of the loan;

(c) The terms of the loan remain unchanged; and

(d) There is no extension of the original maturity date specified in the loan agreement with the member.

(2) An assumption is impermissible if the original loan was made with the intent of having a nonmember assume the loan.

Stat. Auth.: ORS 723.102

Stats. Implemented: ORS 723.156 & 723.602

Hist.: FID 5-1986, f. & ef. 8-27-86; Renumbered from 805-072-0270; Renumbered from 441-710-0200, FCS 2-2005, f. & cert. ef. 8-25-05

**441-720-0230**

**Adoption of Federal Statutes and Regulations Concerning Loan Participations**

(1) Federal Tie-In: A state credit union is authorized to participate in making loans with financial institutions as defined in ORS 706.008 within the limitations of the board of directors' written participation loan policies, provided:

(a) No credit union may obtain an interest in a participation loan if the sum of that interest and any indebtedness owed to the credit union by the borrower exceeds 10 per cent of the credit union's unimpaired capital and surplus;

(b) A written master participation agreement is properly executed, acted upon by the credit union's board of directors, or if the board has so delegated in its policy, by the investment committee or senior management official(s) and retained in the credit union's office. The master agreement must include provisions for identifying, either through a document that is incorporated by reference into the master agreement, or directly in the master agreement, the participation loan or loans prior to their sale; and

(c) A credit union may sell to or purchase from any participant the servicing of any loan in which it owns a participation interest.

(2) An originating lender which is a state credit union must:

(a) Originate loans only to its members;

(b) Retain an interest of at least 10 per cent of the face amount of each loan;

(c) Retain the original or copies of the loan documents; and

(d) Require the credit committee or loan officer to use the same underwriting standards for participation loans used for loans that are not being sold in a participation agreement unless there is a participation agreement in place prior to the disbursement of the loan. Where a participation agreement is in place prior to disbursement, either the credit union's loan policies or the participation agreement shall address any variance from non-participation loan underwriting standards.

(3) A participant state credit union that is not an originating lender must:

(a) Participate only in loans it is empowered to grant, having a participation policy in place that sets forth the loan underwriting standards prior to entering into a participation agreement;

(b) Participate in participation loans only if made to its own members or members of another participating credit union;

(c) Retain the original or a copy of the written participation loan agreement and a schedule of the loans covered by the agreement; and

(d) Obtain the approval of the board of directors or investment committee of the disbursement of proceeds to the originating lender.

(4) Additional State Requirements:

(a) In addition to the requirements of the federal provisions stated in this rule, a state credit union must file with the Director:

(A) A representation that the board of directors has adopted written policies and procedures concerning loan participations and recourse;

(B) An undertaking that it will not keep or acquire any loan participation interest which exceeds the loan to one borrower requirements in ORS 723.512 and, except for this provision, will follow the guidelines for loan participations stated in this rule; and

(C) An undertaking that each loan agreement will contain a provision that provides complete access to the agency to all records of each participant concerning the loan transaction.

(b) Any provision of subsection (a) of this section except paragraph (a)(B) of this section may be waived or modified by order of the Director if no undue risk is created by the waiver or modification and the credit union has policies, procedures, and strategies covering the changed items or where it is necessary for regulatory purposes.

Stat. Auth.: ORS 723.102

Stats. Implemented: ORS 723.156

Hist.: FCS 10-1987, f. 11-13-87, ef. 12-1-87; Renumbered from 805-072-0280; Renumbered from 441-710-0220, FCS 2-2005, f. & cert. ef. 8-25-05

**Member Business Loans**

**441-720-0300**

**Definitions**

(1) "Associated member" means any member with a shared ownership, investment, or other pecuniary interest in a business or commercial endeavor with the borrower.

(2) "Construction or development loan" means a financing arrangement for acquiring property or rights to property, including land or structures, with the intent to convert it to income-producing property such as residential housing for rental or sale; commercial use; industrial use; or similar uses.

(3) "Director" means the Director of the Department of Consumer and Business Services.

(4) "Immediate family member" means a spouse or other family member living in the same household.

(5) "Loan-to-value ratio or LTV ratio" means the aggregate amount of all sums borrowed including outstanding balances plus any unfunded commitment or line of credit from all sources on an item of collateral divided by the market value of the collateral used to secure the loan.

(6) "Net Worth" means retained earnings as defined under Generally Accepted Accounting Principles. Retained earnings normally includes undivided earnings, regular reserves and any other appropriations designated by management or regulatory authorities. It does not include the Allowance for Loan and Lease Losses account.

(7) "NCUA" means the National Credit Union Administration.

Stat. Auth.: ORS 723.102 & 723.156

Stats. Implemented: ORS 723.156 & 723.502

Hist.: FCS 2-2002, f. & cert. ef. 8-27-02

**441-720-0305**

**Member Business Loan**

(1) A member business loan includes any loan, line of credit, or letter of credit (including any unfunded commitments), of which the proceeds will be used for the following purposes:

(a) Commercial;

(b) Corporate;

(c) Other business investment property or venture; or

(d) Agricultural.

(2) Exceptions. The following are not considered a member business loan:

(a) A loan secured by a lien on a 1 to 4 family dwelling that is the member's primary residence;

(b) A loan fully secured by shares in the credit union making the extension of credit or fully secured by deposits in other financial institutions;

(c) Loan(s) to a member or an associated member which, when added together, are equal to less than \$50,000.

(d) A loan where a federal or state agency (or any political subdivision of a state) fully insures or guarantees repayment, or provides an advance commitment to purchase the loan in full; or

(e) A loan granted by a corporate credit union to another credit union.

Stat. Auth.: ORS 723.102 & 723.156

Stats. Implemented: ORS 723.156 & 723.502

Hist.: FCS 2-2002, f. & cert. ef. 8-27-02

**441-720-0310**

**Implementation of Member Business Loan Program**

(1) It is the responsibility of the board of directors to:

(a) Adopt specific member business loan policies and review them at least annually.

(b) Send a copy of the policies to the Director prior to beginning the program.

(c) Make certain that management of the credit union:

(A) Utilizes the services of an individual with at least two years direct experience with the type of lending the credit union will be engaging in; except that

(B) If the credit union is engaged in construction and development lending, the qualified individual must have five years direct experience.

(d) The qualified individual does not have to be on staff, but the expertise must be readily available.

(e) The experience requirement can be met through various approaches. For example, the credit union may use:

(A) The services of a credit union service organization;

(B) An employee of another credit union;

(C) An independent contractor; or

(D) Other third parties.

(2) The actual decision to grant a loan must be made by the originating credit union.

(3) A Credit Union Service Organization (CUSO) may not grant or fund a member business loan, but may provide member business loan services to a credit union.

Stat. Auth.: ORS 723.102 & 723.156

Stats. Implemented: ORS 723.156 & 723.502

Hist.: FCS 2-2002, f. & cert. ef. 8-27-02

#### **441-720-0315**

##### **Member Business Loan Policies and Procedures**

Prior to engaging in member business lending, a credit union must adopt member business loan policies and procedures. At a minimum, the policies and procedures must address the following:

(1) Types of business loans to be made;

(2) Identification of trade area to be served;

(3) The maximum amount of credit union assets, relative to net worth, that will be invested in member business loans;

(4) The maximum amount of credit union assets, relative to net worth, that will be invested in a given category or type of member business loan;

(5) The maximum amount of credit union assets, relative to net worth, that will be loaned to any one member or group of associated members, subject to 441-720-0330;

(6) The qualifications and experience (minimum of 2 years experience) of personnel involved in making and administering business loans;

(7) Initial and ongoing analysis and documentation of the ability of the borrower to repay the loan;

(8) Receipt and periodic updating of financial statements and other documents, including tax returns;

(9) Documentation sufficient to support each request for an extension of credit, or an increase in an existing loan or line of credit, except where the board of directors finds that the required documentation is not generally available for a particular type of loan and states the reasons for those findings in the credit union's written policies. The documentation must include the following:

(a) Balance sheet, income statement and tax returns;

(b) Cash flow analysis, history of borrower and business, and analysis of leveraging;

(c) Comparison with industry average or similar analysis;

(10) Collateral requirements must include all of the following:

(a) Loan-to-value ratios;

(b) Determination of value;

(c) Determination of ownership;

(d) Steps to be taken to secure various types of collateral;

(e) Frequency of reevaluation of the value and marketability of the collateral; and

(f) Insurance, if applicable.

(11) Interest rates and maturities of business loans;

(12) General loan procedures which include:

(a) Loan monitoring; including loan review and grading system;

(b) Servicing and follow-up;

(c) Collections;

(d) Loan officer limits; and

(e) Borrower Documentation; such as loan agreement, note, security agreement, borrowing authority, and commitment letter.

(13) Identification of individuals prohibited from receiving member business loans.

(14) Procedures for adequate safeguards to minimize potential environmental liability.

Stat. Auth.: ORS 723.102 & 723.156

Stats. Implemented: ORS 723.156 & 723.502

Hist.: FCS 2-2002, f. & cert. ef. 8-27-02

#### **441-720-0320**

##### **Collateral and Security Requirements**

(1) All member business loans must be secured by collateral in accordance with this section, except for the following:

(a) A credit card line of credit granted to nonnatural person members that is limited to routine purposes normally made available under such lines of credit; or

(b) A loan made by a credit union where the loan and the credit union meet each of the following criteria:

(A) The amount of the loan does not exceed \$50,000;

(B) The aggregate of unsecured member business loan under this paragraph (1)(b) does not exceed 10% of the credit union's net worth;

(C) The loan is guaranteed or insured by a financially responsible guarantor or insurer and the credit union has determined that the guarantor or insurer has the financial capacity and willingness to perform under the terms of the guaranty or insurance agreement;

(D) The credit union has a net worth of at least 7%; and

(E) The credit union submits reports to the Division with its NCUA 5300s, providing numbers and such other detail as may be required by the Director to demonstrate compliance with this paragraph (1)(b).

(2) In the case of a member business loan secured by collateral on which the credit union will have a first lien, the credit union may grant the loan with a LTV ratio in excess of 80% only where the value in excess of 80% is:

(a) Covered through acquisition of private mortgage or equivalent type insurance provided by an insurer acceptable to the credit union; or

(b) Insured or guaranteed, or subject to advance commitment to purchase, by an agency of the Federal government, state, or any of its political subdivisions. In no event may the LTV ratio exceed 95%;

(3) In the case of a member business loan secured by collateral on which the credit union will have a second priority lien, the credit union may not grant the loan with a LTV ratio in excess of 80%; and

(4) In the case of member business loans secured by the same collateral,

(a) On which the credit union will have a first lien as well as other lesser priority liens, the credit union may grant the loans with a LTV ratio in excess of 80% only if section (2) of this rule is satisfied. In no event may the LTV ratio exceed 95%; and

(b) On which the credit union will have lesser priority liens but no first lien, the credit union may not grant loans with a LTV ratio in excess of 80%.

(5) Principals, other than a not for profit organization as defined by the Internal Revenue Service Code (26 U.S.C. 501) must assume personal liability and guarantee the loan.

Stat. Auth.: ORS 723.102 & 723.156

Stats. Implemented: ORS 723.156 & 723.502

Hist.: FCS 2-2002, f. & cert. ef. 8-27-02

#### **441-720-0325**

##### **Recordkeeping Requirements**

The credit union must separately identify member business loans in its records and in the aggregate on its financial reports.

Stat. Auth.: ORS 723.102 & 723.156

Stats. Implemented: ORS 723.156 & 723.502

Hist.: FCS 2-2002, f. & cert. ef. 8-27-02

#### **441-720-0330**

##### **Aggregate Loans to a Member or Associated Members**

The aggregate amount of outstanding member business loans (including any unfunded commitments) to a member or group of associated members may not exceed the greater of:

(1) 15% of the credit union's net worth; or

(2) \$100,000.

Stat. Auth.: ORS 723.102 & 723.156

Stats. Implemented: ORS 723.156 & 723.502

Hist.: FCS 2-2002, f. & cert. ef. 8-27-02

**441-720-0335**

**Calculation of the Aggregate 15% Limit**

For purposes of complying with the provisions of OAR 441-720-0330, a credit union must:

- (1) Calculate the numerator by adding together the total outstanding balance of member business loans to any one member, or group of associated members. From this amount, subtract any portion:
  - (a) Secured by shares in the credit union;
  - (b) Secured by deposits in another financial institution;
  - (c) Fully or partially insured or guaranteed by any agency of the Federal government, state, or its political subdivisions;
  - (d) Subject to an advance commitment to purchase by any agency of the Federal government, state, or its political subdivisions; and
- (2) Divide the numerator by the net worth of the credit union.

Stat. Auth.: ORS 723.102 & 723.156

Stats. Implemented: ORS 723.156 & 723.502

Hist.: FCS 2-2002, f. & cert. ef. 8-27-02

**441-720-0340**

**Aggregate Member Business Loan Limit for a Credit Union**

The aggregate limit on the amount of a credit union's member business loan outstandings, including any unfunded commitments, is the lesser of:

- (1) 1.75 times the credit union's net worth; or
- (2) 12.25 percent of the credit union's total assets.

Stat. Auth.: ORS 723.102 & 723.156

Stats. Implemented: ORS 723.156 & 723.502

Hist.: FCS 2-2002, f. & cert. ef. 8-27-02

**441-720-0345**

**Exceptions to the Aggregate Member Business Loan Limit for a Credit Union**

A credit union can qualify for an exception from the aggregate member business loan limit if the credit union meets any one of the following:

- (1) Designated as a low-income credit union in accordance with the requirements of 12 U.S.C. 1757a;
- (2) Participates in the Community Development Financial Institutions program;
- (3) Originally chartered for the purpose of making member business loans and can provide documentary evidence such as the charter, bylaws, business plan, field of membership, board minutes or loan portfolio.

Stat. Auth.: ORS 723.102 & 723.156

Stats. Implemented: ORS 723.156 & 723.502

Hist.: FCS 2-2002, f. & cert. ef. 8-27-02

**441-720-0350**

**Exception Procedure**

To obtain an exception:

- (1) The credit union must submit documentation to the Director substantiating it meets the criteria of one of the exceptions in 441-720-0345.
- (2) The Director shall notify the credit union of the Director's decision.
- (3) The Director will forward the agency's decision to NCUA.
- (4) If granted, the exception does not expire unless it is revoked by the Director.

Stat. Auth.: ORS 723.102 & 723.156

Stats. Implemented: ORS 723.156 & 723.502

Hist.: FCS 2-2002, f. & cert. ef. 8-27-02

**441-720-0355**

**Construction and Development Lending**

A credit union that makes a member business loan for construction and development of commercial or residential property is subject to the following requirements:

- (1) The aggregate of all such loans must not exceed 15% of net worth of the credit union. To determine the aggregate, a credit union may exclude any portion of a loan:
  - (a) Secured by shares in the credit union.
  - (b) Secured by deposits in another financial institution.
  - (c) Fully or partially insured or guaranteed by any agency of the federal government, state, or its political subdivisions; or
  - (d) Subject to an advance commitment to purchase by any agency of the federal government, or by a state government, or its political subdivisions;

- (2) The borrower must have a minimum of:

(a) 25% equity interest in the project being financed, except if the loan is for land development the equity interest must be 35%; and

(b) The funds may be released only after onsite, written inspections by qualified personnel and according to a preapproved draw schedule and any other conditions as set forth in the loan documentation.

(3) The credit union may not make such loans unless it utilizes the services of an individual who has at least five years direct experience in development and construction lending.

Stat. Auth.: ORS 723.102 & 723.156

Stats. Implemented: ORS 723.156 & 723.502

Hist.: FCS 2-2002, f. & cert. ef. 8-27-02

**441-720-0360**

**Classification of Member Business Loans to Reserve for Potential Losses**

Non-delinquent member business loans may be classified based upon factors such as the adequacy of analysis, supporting documentation, or grades given based upon the financial strength of the borrower. The credit union must classify potential loss loans as either substandard, doubtful, or loss. The criteria for determining the classification of loans are:

(1) **SUBSTANDARD.** A substandard loan is inadequately protected by the current sound worth and paying capacity of the obligor or of the collateral pledged, if any. The loan classified has a well-defined weakness or weaknesses that jeopardize the liquidation of debt. The loan is characterized by the distinct possibility that the credit union will sustain some loss if the deficiencies are not corrected. Loss potential, while existing in the aggregate amount of substandard loans, does not have to exist in individual loans classified substandard.

(2) **DOUBTFUL.** A loan classified doubtful has all the weaknesses inherent in one classified substandard, with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently existing facts, conditions, and values, highly questionable and improbable. The possibility of loss is extremely high, but because of certain important and reasonably specific pending factors which may work to the advantage and strengthening of the loan, its classification as an estimated loss is deferred until its more exact status may be determined. Pending factors include: proposed merger, acquisition, or liquidation actions; capital injection; perfecting liens on collateral; and refinancing plans.

(3) **LOSS.** A loan classified loss is considered uncollectible and of such little value that its continuance as a loan is not warranted. This classification does not necessarily mean that the loan has absolutely no recovery or salvage value, but rather, it is not practical or desirable to defer writing off this basically worthless asset even though partial recovery may occur in the future.

Stat. Auth.: ORS 723.102 & 723.156

Stats. Implemented: ORS 723.156 & 723.502

Hist.: FCS 2-2002, f. & cert. ef. 8-27-02

**441-720-0365**

**Minimum Reserves for Potential Loan Losses**

The following schedule sets the minimum amount the credit union must reserve for classified loans:

**Classification — Amount Required.**

Substandard — 10% of outstanding balance unless other factors (for example, history of such loans at the credit union) indicate a greater or lesser amount is appropriate.

Doubtful — 50% of the outstanding balance.

Loss — 100% of the outstanding balance.

Stat. Auth.: ORS 723.102 & 723.156

Stats. Implemented: ORS 723.156 & 723.502

Hist.: FCS 2-2002, f. & cert. ef. 8-27-02

**441-720-0370**

**Prohibited Member Business Loans**

(1) A credit union may not grant a member business loan to the following:

- (a) The credit union's chief executive officer;
- (b) Any assistant chief executive officers;
- (c) The chief financial officer; or
- (d) Any associated member or immediate family member of anyone listed in subsections (a) through (c) of this section.

(2) **Equity agreement/Joint Ventures.** The credit union may not grant a member business loan if any additional income received by the

credit union or senior management employees is tied to the profit or sale of the business or commercial endeavor for which the loan is made.

(3) Loans to directors. A credit union may not grant a member business loan to a director unless the board of directors approves in advance granting the loan and the director is recused from the decision making process.

Stat. Auth.: ORS 723.102 & 723.156

Stats. Implemented: ORS 723.156 & 723.502

Hist.: FCS 2-2002, f. & cert. ef. 8-27-02

#### **441-720-0375**

##### **Available Waivers for Specific Loan Types**

A credit union may seek a waiver for a type of member business loan in the following areas:

(1) Loan to value ratios under 441-720-0320.

(2) Unsecured loan limit under 441-720-0320 not to exceed \$100,000.

(3) Maximum loan amount to one borrower or associated group of borrowers under 441-720-0330.

(4) Construction and development loan limits under 441-720-0355.

(5) Requirement for personal liability and guarantee under 441-720-0320.

(6) If a credit union is requesting a waiver of appraisal requirements of 12 C.F.R. 722.3 from the NCUA, the credit union shall:

(a) File the request with the Director; and

(b) If the Director approves the request, the Director will promptly forward the request to the Regional Director of Region VI of the NCUA (or if it is the Corporate Credit Union to the Director of the Office of Corporate Credit Unions of NCUA) for decision under NCUA rules at 12 C.F.R. 723.12; or

(c) If the Director does not approve the request, the Director will return the request to the credit union with reasons for the disapproval and provide the NCUA with notice of the Director's decision.

(d) The waiver is not effective until the Regional Director of Region VI of the NCUA (or the Director of the Office of Corporate Credit Unions) approves it in accordance with NCUA rules at 12 C.F.R. 723.12.

Stat. Auth.: ORS 723.102 & 723.156

Stats. Implemented: ORS 723.156 & 723.502

Hist.: FCS 2-2002, f. & cert. ef. 8-27-02

#### **441-720-0380**

##### **Waiver Procedure**

(1) A credit union must submit a request to the Director to obtain a waiver under ORA 441-720-0375. The waiver request must contain the following:

(a) A copy of the member business loan policy;

(b) The higher limit sought, if applicable;

(c) An explanation of the need to raise the limit, if applicable;

(d) Documentation supporting the credit union's ability to manage this activity; and

(e) Analysis of the credit union's prior experience making member business loans, including:

(A) The history of loan losses and loan delinquency;

(B) Loan volume and cyclical or seasonal patterns;

(C) Diversification;

(D) Concentrations of credit to one borrower or group of associated borrowers in excess of 15% of net worth;

(E) Underwriting standards and practices;

(F) Types of loans grouped by purpose and collateral;

(G) The qualifications of personnel responsible for underwriting and administering member business loans; and

(H) Any other information deemed relevant by the credit union or requested by the Director.

(2) The Director will:

(a) Review the information provided by the credit union in its request;

(b) Evaluate the level of risk to the credit union;

(c) Consider the credit union's historical CAMEL composite and component ratings;

(d) Notify the credit union when the waiver request is deemed complete;

(e) Notify the credit union of the action taken within 45 calendar days of receiving a complete request, and, if the Director approves the waiver request as not detrimental to the safety and soundness of the credit union nor contrary to the public interest, issue an order subject to NCUA approval granting the waiver; and

(f) Provide a copy of the waiver request under 12 C.F.R. 723.11 to NCUA, Region VI (or if it is the Corporate Credit Union to the Director of the Office of Corporate Credit Unions) for their review and approval.

(3) The waiver is not effective until the Director approves it by order.

(4) If granted, the waiver does not expire unless it is revoked by the Director.

Stat. Auth.: ORS 723.102 & 723.156

Stats. Implemented: ORS 723.156 & 723.502

Hist.: FCS 2-2002, f. & cert. ef. 8-27-02

## **DIVISION 730**

### **CONSUMER FINANCE**

#### **441-730-0000**

##### **Statutory Authority; Purpose**

(1) ORA 441-730-0000 to 441-730-0320 is adopted pursuant to the rulemaking authority granted the director by ORS 725.320, and 725.505.

(2) The rules are considered necessary to assure the proper conduct of the business regulated, to enforce the Consumer Finance Act and to protect the public.

Stat. Auth.: ORS 725.320, 725.505

Stats. Implemented: ORS 725

Hist.: BB 14, f. & ef. 11-15-76; Renumbered from 805-075-0005; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 5-2006, f. & cert. ef. 12-21-06; FCS 2-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 12-27-07; FCS 6-2010, f. & cert. ef. 6-4-10

#### **441-730-0010**

##### **Definitions**

(1) "Annual percentage rate" or "APR" means the annual percentage rate that every licensee is required by Regulation Z of the Federal Truth in Lending Act (Title I of the Consumer Credit Protection Act) to disclose to each of its credit customers.

(2) "Borrower" means a natural person.

(3) "Charges" means any one or more of the fees, premiums or other charges described by ORS 725.340(2)(a), (3) and (4), and other items charged to a borrower's account; but the term does not include interest or deferral charges.

(4) "Deferral charges" means the additional charge assessed by a licensee made for deferring all unpaid installments as provided by ORS 725.340(2)(b). Deferral charges do not apply to loans with a single payment payback feature.

(5) "Director" means the Director of the Department of Consumer and Business Services.

(6) "Finance charge" means the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction.

(7) "Formalized grading system" means a formula or computer program that determines the creditworthiness of individual borrowers based on information regarding the borrower's financial condition, such as the borrower's income, assets, debts and financial obligations, and the nature and value of any collateral used to secure the loan.

(8) "Fully amortized" means characterized by periodic payments, that if made as scheduled, result in full repayment of the principal and interest owed on a loan by the end of the loan term.

(9) "License" means a consumer finance license issued under ORS 725.140.

(10) "Legally qualified in this state" means a business is qualified to conduct business in this state, having made the appropriate filings with the Secretary of State.

(11) "Licensee" means a person in the business of making loans for periods of more than 60 days that have periodic payments.

(12) "Loan" means a loan that is subject to the Oregon Consumer Finance Act.

(13) "Loan underwriting" means a written or otherwise documented evaluation of the assumption of risk preceding the granting of a loan to a specific borrower, and may be fulfilled through use of a formalized grading system. Loan underwriting may be based on one or more of the following:

- (a) Credit information furnished by the borrower, such as employment history, income, and outstanding obligations;
- (b) A financial statement that includes income, assets and debts;
- (c) Publicly available information concerning the borrower, that may include the borrower's credit report;
- (d) The borrower's credit needs and willingness and ability to pay, including the nature and value of any collateral used to secure the loan.

(14) "Periodic payments" means loan repayments scheduled for monthly or more frequent periods of time.

(15) "Person" means a natural person or an organization, including a corporation, partnership, proprietorship, association, limited liability company, or cooperative.

Stat. Auth.: ORS 725.320 & 725.505

Stats. Implemented: ORS 725.110, 725.140, 725.340, & 725.360

Hist.: BB 14, f. & ef. 11-15-76; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0007; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88; FCS 2-2000, f. & cert. ef. 2-15-00; FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 6-2001(Temp), f. 6-29-01, cert. ef. 7-1-01 thru 12-25-01; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 5-2006, f. & cert. ef. 12-21-06; FCS 2-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 12-27-07; FCS 3-2009, f. & cert. ef. 6-2-09; FCS 6-2010, f. & cert. ef. 6-4-10

#### **441-730-0015**

##### **Licensee Lending Characteristics and Practices**

(1) A licensee, making loans under that license, must make a determination of the creditworthiness of a borrower based on the information about the borrower's financial condition, such as his or her income, assets, debts, and financial obligations, and the nature and value of any collateral used to secure the loan for the majority of loans made under a consumer finance license.

(2) A licensee must ensure that the majority of secured or unsecured loans made under a license have:

- (a) Periodic payments;
  - (b) Terms longer than 60 days;
  - (c) Loan underwriting; and
  - (d) Full amortization.
- (3) A licensee must not:

(a) Disguise any loan as an open-ended loan authorized under ORS 725.345 or 725.347 as a device or subterfuge to evade the requirements and prohibitions of this rule;

(b) Retain the title to the vehicle used as security on a loan for more than thirty business days before submitting the application to be recorded as a lien-holder on the title or taking other commercially reasonable steps to be added as a security interest holder of the vehicle;

(c) Unreasonably withhold documents on a loan secured by a borrower's vehicle for more than three business days if the loan is paid by certified or guaranteed funds; or

(d) Require a borrower, as a condition of making a loan under its license, to provide a postdated check or debit authorization for one or more future payments. However, if permitted by the licensee and at the discretion of the borrower, one or more postdated checks or debit authorizations may be delivered to a licensee to facilitate timely future payments.

Stat. Auth.: ORS 725.505

Stats. Implemented: ORS 725.110, 725.140(1) & 725.330

Hist.: FCS 2-2000, f. & cert. ef. 2-15-00; Renumbered from 441-730-0005, FCS 5-2006, f. & cert. ef. 12-21-06; FCS 3-2007(Temp), f. & cert. ef. 8-10-07 thru 12-27-07; FCS 3-2009, f. & cert. ef. 6-2-09; FCS 6-2010, f. & cert. ef. 6-4-10

#### **441-730-0025**

##### **License Applications**

(1) For purposes of the investigation described in ORS 725.140(1), an applicant for a license must submit the application form prescribed by the director, signed by an authorized owner or officer of the applicant.

(2)(a) An applicant, including a person that currently has a license, must provide the employment history for the proposed manager of the licensed office for the five years immediately preceding the date of the application. A licensee employing a new manager may be required to submit a resume to meet the requirements of this section.

(b) The employment history for a license applicant's proposed manager must demonstrate verifiable recent experience in traditional lending, including but not limited to, experience obtained in banking, consumer finance, or mortgage lending. For purposes of this rule, "recent" means no less than three years out of the five years immediately preceding the date of application. Short-term lending experience alone is not a sufficient substitute for the required experience.

(c) At the request of the applicant and in the sole discretion of the director, education, extensive training, or other business experience may be substituted for the three out of five years of traditional lending experience. Factors that the director may consider include relevance of the education, or the number, complexity and types of transactions handled in the substituted business experience. Short-term lending experience alone is not a sufficient substitute for the required experience.

(3) A person that is not currently licensed with the director to make loans must submit:

(a) The employment history for all executive officers, owners, directors, or managing partners. A resume may be required to meet this requirement. At least one-half of the executive officers, owners, directors, or managing partners must have verifiable recent lending experience in banking, consumer finance, or mortgage lending;

(b) A business plan, including but not limited to:

- (A) Financial and operational history of the applicant, if any;
- (B) Copies of any loan documents that proposed to be used;

(C) A description of the types of loans and the percentage of the different types of loans the applicant proposes to make, the length of the loans the applicant proposes to make, the interest rates or range of rates the applicant proposes to charge, and any other business activities the licensee will engage in at the location;

(D) The process by which the applicant will determine that loans to be made comply with requirements in OAR 441-730-0015(1); and

(E) Funding sources for the loans, including third-party financial institutions.

(4) For purposes of ORS 725.140 and this rule, the filing date of an application is the date the application is complete. An application must be deemed complete on the date:

(a) All required fees have been paid; and

(b) All fully completed documents that are part of an application or required to be submitted by this rule have been received.

(5) An application for licensing is deemed abandoned if:

(a) The director has had one or more incomplete documents as part of an application for a minimum of 60 days; and

(b) The applicant has not responded within 30 days following a written notice from the director requesting submission of all fees, documents, or information necessary to make the application complete.

(6) An applicant whose application has been abandoned may reapply by submitting a new application including new fees.

Stat. Auth.: ORS 725.505

Stats. Implemented: ORS 725.120 & 725.140

Hist.: FCS 5-2006, f. & cert. ef. 12-21-06; FCS 3-2009, f. & cert. ef. 6-2-09; FCS 6-2010, f. & cert. ef. 6-4-10

#### **441-730-0026**

##### **Corporate Surety Bond for Consumer Finance Licensees Employing a Mortgage Loan Originator**

(1) This rule applies to a consumer finance company licensed under ORS 725.010 to 725.270 and OAR chapter 441, division 730 that employs one or more mortgage loan originators. The corporate surety bond must be in a form and on terms approved by the director.

(2) A corporate surety bond under this rule must be renewed or replaced each calendar year, concurrently with the license renewal of any mortgage loan originators employed by the consumer finance company. The corporate surety bond shall be delivered to the director by December 1 of each calendar year but may be made effective as of December 31 of each calendar year. In no case shall any applicant, mortgage banker or mortgage broker subject to this rule reduce the amount of a corporate surety bond before October 1 of each calendar year.

(3) A consumer finance company must maintain a corporate surety bond during the period the company employs a mortgage loan originator. The corporate surety bond must remain in effect for at least five years after the person ceases to employ one or more mortgage loan originators. A person must file a claim against the corporate surety bond before the bond expires as described in this section.

(4) At least five years after a consumer finance company ceases to originate residential mortgage loans, the person or the writer of the corporate surety bond may apply to the director for release of the corporate surety bond. Unless the director determines that claims are pending against the person for violation of ORS 86A.095 through 86A.198, the director will release the corporate surety bond.

(5) The sum of the corporate surety bond for a consumer finance company that employs one or more mortgage loan originators must be calculated based on the last required annual report submitted under OAR 441-730-0320. The sum of each consumer finance company's corporate surety bond must be determined as follows:

(a) For a consumer finance company that has not previously conducted business involving the origination of residential mortgage loans, the corporate surety bond must be in the amount of \$50,000.

(b) For a consumer finance company making or negotiating less than \$10,000,000 in residential mortgage loans in the previous calendar year, the corporate surety bond must be in the amount of \$50,000.

(c) For a consumer finance company making or negotiating \$10,000,000 or more but less than \$25,000,000 in residential mortgage loans in the previous calendar year, the corporate surety bond must be in the amount of \$75,000.

(d) For a consumer finance company making or negotiating \$25,000,000 or more but less than \$50,000,000 in residential mortgage loans in the previous calendar year, the corporate surety bond must be in the amount of \$100,000.

(e) For a consumer finance company making or negotiating \$50,000,000 or more but less than \$100,000,000 in residential mortgage loans in the previous calendar year, the corporate surety bond must be in the amount of \$150,000.

(f) For a consumer finance company making or negotiating more than \$100,000,000 in residential mortgage loans in the previous calendar year, the corporate surety bond must be in the amount of \$200,000.

(8) Notwithstanding section (7) of this rule, a person that obtains and maintains one or more consumer finance licenses in this state may provide a corporate surety bond in an amount to cover the entire surety amounts required for one or more of the person's consumer finance companies in an amount meeting the minimum bond amounts of sections (7)(a) through (f) of this rule.

Stat. Auth.: ORS 86A.242

Stats. Implemented: ORS 86A.227

Hist.: FCS 3-2010, f. 3-18-10, cert. ef. 3-22-10; FCS 4-2012, f. & cert. ef. 8-1-12

#### **441-730-0027**

##### **State Criminal Records Check**

(1) A consumer finance company that makes or offers to make residential mortgage loans must conduct a state criminal records check of an employee prior to the person originating residential mortgage loans.

(a) The consumer finance company must search state records of all states where the individual has resided in the past 10 years using the person's full legal name, date of birth, place of birth, and Social Security number.

(b) The consumer finance company must use the services of law enforcement agencies or an independent private company that complies with the federal Fair Credit Reporting Act to conduct the state criminal records check.

(2) If the state criminal records check discloses a disqualifying conviction under ORS 86A.212, an applicant for a mortgage loan originator license may not be employed and a currently employed mortgage loan originator must cease making residential mortgage loans immediately.

(3) The consumer finance company must maintain state criminal records check documents in a secure location and must make these available to the director for examination at any reasonable time or times and may require, without subpoena, the production of such records at the office of the director as often as is reasonably necessary. The consumer finance company must preserve these records for three years after they terminate the employment of the mortgage loan originator. After the retention period, the consumer finance company must destroy these files in a secure manner.

(4) This rule applies to employees of consumer finance companies hired or employed on or after August 1, 2010.

Stat. Auth.: ORS 59.972, 86A.242

Stats. Implemented: ORS 59.972

Hist.: FCS 3-2010, f. 3-18-10, cert. ef. 3-22-10

#### **Notes, Mortgages, and Collateral**

#### **441-730-0030**

##### **Fees, Charges Licensees Pay the Director**

(1) The license fee for license applicants or licensees is:

(a) \$600 for an initial application for each location to be licensed; and

(b) \$600 for renewal for each licensed location, due and payable on January 1 of each calendar year;

(2) The rate of charge payable by a licensee is \$75 an hour per person payable by the licensee for the director and each examiner and other division employee used in an examination conducted under ORS 725.312 and for extra services provided a licensee under 725.185(2).

(3) Notwithstanding the rate of charge fixed by section (2) of this rule:

(a) If an examiner from the division or the director is required to travel out of state to conduct the examination or provide extra services, the rate of charge payable by the licensee is \$75 an hour per person, plus actual cost of travel. Actual travel costs include air fare, lodging, food, car usage out of state, mileage to the Oregon airport and return, and travel time beginning from the departure time and ending at the departure time at the destination city;

(b) If the extra services or examination is performed by a consultant hired by contract for the particular service or examination, the charge payable by the licensee is the actual cost to the division of the contract consultant.

(4) As used in this rule, "extra services" means any attention other than an examination given under ORS 725.310.

(5) In addition to the charges fixed by sections (2) and (3) of this rule, the director will collect from a licensee any additional costs directly attributable to extra services given the licensee under ORS 725.185 or a special examination given the licensee under ORS 725.310.

(6) The director may by order reduce the fees assessed for any specific year.

Stat. Auth.: ORS 725.185

Stats. Implemented: ORS 725.185

Hist.: FID 8-1985, f. & ef. 12-31-85; FCS 2-1988, f. 1-29-88, cert. ef. 2-1-88; Renumbered from 805-075-0015; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88; FCS 1-1989, f. 1-18-89, cert. ef. 2-1-89; FCS 1-2001, f. 1-22-01, cert. ef. 2-1-01; FCS 4-2003, f. 12-30-03 cert. ef. 1-1-04; FCS 4-2004, f. 11-1-04, cert. ef. 1-1-05; FCS 3-2005, f. & cert. ef. 9-6-05; FCS 1-2008, f. & cert. ef. 1-28-08; FCS 2-2009, f. & cert. ef. 2-3-09; FCS 3-2009, f. & cert. ef. 6-2-09; FCS 6-2010, f. & cert. ef. 6-4-10

#### **441-730-0050**

##### **Notes and Agreements**

(1) All forms of notes and agreements pertaining to loans and security for loans used by a licensee must be so worded that they comply with all provisions of ORS Chapter 725 and these rules.

(2) Any forms or agreements required or authorized by federal statute or regulations and in compliance with those statutes or regulations are considered in compliance with and authorized by ORS Chapter 725.

Stat. Auth.: ORS 725.505

Stats. Implemented: ORS 725.120 & 725.320

Hist.: BB 14, f. & ef. 11-15-76; BB 3-1978, f. 5-16-78, ef. 7-1-78; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0030; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 5-2006, f. & cert. ef. 12-21-06; FCS 3-2009, f. & cert. ef. 6-2-09; FCS 6-2010, f. & cert. ef. 6-4-10

#### **441-730-0060**

##### **Loans Not to Be Payable on Demand; Exception**

(1) Except as provided by section (2) of this rule, a loan shall not be made payable on demand.

(2) A loan may provide that, if there is a default under the note or collateral security agreement, the loan may become due and payable immediately or on demand.

Stat. Auth.: ORS 725

Stats. Implemented: ORS 725.050

Hist.: BB 14, f. & ef. 11-15-76; BB 3-1978, f. 5-16-78, ef. 7-1-78; Renumbered from 805-075-0040

**441-730-0070**

**Advertising Regulations**

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

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

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

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

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

(b) If a licensee makes and closes the majority of loans electronically, they must prominently post their license on their website and at their licensed location in a manner conspicuous to the public.

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

Stat. Auth.: ORS 725.505

Stats. Implemented: ORS 725.060

Hist.: BB 14, f. & ef. 11-15-76; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0045; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88; FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 3-2009, f. & cert. ef. 6-2-09; FCS 3-2010, f. 3-18-10, cert. ef. 3-22-10; FCS 6-2010, f. & cert. ef. 6-4-10

**441-730-0080**

**Qualifications of Person in Charge of Licensed Office**

(1) A loan licensee must not place any person in charge of a licensed office unless the person has a thorough understanding of ORS chapter 725 and these rules.

(2) A licensee must place the experienced person as described in OAR 441-730-0025(2) in its licensed office.

(3) Notwithstanding section (2) of this rule, if the licensee holds a license for more than one location or if the experienced person described in OAR 441-730-0025(2) is employed outside of Oregon, the licensee may place a qualified person with no less than one year's traditional lending experience in charge of each licensed office provided the experienced person described in 441-730-0025(2) supervises the lending operations of each location.

(4) At the request of the applicant and in the sole discretion of the director, education, extensive training or other business experience may be substituted for the one year of relevant lending experience required in section (3) of this rule.

(5) Unless a licensee requires all loan underwriting decisions be forwarded to an experienced person at another location or uses a formalized grading system, a licensee must employ or place a qualified person as described in this rule at each licensed office to be in charge of and oversee the lending operations of the office. A licensee must provide the director with a current resume for any new manager employed or placed at a licensed office within 30 days of the date of their employment.

Stat. Auth.: ORS 725.505

Stats. Implemented: ORS 725.140, 725.310 & 725.330

Hist.: BB 14, f. & ef. 11-15-76; Renumbered from 805-075-0050; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 5-2006, f. & cert. ef. 12-21-06; FCS 3-2009, f. & cert. ef. 6-2-09; FCS 6-2010, f. & cert. ef. 6-4-10

**441-730-0100**

**Licensee Officers and Directors**

(1)(a) A licensee may add a new executive officer, owner, director, or managing partner at any time after the licensee has been granted a license if after the addition at least one-half of the executive officers, owners, directors, or managing partners can demonstrate verifiable recent lending experience in banking, consumer finance, or mortgage lending as required by OAR 441-730-0025.

(b) If a licensee adds a new executive officer, director, partial owner, or managing partner under this section, the licensee must provide a current resume for such new persons demonstrating verifiable recent lending experience in banking, consumer finance, or mortgage lending to the director within 30 days of their appointment or selection.

(2) If an existing or new executive officer, director, partial owner, or managing partner of the licensee gains a controlling interest in the company after the license has been granted, the licensee must notify the director within 30 days.

(3) An officer or director of a licensee addressed in an order issued by the director under ORS 725.315 or 725.317 may, within 30 days after the date the order is issued and served, request a hearing on the order as provided for contested cases by 183.310 to 183.500, and the rules of the director adopted pursuant thereto.

(4) A person who is suspended or removed under ORS 725.315 or 725.317 must not conduct any of the business of the licensee or have access to the books, records, or assets of the licensee either as an officer, director, partner, stockholder, or employee without receiving permission from the director:

(a) During the period of the suspension; or

(b) After the effective date of the removal.

(5) A licensee subject to an order of suspension under the provisions of ORS 725.230(2) may, within 90 days after the date the order is issued or served, request a hearing on the order as provided for contested cases by 183.310 to 183.500 and the rules of the director adopted pursuant thereto.

Stat. Auth.: ORS 725.505

Stats. Implemented: ORS 725.315 & 725.317

Hist.: BB 3-1978, f. 5-16-78, ef. 7-1-78; Renumbered from 805-075-0057; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 3-2009, f. & cert. ef. 6-2-09; FCS 6-2010, f. & cert. ef. 6-4-10

**441-730-0110**

**Accounting Records of Licensee**

(1) The accounting records of a licensee must reflect a complete segregation of the loan transactions from any other business in which the licensee may be engaged.

(2) The licensee must maintain separate control accounts or other acceptable records to reflect such segregation for:

(a) Loans receivable;

(b) Charges; and

(c) Repossessed property and sales of repossessed property.

(3) The receipt and disbursement of all charges charged or collected must be fully accounted for.

(4) Each licensee must maintain a log of:

(a) Loans made, listing each loan in sequence by number or date of loan and showing:

(A) The amount of the loan;

(B) The type of security taken;

(C) The rate of interest charged; and

(D) The types of insurance for which premium charges have been made in connection with the loan and which are payable by the borrower.

(b) Loans prepaid in full by credit life insurance showing for each loan so paid;

(A) The borrower's name and account number;

(B) The date of death of the borrower;

(C) The date proof of death was received by the licensee; and

(D) The disposition of the insurance proceeds with substantiated documents.

(c) Any litigation initiated by the licensee showing for each proceeding:

(A) The borrower's name and account number;

(B) The court where the proceeding is filed;

(C) The date of filing; and

(D) When applicable, the date, and terms of any disposition of the matter.

(d) Information on files sent to a collection agency showing, for each file:

(A) The borrower's name, the account number;

(B) The original date of the loan, the due date of the loan, or last renewal or extension;

(C) The date the loan was sent to the collection agency;

(D) The name of the collection agency; and  
(E) The date and amount of monies received from the collection agency.

(F) A separate log of files sent to a collection agency need not be maintained provided the information is available in existing records at the time of examination.

(5) Any public or private sale of repossessed property by a licensee must be made in good faith and in a commercially reasonable manner. If there is no recognized market for the property, such as a motor vehicle auction house or similar sales process that is commonly used to sell property of the kind repossessed by the licensee, prior to a private sale of repossessed property, the licensee must obtain, from persons who are not directly or indirectly related to the licensee, sufficient written bids to establish market value. The written bid must contain sufficient information to identify the property being bid on.

(6) When a judgment is entered in a court proceeding initiated by a licensee on a loan, the licensee forthwith must place in the related loan file either:

- (a) A copy of the judgment entered in the proceeding; or
- (b) A statement verified by a representative of the licensee, detailing the essential provisions of the judgment.

Stat. Auth.: ORS 725.320 & 725.505

Stats. Implemented: ORS 725.330

Hist.: BB 14, f. & ef. 11-15-76; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0060; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88; FCS 2-2000, f. & cert. ef. 2-15-00; FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 3-2009, f. & cert. ef. 6-2-09; FCS 6-2010, f. & cert. ef. 6-4-10

#### **441-730-0120**

##### **Account Record to Be Maintained for Each Loan**

(1) The licensee must maintain a separate individual account record for each loan made to any borrower showing:

- (a) The loan number;
- (b) The date of the loan;
- (c) The name and address of the borrower;
- (d) A brief description of the security, if any;
- (e) The agreed interest rate or rates and the amount of each charge, if any;
- (f) The terms of repayment, including the expiration date of the loan, and any modifications of the terms.

(g) The amount of each payment made on the loan and in accordance with sections (2) and (3) of this rule, how the payment is allotted to principal, interest and charges;

(h) The date of the final entry when the loan is paid in full or otherwise finally settled or closed; and

(i) A clear, brief explanation of any other entries that result in the reduction or addition to the principal balance or interest.

(2) The account record for a daily interest loan must show, for each loan payment received:

- (a) The amount, if any, applied to interest;
- (b) The date to which the interest is paid;
- (c) If payment is insufficient to pay interest to date, the dollar amount short;
- (d) The amount applied to principal, if any; and
- (e) The unpaid principal balance of the loan, if any.

(3) The account record for a precomputed-interest loan may comply with section (2) of this rule or it must show, for each loan payment received:

- (a) The amount of the payment applied to installments, identifying which installments;
- (b) The amount applied to any default charges; and
- (c) The unpaid balance of the loan and charges, if any.
- (4) When a licensee makes advances to perform covenants, the account record must specify:

(a) The amount of the advance which is added to the principal of the loan.

- (b) A brief description of what the advance is paying; and
- (c) When the advance is to purchase insurance coverage, the type and extent of coverage.

(5) All entries to the account record made by the licensee must be accurate and posted by close of business on the day the transaction occurred. If the licensee is unable to post a transaction as required by this section, the posting when made must reflect the actual date of the transaction.

Stat. Auth.: ORS 725.320 & 725.505

Stats. Implemented: ORS 725.330

Hist.: BB 14, f. & ef. 11-15-76; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0065; FCS 2-2000, f. & cert. ef. 2-15-00; FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 5-2006, f. & cert. ef. 12-21-06; FCS 3-2009, f. & cert. ef. 6-2-09; FCS 6-2010, f. & cert. ef. 6-4-10

#### **441-730-0125**

##### **Residential Borrower Files for Mortgage Loans**

(1) In addition to any records required to be kept under OAR 441-730-0110 and 441-730-0120, a consumer finance company that makes or offers to make a residential mortgage loan must ensure that the following are prepared and maintained in the loan file:

- (a) A summary of the key terms of the approval of the loan;
- (b) A copy of each residential mortgage loan application with the signature and the unique identifier of the mortgage loan originator who took or received the application, who offered to negotiate or negotiated the loan, or who closed the loan;
- (c) A copy of all documentation relied upon in making the loan decision;
- (d) A copy of the borrower executed note and executed trust deed;
- (e) A copy of all correspondence with the borrower in writing or in a format easily converted to writing;
- (f) A copy of the good faith estimate prepared under Regulation X, 24 C.F.R. Part 3500 and translated as applicable to comply with ORS 86A.198;
- (g) If required to be prepared for the residential mortgage transaction, a copy of the final credit report, or the report relied upon for the loan decision, if other than the final credit report, received on the borrower including documentation of borrower payment history;
- (h) If required to be prepared for the Oregon residential mortgage transaction, a copy of any disclosure required by Regulation Z, 12 C.F.R. Part 226 and translated as applicable to comply with ORS 86A.198, including, but not limited to, the Truth in Lending disclosure statement;
- (i) A copy of the final HUD-1 settlement statement required by 24 C.F.R. Part 3500; and
- (j) A copy of the statement that notifies the borrower that loan documents associated with the transaction will be in English and that advises the borrower to obtain appropriate assistance, with any necessary translations as required by ORS 86A.195.

(2) Records retained under this rule may be kept in a written format or in a format easily converted to writing.

Stat. Auth.: ORS 86A.242

Stats. Implemented: ORS 725.230

Hist.: FCS 3-2010, f. 3-18-10, cert. ef. 3-22-10

Stat. Auth.: ORS 86A.242

Stats. Implemented: ORS 725.230

Hist.: FCS 3-2010, f. 3-18-10, cert. ef. 3-22-10

#### **441-730-0130**

##### **Maintaining Index of Obligors**

A licensee must maintain in each of its licensed offices an alphabetical index or other index system approved by the director, of every person obligated, directly or contingently, on a loan serviced at that office.

Stat. Auth.: ORS 725

Stats. Implemented: ORS 725.330

Hist.: BB 14, f. & ef. 11-15-76; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0070; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 6-2010, f. & cert. ef. 6-4-10

#### **441-730-0140**

##### **Records and Files Required to Be Kept at Servicing Office; Copies of Loans Transferred; Centralized Accounting Office Exception**

(1) A licensee must maintain the accounting records and loan files for active loans at the licensed office where the loans are serviced.

(2) Whenever an active loan is for any reason transferred to another licensed office in this state, the licensee must retain in the transferring office an exact copy of the individual account record and supporting legal documents.

(3) Whenever an active loan is for any reason transferred to another licensed office, the licensee must retain in the transferring office an exact copy of the account record to which has been added the date of transfer and the name and address of the new location of the account. However, if a bulk sale or similar transfer of loans not in the ordinary course of business is made to another licensed office, the licensee may, with the prior approval of the director, make other provisions for the retention of copies of records and files and for the examination of accounts in the receiving office.

(4) Whenever a licensee sends an active loan to another licensed location, the licensee must retain the original record or an exact copy of the account record in the originating office.

(5) Notwithstanding sections (1) through (4) of this rule, a licensee may, with the prior approval of the director, maintain the accounting records and loan files for active loans at a location other than the servicing office if:

(a) The other location is established by the licensee to provide centralized accounting for one or more licensed offices;

(b) Off-site maintenance of the records and files will not hinder prompt servicing of the loans by the servicing offices;

(c) The director, and any duly appointed examiners or agents of the director, have the right of free access to the records and files of the licensee at the other location; and

(d) The other location provides adequate security for the licensee's records and files.

Stat. Auth.: ORS 725.320 & 725.505

Stats. Implemented: ORS 725.330

Hist.: BB 14, f. & ef. 11-15-76; BB 5-1982, f. 9-1-82, ef. 9-15-82; BB 1-1983, f. 3-29-83, ef. 4-1-83; Renumbered from 805-075-0075; FCS 2-2000, f. & cert. ef. 2-15-00; FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 6-2010, f. & cert. ef. 6-4-10

### **Computation of Interest and Charges**

#### **441-730-0150**

##### **Consolidating Sales Financing into Direct Loans**

(1) A licensee shall not make a direct loan to pay off a retail installment contract owned by or assigned to the licensee if the loan bears a higher APR than that borne by the contract unless the loan is of substantial benefit to the borrower. A substantial benefit would exist in circumstances including, but not limited to one or more of the following:

(a) The retail installment contract is in default two installments or more;

(b) The amount of the individual installments payable on the direct loan will be lower than the amount of the individual installment being paid on the contract;

(c) The direct loan pays off one or more obligations in addition to the retail installment contract;

(d) The principal amount of the direct loan exceeds the sum of the unpaid installments on the retail installment contract by not less than 20 percent of the sum of the unpaid installments, or by \$200, whichever is less.

(2) As used in this rule, "retail installment contract" has the meaning given the term by ORS 83.010 and 83.510.

Stat. Auth.: ORS 725.505

Stats. Implemented: ORS 725.320

Hist.: BB 3-1978, f. 5-16-78, ef. 7-1-78; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0103; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 3-2009, f. & cert. ef. 6-2-09

#### **441-730-0160**

##### **Daily-Interest Computation**

(1) When interest on a loan is computed on a daily basis using a 360-day factor, the maximum charge for each day must be 1/30 of the monthly rate. In determining the elapsed time to compute interest on any such loan, each calendar month shall be treated as containing 30 days. However, when the period for which interest is computed includes the last day of the month:

(a) If the month has 31 days, the 31st day must be ignored;

(b) If the month is February, two days must be added to the period, except in leap year when only one day may be added.

(2) Interest on a loan may be computed on a daily basis using a 365-day factor or, in a leap year, a 366-day factor. In determining the elapsed time to compute interest or a refund of interest, on such a loan, the maximum charge for each day must be 1/365th of the annual rate, except in a leap year when the maximum charge for each day must be 1/366th of the annual rate.

Stat. Auth. ORS 725.320 & 725.505

Stats. Implemented ORS 725.340

Hist.: BB 14, f. & ef. 11-15-76; Renumbered from 805-075-0105; FCS 2-2000, f. & cert. ef. 2-15-00; FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 6-2010, f. & cert. ef. 6-4-10

#### **441-730-0170**

##### **Precomputed Interest**

(1) When a loan contract is repayable in substantially equal and consecutive monthly installments of principal and interest combined,

interest may be precomputed and added to the principal. Interest may be precomputed even though the first installment period is more or less than one month.

(2) If the first installment period exceeds one month, the amount of the agreed monthly interest charge must be reduced for the first period by 1/30th of the amount for each extra day in the first period. If the first installment period is less than one month the amount of the agreed monthly interest charge must be reduced for the first period by 1/30th of the amount for each day that the first installment period is less than one month.

Stat. Auth.: ORS 725.320 & 725.505

Stats. Implemented: ORS 725.340

Hist.: BB 14, f. & ef. 11-15-76; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0110; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88; FCS 2-2000, f. & cert. ef. 2-15-00; FCS 3-2009, f. & cert. ef. 6-2-09; FCS 6-2010, f. & cert. ef. 6-4-10

#### **441-730-0180**

##### **Deferred Payment on Precomputed Loan**

(1) When unpaid installments are deferred as provided by ORS 725.340(2)(b), the licensee must give the borrower written evidence of the agreed deferral showing:

(a) The amount of the deferral charge;

(b) The new due date of the first deferred installment; and

(c) The new due date of the final deferred installment of the loan.

(2) The licensee must also note the due date of the final deferred installment and the amount of the deferral charge on the borrower's account record.

Stat. Auth.: ORS 725.505

Stats. Implemented: ORS 725.340(2)

Hist.: BB 14, f. & ef. 11-15-76; BB 3-1978, f. 5-16-78, ef. 7-1-78; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0120; FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 3-2009, f. & cert. ef. 6-2-09; FCS 6-2010, f. & cert. ef. 6-4-10

#### **441-730-0200**

##### **Action on Precomputed Loan; Rebate Required**

(1) When a licensee brings an action against a borrower on a precomputed loan, if the action comes to judgment prior to the due date of the final installment, the licensee must tender a rebate to the borrower of interest unearned as of the date of the judgment. The rebate must be computed in accordance with ORS 725.340(2)(c) as if the loan were prepaid in full on the date of the judgment.

(2) Rebate of any deferral charge must be determined on the US Actuarial Rule.

(3) Licensees may collect prejudgment interest awarded by the court, but may not estimate interest based upon an estimate of the judgment date.

Stat. Auth.: ORS 725.320 & 725.505

Stats. Implemented: ORS 725.340

Hist.: BB 14, f. & ef. 11-15-76; BB 3-1978, f. 5-16-78, ef. 7-1-78; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0130; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88; FCS 2-2000, f. & cert. ef. 2-15-00; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 3-2009, f. & cert. ef. 6-2-09; FCS 6-2010, f. & cert. ef. 6-4-10

#### **441-730-0205**

##### **Limitation on Charging a Prepayment Penalty by Consumer Finance Licensees**

A licensee may not charge a penalty for prepayment of all or part of the unpaid balance of a loan where:

(1) A licensee refinances a loan they own.

(2) The licensee has repossessed any collateral offered for the loan, sold the collateral and applied the proceeds of the sale towards the unpaid balance of the loan.

(3) The licensee forecloses on property and applies any proceeds realized from the foreclosure toward the unpaid balance of the loan.

(4) The licensee exercises an option contained in the loan agreement to require immediate repayment of all or part of the unpaid balance of the loan.

(5) All or part of the loan balance is repaid with insurance benefits resulting from the death of the borrower.

(6) The licensee demands repayment of all or part of the unpaid balance of the loan.

(7) The loan is a home equity line of credit or an unsecured line of credit.

Stat. Auth.: ORS 725.320 & 725.505

Stats. Implemented: ORS 725.360

Hist.: FCS 2-2000, f. & cert. ef. 2-15-00; FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 3-2009, f. & cert. ef. 6-2-09; FCS 6-2010, f. & cert. ef. 6-4-10

**441-730-0210**

**Recomputation of Interest on Delinquent Precomputed Loan**

If two or more installments of a precomputed loan are delinquent, the licensee may elect to recompute interest and other charges. A recomputation shall be made at the agreed interest rate, or at the APR, from the date the loan was made, on actual unpaid balances, until the date the loan is paid in full. When such an election is made, the licensee shall recompute the interest charges from the date of the loan to the date of the election by applying every payment received prior to the election first to interest and then to the unpaid principal as of the date the payment was received. Recomputed interest so received is in lieu of the precomputed interest, including any deferral charges, and default charges which accrued prior to the date of the election.

Stat. Auth.: ORS 725.505

Stats. Implemented: ORS 725.340

Hist.: BB 14, f. & ef. 11-15-76; BB 3-1978, f. 5-16-78, ef. 7-1-78; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0135; FCS 3-2009, f. & cert. ef. 6-2-09

**441-730-0220**

**Insurance Premium Charges; Refunds**

If a loan contract is prepaid in full by cash, renewal, refinancing, or a new loan, one month or more before the final installment due date, the licensee shall refund to the borrower that proportion of the credit life and credit health insurance premium collected which the sum of the monthly balances scheduled to follow the installment date nearest the date of prepayment in full bears to the sum of all scheduled monthly balances, as computed in accordance with the rule commonly known as the "rule of seventy-eights." However, a licensee is not required to make a refund if the unearned insurance premium is less than \$2 and the loan is prepaid in full by cash.

Stat. Auth.: ORS 725

Stats. Implemented: ORS 725.340

Hist.: BB 14, f. & ef. 11-15-76; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0145

**441-730-0230**

**Insurance Benefits Paid to Licensee**

(1) When a death claim settlement is made on a borrower's account and the credit life insurance premium charged was based on the total of installments contracted, including both principal and anticipated interest, the licensee shall credit the borrower's account or estate in an amount not less than the total of all installments including both principal and unearned interest which were insured and scheduled to follow the date of the borrower's death. The licensee is entitled to accrue interest for not to exceed 30 days after proof of death is received by the licensee or until the date the insurance check is received, whichever is first to occur. A copy of the insurance check shall be retained in the file for auditing purposes.

(2) If premium charges for other types of credit life and credit health insurance have been charged to the account of the deceased borrower, the unearned charges shall also be credited to the borrower's account or estate from date of death.

Stat. Auth.: ORS 725

Stats. Implemented: ORS 725.340

Hist.: BB 14, f. & ef. 11-15-76; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0150

**Licensee's Duties to Borrower**

**441-730-0240**

**Statement of Loan**

(1) In addition to the statement required by ORS 725.360(1), the licensee shall, at the time each loan is made, deliver to the borrower:

(a) A written statement that payment in any amount may be made in advance at any time and, if the loan contains a prepayment penalty, the statement shall comply with the notice required by ORS 82.160(1).

(b) A detailed schedule showing the manner in which the proceeds of the loan have been disbursed or are to be disbursed on behalf of the borrower, including:

(A) Amounts applied to payment of the balance of an existing loan with the licensee;

(B) Amounts paid to others as authorized and designated by the borrower;

(C) Amounts paid for insurance premiums, itemizing the types of insurance that the borrower has approved in writing and, if the cov-

erage of any policy is less than the principal balance or the full term of the loan, state the balance and term covered.

(D) Amounts paid for other identifiable charges the borrower has approved in writing;

(E) Amounts retained for filing, releasing, recording, satisfaction, reconveyance, license, title transfer, and similar fees, itemizing the purpose of each fee; and

(F) Amounts remaining that will be paid to the borrower.

(c) When requested by the borrower, a copy of the security agreement, trust deed, or mortgage signed by the borrower, together with any attached schedule of property pledged by the borrower.

(2) When copies are requested by any other person obligated directly or contingently on the loan, the licensee shall also deliver a copy of the statements and other documents required by ORS 725.360(1) and section (1) of this rule to such other person whether the person is obligated as a maker, co-maker guarantor, accommodation maker, endorser or otherwise.

(3) The statement required by section (1) of this rule may include disclosures under applicable federal law that a licensee is required to make to the borrower at the time the loan is made.

(4) The licensee shall retain a copy of the statement of loan delivered to the borrower for at least two years after final entry has been made on the loan records.

Stat. Auth.: ORS 725

Stats. Implemented: ORS 725.330, 725.340 & 725.360

Hist.: BB 14, f. & ef. 11-15-76; BB 3-1978, f. 5-16-78, ef. 7-1-78; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0170; FCS 6-2001(Temp), f. 6-29-01, cert. ef. 7-1-01 thru 12-25-01; FCS 13-2001, f. & cert. ef. 12-27-01

**441-730-0246**

**Contents of Foreclosure Notices**

The sender of a notice form required by ORS 86.737 must enter in the form and format adopted by this rule:

(1) The statewide telephone contact number for handling consumer queries as 800-SAFENET (800-723-3638);

(2) The telephone number of the Oregon State Bar's Lawyer Referral Service as 503-684-3763;

(3) The Oregon State Bar's Lawyer Referral Service toll-free number as 800-452-7636;

(4) The website address of the Oregon State Bar as: <http://www.osbar.org>;

(5) The website address for the organization providing more information and a directory of legal aid programs as <http://www.oregonlawhelp.org>

(6) The toll-free consumer mortgage foreclosure information number as 800-SAFENET (800-723-3638); and

(7) Information on federal loan modification programs as <http://www.makinghomeaffordable.gov/>.

Stat. Auth.: ORS 86.737

Stats. Implemented: ORS 86.737

Hist.: FCS 9-2008, f. 10-15-08, cert. ef. 10-16-08; FCS 6-2009(Temp), f. 8-21-09 thru 2-17-10; FCS 11-2009, f. 12-2-09, cert. ef. 12-7-09; FCS 6-2010, f. & cert. ef. 6-4-10; FCS 13-2011(Temp), f. & cert. ef. 12-15-11 thru 6-12-12; Administrative correction, 6-27-12

**441-730-0250**

**Receipt to Be Furnished to Borrower Upon Request**

(1) When the borrower requests a receipt for a payment on a loan for which interest is to be computed on a daily basis, the receipt shall specify:

(a) The amount applied to interest, if any;

(b) The date to which the interest is paid, or the dollar amount short, if payment is insufficient to pay interest to date;

(c) The amount applied to principal, if any; and

(d) The unpaid principal of such loan, if any.

(2) When a borrower requests a receipt for a payment on a loan that is contracted for interest to be precomputed, the receipt shall specify:

(a) The amount of the payment applied to the loan and any default charges; and

(b) The amount of the unpaid balance of the loan and charges, if any.

Stat. Auth.: ORS 725.505

Stats. Implemented: ORS 725.360

Hist.: BB 14, f. & ef. 11-15-76; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0175; FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 3-2009, f. & cert. ef. 6-2-09

**441-730-0255**

**Payoff Information to be Furnished to Borrower Upon Request**

(1) When a borrower requests the payoff information on a loan and specifies a payoff date, the licensee must promptly, but in no case later than three business days, provide the requested information.

(2) When a borrower does not specify a payoff date, the licensee must calculate the payoff amount for a date no later than 10 days after the date of the request, and the amount must be provided within three business days of the borrower's request. When a licensee provides a payoff amount, it must also advise the borrower, verbally or in writing, that interest will continue to accrue past the payoff date if the loan is not paid in full.

Stat. Auth.: ORS 725.505

Stats. Implemented: ORS 725.360

Hist.: FCS 5-2006, f. & cert. ef. 12-21-06; FCS 3-2009, f. & cert. ef. 6-2-09; FCS 6-2010, f. & cert. ef. 6-4-10

**441-730-0260**

**Advances to Perform Covenants**

(1) Within a reasonable time after advancing any sum pursuant to ORS 725.340(3), the licensee must furnish the borrower a written statement showing:

(a) The amount of the sums advanced and, any charges with respect to such sums advanced;

(b) Any revised payment schedule; and, if the duties of the borrower performed by the licensee pertain to insurance.

(c) A brief description of the types of insurance paid for the by licensee.

(2) The amount advanced by the licensee may be added to the unpaid balance of the loan and may bear interest not to exceed the rate permitted by ORS 725.340(3). However, a licensee may not advance any sums under ORS 725.340(3) or add any such advances to the unpaid balance of a loan unless the borrower's loan contract provides for such advances and additions.

Stat. Auth.: ORS 725

Stats. Implemented: ORS 725.340(3)

Hist.: BB 14, f. & ef. 11-15-76; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0180; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 6-2010, f. & cert. ef. 6-4-10

**441-730-0280**

**Prohibited Provisions in Loan Contract Provisions**

A licensee may not use a contract evidencing a loan that contains any of the following provisions:

(1) A hold harmless clause;

(2) A confession of judgment or other waiver of the right to notice and the opportunity to be heard in the event of suit or process;

(3) A provision in which the consumer agrees not to assert any claim or defense arising out of the contract against the licensee or any holder in due course.

(4) An executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the consumer, unless the waiver applies solely to property subject to a security interest executed in connection with the loan.

Stat. Auth.: ORS 725.505

Stats. Implemented: ORS 725.360

Hist.: FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 4-2001, f. & cert. ef. 3-27-01; FCS 6-2001(Temp), f. 6-29-01, cert. ef. 7-1-01 thru 12-25-01; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 3-2009, f. & cert. ef. 6-2-09; FCS 6-2010, f. & cert. ef. 6-4-10

**441-730-0320**

**Licensee Reporting**

(1) Licensees are required to file their annual report by March 31 of each year. Licensees must also provide known information on any felony conviction, or any conviction involving theft or fraud, of any executive officer, director, managing partner, or the manager of any office location that occurred during the reporting period that had not already been reported to the director. This applies to:

(a) A new qualified person or office manager;

(b) A new experienced person;

(c) Material changes in business plan; or

(d) Any criminal conviction entered against any person named in the application.

(2)(4) In addition, a consumer finance licensee employing one or more mortgage loan originators shall file a report of condition with the

National Mortgage Licensing System and Registry of the consumer finance licensee's business and operations in Oregon related to residential mortgage transactions. The report shall be filed within 45 days following the end of each calendar quarter.

Stat. Auth.: ORS 725.505, 86A.242

Stats. Implemented: ORS 725.190, 86A.239

Hist.: FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 5-2006, f. & cert. ef. 12-21-06; FCS 3-2009, f. & cert. ef. 6-2-09; FCS 3-2010, f. 3-18-10, cert. ef. 3-22-10; FCS 6-2010, f. & cert. ef. 6-4-10; FCS 4-2012, f. & cert. ef. 8-1-12

**DIVISION 735**

**PAYDAY AND TITLE LENDING**

**441-735-0000**

**Statutory Authority; Purpose**

OAR 441-735-0000 to 441-735-0320 are adopted pursuant to the rulemaking authority granted the director by ORS 725A.092. These rules are considered necessary to assure the proper conduct of the business regulated and to protect the public.

Stat. Auth.: ORS 725A.092

Stat. Implemented: ORS 725A.092

Hist.: FCS 7-2010, f. & cert. ef. 6-4-10; FCS 2-2012, f. & cert. ef. 7-23-12

**441-735-0010**

**Definitions**

(1) "Annual percentage rate" or "APR" means the annual percentage rate that every licensee is required to disclose to any credit customer in accordance with the Truth In Lending Act, 15 U.S.C. 1601 et seq., and Regulation Z, 12 C.F.R. Part 1026. (2) "Borrower" means a natural person.

(3) "Charges" means any one or more of the fees, premiums or other charges described by ORS 725A.062, 725A.082, and 725A.092, and other items charged to a borrower's account; but the term does not include interest or deferral charges.

(4) "Director" means the Director of the Department of Consumer and Business Services.

(5) "Extension" has the same meaning as "renewal" as defined in section (11) of this rule.

(6) "Finance charge" means the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction.

(7) "License" means a payday loan license or title loan license issued under ORS 725A.024.

(8) "Legally qualified in this state" means a business is qualified to conduct business in this state, having made the appropriate filings with the Secretary of State.

(9) "Person" means a natural person or an organization, including a corporation, partnership, proprietorship, association, limited liability company or cooperative.

(10) "Renewal" of a loan means granting a borrower the right to postpone repayment of a payday loan or a title loan.

(11) "Roll-over" has the same meaning as "renewal" as defined in section (10) of this rule.

(12) "Same day transaction" means a payday loan or title loan made on the same day that a previous payday loan or title loan is paid-off and will be treated as a "renewal" defined in section (10) of this rule.

Stat. Auth.: 2010 Or Laws ch. 23, §27

Stats. Implemented: 2010 Or Laws ch. 23 §§1, 5, 27, and 32

Hist.: FCS 7-2010, f. & cert. ef. 6-4-10; FCS 2-2012, f. & cert. ef. 7-23-12

**441-735-0015**

**Title Loan Licensee Lending Practices**

A title loan licensee may not:

(1) Retain the title to the vehicle used as security on a loan for more than thirty business days before submitting the application to be recorded as a lien-holder on the title or taking other commercially reasonable steps to be added as a security interest holder of the vehicle;

(2) Unreasonably withhold documents on a loan secured by a borrower's vehicle for more than three business days if the loan is paid by certified or guaranteed funds.

Stat. Auth.: 2010 Or Laws ch. 23, §27

Stats. Implemented: 2010 Or Laws ch. 23, §§5 & 15

Hist.: FCS 7-2010, f. & cert. ef. 6-4-10; FCS 2-2012, f. & cert. ef. 7-23-12

**441-735-0025****License Applications**

(1) For purposes of the investigation described in ORS 725A.024 an applicant for a license must submit the application form prescribed by the director, signed by an authorized owner or officer of the applicant.

(2) An applicant, including a person that currently has a payday loan license or title loan license, must provide the employment history for the proposed manager of the licensed office for the five years immediately preceding the date of the application. A licensee employing a new manager may be required to submit a resume to meet the requirements of this section.

(3) A person that is not currently licensed to make payday loans or title loans must submit:

(a) The employment history for all executive officers, owners, directors, or managing partners. A resume may be required to meet this requirement. At least one-half of the executive officers, owners, directors, or managing partners must have verifiable recent lending experience;

(b) A business plan, including but not limited to:

(A) Financial and operational history of the applicant, if any;

(B) Copies of any loan documents proposed to be used;

(C) A description of the types of loans and the percentage of the different types of loans the applicant proposes to make, the length of the loans the applicant proposes to make, the interest rates or range of rates the applicant proposes to charge, and any other business activities the licensee will engage in at the location; and

(D) Funding sources for the loans, including third-party financial institutions.

(4) For purposes of ORS 725A.024 and this rule, the filing date of an application is the date the application is complete. An application will be deemed complete on the date that:

(a) All required fees have been paid; and

(b) All fully completed documents that are part of an application or required to be submitted by this rule have been received.

(5) An application for licensing is deemed abandoned if:

(a) The director has had one or more incomplete documents as part of an application for a minimum of 60 days; and

(b) The applicant has not responded within 30 days following a written notice from the director requesting submission of all fees, documents, or information necessary to make the application complete.

(6) An applicant whose application has been abandoned may reapply by submitting a new application including new fees.

Stat. Auth.: ORS 725A.012, 725A.022, 725A.024, & 725A.092

Stats. Implemented: ORS 725A.022 & 725A.024

Hist.: FCS 7-2010, f. & cert. ef. 6-4-10; FCS 2-2012, f. & cert. ef. 7-23-12

**441-735-0030****Fees, Charges Licensees Pay the Director**

(1) The license fees under ORS 725A.028 are:

(a) \$750 for an initial application for each location to be licensed; and

(b) \$750 for renewal of each licensed location, due and payable on January 1 of each calendar year.

(2) The rate of charge payable by a licensee is \$75 an hour per person payable by the licensee for the director and each examiner and other division employee conducting an examination and for extra services provided to a licensee under ORS 725A.050.

(3) Notwithstanding the rate of charge fixed by section (2) of this rule:

(a) If an examiner from the division or the director is required to travel out of state to conduct the examination or provide extra services, the rate of charge payable by the licensee is \$75 an hour per person, plus actual cost of travel. Actual travel costs include air fare, lodging, food, car usage out of state, mileage to the Oregon airport and return, and travel time beginning from the departure time and ending at the departure time at the destination city;

(b) If the extra services or examination are performed by a consultant hired for the particular service or examination, the licensee will be charged the actual costs to the division of the contract consultant.

(4) As used in this rule, "extra services" means any attention other than an examination.

(5) The director will collect any additional costs directly attributable to extra services to the licensee in addition to the charges in sections (2) and (3) of this rule.

(6) The director may by order reduce the fees assessed for any specific year.

Stat. Auth.: ORS 725A.022, 725A.028 & 725A.092

Stats. Implemented: ORS 725A.028

Hist.: FCS 7-2010, f. & cert. ef. 6-4-10; FCS 2-2012, f. & cert. ef. 7-23-12

**441-735-0050****Notes and Agreements**

(1) All forms of notes and agreements pertaining to loans and security for loans used by a licensee must be so worded that they comply with all provisions of ORS 725A.010 through 725A.990 and these rules.

(2) Any forms or agreements required or authorized by federal statute or regulation, and in compliance with those statutes or regulations are considered in compliance with and authorized by ORS 725A.010 through 725A.990.

Stat. Auth.: ORS 725A.092

Stats. Implemented: ORS 725A.092

Hist.: FCS 7-2010, f. & cert. ef. 6-4-10; FCS 2-2012, f. & cert. ef. 7-23-12

**441-735-0060****Loans Not to Be Payable on Demand; Exception**

(1) Except as provided by section (2) of this rule, a loan must not be made payable on demand.

(2) A loan may provide that, if there is a default under the note or collateral security agreement, the loan may become due and payable immediately or on demand.

Stat. Auth.: ORS 725A.092

Stats. Implemented: ORS 725A.060

Hist.: FCS 7-2010, f. & cert. ef. 6-4-10; FCS 2-2012, f. & cert. ef. 7-23-12

**441-735-0070****Advertising Regulations**

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

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

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

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

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

(b) If a licensee makes and closes the majority of loans electronically, they must prominently post their license on their website and at their licensed location in a manner conspicuous to the public.

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

Stat. Auth.: ORS 725A.092

Stats. Implemented: ORS 725A.058

Hist.: FCS 7-2010, f. & cert. ef. 6-4-10; FCS 2-2012, f. & cert. ef. 7-23-12

**441-735-0080****Qualifications of Person in Charge of Licensed Office**

A licensee must not place any person in charge of a licensed office unless the person has a thorough understanding of ORS 725A.010 – 725A.990 and these rules.

Stat. Auth.: ORS 725A.092

Stats. Implemented: ORS 725A.024

Hist.: FCS 7-2010, f. & cert. ef. 6-4-10; FCS 2-2012, f. & cert. ef. 7-23-12

**441-735-0100****Licensee Officers and Directors**

(1)(a) A licensee may add a new executive officer, owner, director, or managing partner at any time after the licensee has been granted a license if after the addition at least one-half of the executive offi-

cers, owners, directors, or managing partners can demonstrate verifiable recent lending as required by ORS 725A.092.

(b) If a licensee adds a new executive officer, director, partial owner, or managing partner under this section, the licensee must provide a current resume for such new persons demonstrating verifiable recent lending experience to the director within 30 days of their appointment or selection.

(2) If an existing or new executive officer, director, partial owner, or managing partner of the licensee gains a controlling interest in the company after the license has been granted, the licensee must notify the director within 30 days.

(3) An officer or director of a licensee addressed in an order issued by the director under ORS 725A.084 may request a hearing on the order as provided for contested cases by ORS chapter 183 and the rules of the director adopted pursuant thereto, within 30 days after the date the order is issued and served.

(4) A person who is suspended or removed under ORS 725A.084 may not conduct any of the business of the licensee or have access to the books, records, or assets of the licensee either as an officer, director, partner, stockholder, or employee without receiving permission from the director:

- (a) During the period of the suspension; or
- (b) After the effective date of the removal.

(5) A licensee subject to an order of suspension under the provisions of ORS 725A.034 may, within 90 days after the date the order is issued or served, request a hearing on the order as provided for contested cases by ORS chapter 183 and the rules of the director adopted pursuant thereto.

Stat. Auth.: ORS 725A.092

Stats. Implemented: ORS 725A.026 & 725A.084

Hist.: FCS 7-2010, f. & cert. ef. 6-4-10; FCS 2-2012, f. & cert. ef. 7-23-12

#### **441-735-0110**

##### **Accounting Records of Licensee**

(1) The accounting records of a licensee must reflect a complete segregation of the loan transactions from any other business in which the licensee may be engaged.

(2) The licensee must maintain separate control accounts or other acceptable records to reflect such segregation for:

- (a) Loans receivable;
- (b) Charges; and
- (c) Repossessed property and sales of repossessed property.

(3) The licensee must fully account for receipt and disbursement of all charges charged or collected.

(4) Each licensee must maintain a log of:

(a) Loans made, listing each loan in sequence by number or date of loan and showing:

- (A) The amount of the loan;
- (B) The type of security taken;
- (C) The rate of interest charged; and
- (D) The types of insurance for which premium charges have been made in connection with the loan and which are payable by the borrower.

(c) Any litigation initiated by the licensee showing for each proceeding:

- (A) The borrower's name and account number;
- (B) The court where the proceeding is filed;
- (C) The date of filing; and
- (D) When applicable, the date, and terms of any disposition of the matter.

(d) Information on files sent to a collection agency showing, for each file:

- (A) The borrower's name, the account number;
- (B) The original date of the loan, the due date of the loan, or last renewal or extension;
- (C) The date the loan was sent to the collection agency;
- (D) The name of the collection agency; and
- (E) The date and amount of monies received from the collection agency.

(F) A separate log of files sent to a collection agency need not be maintained provided the information is available in existing records at the time of examination.

(6) When a judgment is entered in a court proceeding initiated by a licensee on a loan, the licensee forthwith must place in the related loan file either:

- (a) A copy of the judgment entered in the proceeding; or
- (b) A statement verified by a representative of the licensee, detailing the essential provisions of the judgment.

(7) Licensees who make both title and payday loans must maintain separate logs for each type of loan.

Stat. Auth.: ORS 725A.092

Stats. Implemented: ORS 725A.052

Hist.: FCS 7-2010, f. & cert. ef. 6-4-10; FCS 2-2012, f. & cert. ef. 7-23-12

#### **441-735-0120**

##### **Account Record to Be Maintained for Each Loan**

(1) The licensee must maintain a separate individual account record for each loan made to any borrower showing:

- (a) The loan number;
- (b) The date of the loan;
- (c) The name and address of the borrower;
- (d) A brief description of the security, if any;
- (e) The agreed interest rate or rates and the amount of each charge, if any;

(f) The terms of repayment, including the expiration date of the loan, and any modifications of the terms.

(g) The amount of each payment made on the loan and in accordance with sections (2) and (3) of this rule, how the payment is allotted to principal, interest and charges;

(h) The date of the final entry when the loan is paid in full or otherwise finally settled or closed; and

(i) A clear, brief explanation of any other entries that result in the reduction or addition to the principal balance or interest.

(2) The account record for a daily interest loan must show, for each loan payment received:

- (a) The amount, if any, applied to interest;
- (b) The date to which the interest is paid;
- (c) If payment is insufficient to pay interest to date, the dollar amount short;

- (d) The amount applied to principal, if any; and
- (e) The unpaid principal balance of the loan, if any.

(3) The account record for a payday loan or title loan must show the date each loan is renewed, the amount of the charge the borrower paid and the new due date of the loan.

(4) All entries to the account record made by the licensee must be accurate and posted by close of business on the day the transaction occurred. If the licensee is unable to post a transaction as required by this section, the posting when made must reflect the actual date of the transaction.

Stat. Auth.: ORS 725A.092

Stats. Implemented: ORS 725A.052

Hist.: FCS 7-2010, f. & cert. ef. 6-4-10; FCS 2-2012, f. & cert. ef. 7-23-12

#### **441-735-0130**

##### **Index of Obligors to Be Maintained**

A licensee must maintain an alphabetical index, or other system approved by the director, of every person obligated, directly or contingently, on a loan that is serviced at that office in each of its licensed offices.

Stat. Auth.: ORS 725A.092

Stats. Implemented: ORS 725A.052

Hist.: FCS 7-2010, f. & cert. ef. 6-4-10; FCS 2-2012, f. & cert. ef. 7-23-12

#### **441-735-0140**

##### **Records and Files Required to Be Kept at Servicing Office; Copies of Loans Transferred; Centralized Accounting Office Exception**

(1) A licensee must maintain the accounting records and loan files for active loans at the licensed office where the loans are serviced.

(2) Whenever an active loan is for any reason transferred to another licensed office in this state, the licensee must retain in the transferring office an exact copy of the individual account record and supporting legal documents.

(3) Whenever an active loan is for any reason transferred to another licensed office, the licensee must retain in the transferring office an exact copy of the account record to which has been added the date of transfer and the name and address of the new location of the account. However, if a bulk sale or similar transfer of loans not in the ordinary course of business is made to another licensed office, the licensee may, with the prior approval of the director, make other provisions for the retention of copies of records and files and for the examination of accounts in the receiving office.

(4) Whenever the licensee sends an active loan to a collection agency, the licensee must retain in the originating office the original record or an exact copy of the account record.

(5) Notwithstanding sections (1) through (4) of this rule, a licensee may, with the prior approval of the director, maintain the accounting records and loan files for active loans at a location other than the servicing office if:

(a) The other location is established by the licensee to provide centralized accounting for one or more licensed offices;

(b) Off-site maintenance of the records and files will not hinder prompt servicing of the loans by the servicing offices;

(c) The director, and any duly appointed examiners or agents of the director, have the right of free access to the records and files of the licensee at the other location; and

(d) The other location provides adequate security for the licensee's records and files.

Stat. Auth.: ORS 725A.092

Stats. Implemented: ORS 725A.052

Hist.: FCS 7-2010, f. & cert. ef. 6-4-10; FCS 2-2012, f. & cert. ef. 7-23-12

#### **441-735-0160**

##### **Daily-Interest Computation**

Interest on a loan may be computed on a daily basis using a 365-day factor. In determining the elapsed time to compute interest or a refund of interest, on such a loan, the maximum charge for each day must be 1/365th of the annual rate.

Stat. Auth.: ORS 725A.092

Stats. Implemented: ORS 725A.062 & 725A.064

Hist.: FCS 7-2010, f. & cert. ef. 6-4-10; FCS 2-2012, f. & cert. ef. 7-23-12

#### **441-735-0165**

##### **Unfair or Deceptive Practices**

A licensee must not disguise the terms or provisions of any loan as a device or subterfuge to evade the requirements and fees and interest authorized by ORS 725A.010 through 725A.990. Such conduct will be deemed a violation of 725A.010, 725A.062, and 725A.064, and dishonest, fraudulent, or illegal practices under 725A.082.

Stat. Auth.: ORS 725A.092

Stats. Implemented: ORS 725A.010, 725A.026, & 725A.062

Hist.: FCS 7-2010, f. & cert. ef. 6-4-10; FCS 2-2012, f. & cert. ef. 7-23-12

#### **441-735-0205**

##### **Limitation on Charging a Prepayment Penalty**

A licensee may not charge a penalty for prepayment of all or part of the unpaid balance of a loan where:

(1) The licensee has repossessed any collateral offered for the loan, sold the collateral and applied the proceeds of the sale towards the unpaid balance of the loan;

(2) The licensee exercises an option contained in the loan agreement to require immediate repayment of all or part of the unpaid balance of the loan; or

(3) The licensee demands repayment of all or part of the unpaid balance of the loan.

Stat. Auth.: ORS 725A.092

Stats. Implemented: ORS 725A.056

Hist.: FCS 7-2010, f. & cert. ef. 6-4-10; FCS 2-2012, f. & cert. ef. 7-23-12

##### **Licensee's Duties to Borrower**

#### **441-735-0240**

##### **Statement of Loan**

(1) In addition to the statement required by ORS 725A.056, the licensee must deliver the following to the borrower at the time a loan is made:

(a) A written statement that payment in any amount may be made in advance at any time and, if the loan contains a prepayment penalty, the statement must comply with the notice required by ORS 82.160(1).

(b) A detailed schedule showing the manner in which the proceeds of the loan have been disbursed or are to be disbursed on behalf of the borrower, including:

(A) Amounts applied to payment of the balance of an existing loan with the licensee;

(B) Amounts paid to others as authorized and designated by the borrower;

(C) Amounts paid for other identifiable charges the borrower has approved in writing;

(D) Amounts retained for filing, releasing, recording, satisfaction, reconveyance, license, title transfer, and similar fees, itemizing the purpose of each fee; and

(E) Amounts remaining that will be paid to the borrower.

(c) When requested by the borrower, a copy of the security agreement signed by the borrower, together with any attached schedule of property pledged by the borrower.

(2) When copies are requested by any other person obligated directly or contingently on the loan, the licensee must also deliver a copy of the statements and other documents required by ORS 725A.056 and section (1) of this rule to such other person. This is required whether the person is obligated as a maker, co-maker guarantor, accommodation maker, endorser, or otherwise.

(3) The statement required by section (1) of this rule may include disclosures under applicable federal law that a licensee is required to make to the borrower at the time the loan is made.

(4) The licensee must retain a copy of the statement of loan delivered to the borrower for at least two years after making a final entry on the loan records.

Stat. Auth.: ORS 725A.092

Stats. Implemented: ORS 725A.052 & 725A.056

Hist.: FCS 7-2010, f. & cert. ef. 6-4-10; FCS 2-2012, f. & cert. ef. 7-23-12

#### **441-735-0250**

##### **Receipt to Be Furnished to Borrower Upon Request**

(1) When the borrower requests a receipt for a payment on a loan for which interest is to be computed on a daily basis, the receipt must specify:

(a) The amount applied to interest, if any;

(b) The date to which the interest is paid, or the dollar amount short, if payment is insufficient to pay interest to date;

(c) The amount applied to principal, if any; and

(d) The unpaid principal of such loan, if any.

(2) When a borrower requests a receipt for a payment on a loan that is contracted for interest to be precomputed, the receipt must specify:

(a) The amount of the payment applied to the loan and any default charges; and

(b) The amount of the unpaid balance of the loan and charges, if any.

Stat. Auth.: ORS 725A.092

Stats. Implemented: ORS 725A.056

Hist.: FCS 7-2010, f. & cert. ef. 6-4-10; FCS 2-2012, f. & cert. ef. 7-23-12

#### **441-735-0255**

##### **Payoff Information to be Furnished to Borrower Upon Request**

(1) When a borrower requests the payoff information on a loan and specifies a payoff date, the licensee must promptly, but in no case later than three business days, provide the requested information.

(2) When a borrower does not specify a payoff date, the licensee must calculate the payoff amount for a date no later than 10 days after the date of the request, and must provide the amount within three business days of the borrower's request. When a licensee provides a payoff amount, it must also advise the borrower, verbally or in writing, that interest will continue to accrue past the payoff date if the loan is not paid in full.

Stat. Auth.: ORS 725A.092

Stats. Implemented: ORS 725A.056

Hist.: FCS 7-2010, f. & cert. ef. 6-4-10; FCS 2-2012, f. & cert. ef. 7-23-12

#### **441-735-0271**

##### **Requirements for Payday Loans and Title Loans**

A license must comply with the following when making payday loans or title loans:

(1) Interest may not be compounded.

(2) The loan agreement must have the following information displayed prominently in bold print on the first page of the agreement:

(a) The APR;

(b) The amount of the loan;

(c) The amount of interest or finance charge if paid when the loan is due;

(d) The total amount due on the due date; and

(e) The due date must comply with the disclosure requirements of Truth In Lending Act, 15 U.S.C. 1601 et seq., and Regulation Z, 12 C.F.R. Part 1026, to satisfy the requirements of this section.

(3) If a licensee permits a borrower to renew a loan after the due date, the renewal must be effective on the due date of the loan.

(4) If the licensee does not cash the borrower's check, the licensee must return the note marked "Paid" and the requirements of subsection (4) of this rule would not apply. The licensee must also mark the check "Void" and return it to the borrower with the note marked "Paid."

Stat. Auth.: ORS 725A.080 & 725A.092

Stats. Implemented: ORS 725A.056, 725A.062, 725A.064, 725A.064, 725A.080, & 725A.092

Hist.: FCS 7-2010, f. & cert. ef. 6-4-10; FCS 2-2012, f. & cert. ef. 7-23-12

#### **441-735-0272**

##### **Requirements for Licensees**

(1) A licensee:

(a) Must calculate daily interest based upon a 365/day year.

(b) Must comply with the Equal Credit Opportunity Act, 15 USC § 1691 et seq., and must provide the applicant with a written notice of the reason for declining a loan. The licensee may provide the notice to the applicant at the time the loan is declined or the notice may be mailed to the applicant. The licensee must retain a copy of the notice in the borrower's files unless an exception under the Equal Credit Opportunity Act applies.

(c) Must prominently post the APR inside their office where customers can easily see it and the APR must be prominently posted on the licensee's website so that it will be viewed by any Oregon consumer prior to applying for a loan.

(2) After any payment made, in full or in part, on any loan, a licensee must:

(a) Give the person making payment a signed, dated receipt showing the amount paid to principal, the amount paid to interest, and the balance due on the loan; or

(b) An electronic receipt, a canceled check, or other written instrument approved by the director as a substitute for the receipt requirements of subsection (a).

(3) If a licensee does not give a borrower the note marked "Paid or Renewed" in compliance with ORS 725A.056, the loan agreement must state that the borrower's canceled check will be evidence of payment of the loan. The licensee must mark the note "Paid" or "Renewed" and retain the note in the file. If the loan is made using an electronic medium and the consumer has consented to use of electronic transmission, an electronic transmission may fulfill the requirements of this section.

(4) A licensee may not make a loan to an applicant without forming a good faith belief that the applicant has the ability to repay the loan. A licensee will be presumed to have complied if the licensee:

(a) Requires the applicant to provide evidence of a source of funds to repay the loan such as pay stubs, bank statements or similar record or evidence of employment or income;

(b) Establishes the amount of salary or earnings of the applicant and the date of the month on which the applicant receives compensation or funds;

(c) Solicits the applicant for information on the number, amounts and dates of maturity on outstanding loans on which the applicant is the payor or guarantor;

(d) Does not lend more than 25 percent of the consumer's monthly net income to an applicant that earns \$60,000 a year or less. This limitation does not apply to loans made to applicants who have a net income in excess of \$60,000 a year. If a loan is based upon anticipated receipt of funds from other sources, the licensee must so note in the file and may lend no more than 25 percent of the total anticipated funds received by the applicant during the loan period.

(e) Solicits information on the number, amount and dates of maturity of existing outstanding loans.

(5) When an application is made, a licensee must provide the borrower with a written statement, in a form approved by the director, clearly describing the results of any default or late payment.

(6) In compliance with ORS 725A.062 and 725A.064, a licensee may not renew a loan more than two times and may not make a new loan to a borrower within seven days of the day that a previous payday loan expires.

Example: A borrower borrows \$300 for 31 days on July 3 at 36 percent interest and a \$30 origination fee. Unable to pay off the loan on August 3, the borrower pays the \$30 origination fee and \$9.17 interest (\$300 x 0.36 divided by 365 x 31) and renews the loan with a new due date of September 3. Unable to repay the loan on September 3, the borrower again pays \$9.17 interest and

renews the loan with a new due date of October 4. If the borrower is unable to repay the loan on October 4, the lender may not any more renewals and may not make a new loan to the borrower until October 11.

(7) If the licensee has a preexisting business relationship with the borrower in which the licensee has entered into a loan or loans within the previous 12 months that have been satisfactorily repaid in full, the lender may rely on that preexisting relationship to form the good faith belief required under ORS 725A.062.

(8) For purposes of the investigation described in ORS 725A.024, an applicant for a payday loan license or title loan license must authorize an investigative consumer report as defined in the Fair Credit Reporting Act, 15 USC § 1681 et seq.

(9) No license will be issued or renewed unless the applicant or licensee is legally qualified to conduct business in this state by making appropriate filings with the Secretary of State.

Stat. Auth.: ORS 725A.080 & 725A.092

Stats. Implemented: ORS 725A.056, 725A.060, 725A.062, 725A.064, 725A.080, & 725A.092

Hist.: FCS 7-2010, f. & cert. ef. 6-4-10; FCS 2-2012, f. & cert. ef. 7-23-12

#### **441-735-0275**

##### **Conditions Applicable to Loans Made by Title Loan Licensees**

(1) Title loan contracts may not provide for the continuation of interest or other charges after repossession.

(2) For title loans in default, licensees must send a written notice by first class mail, in a form approved by the director, to the borrower's last known address 10 days prior to repossession.

(a) The notice must be dated the day it is mailed;

(b) A dated copy of the notice must be placed in the borrower's file; and

(c) Repossession may not occur until the 11th day from the date of the notice.

(3) Unless an auctioneer conducts the sale at a public or dealer auction, the licensee must obtain at least three bids on the vehicle prior to the sale of a vehicle. The bids must be in writing and contain the identity of the vehicle, the amount of the bid, and the name and address of the bidder.

(4) Licensees may not sell a vehicle to an agent, affiliate, subsidiary, or employee of the licensee.

(5) If a vehicle is sold, the borrower must receive all proceeds, exceeding the debt and reasonable costs associated with the repossession and sale. The licensee must deliver the proceeds no later than three business days after they receive the proceeds of the sale. If the vehicle was paid for by a check, the licensee may deliver the proceeds within three days after the check has cleared.

(6) The licensee may not charge the borrower any storage charge, regardless of how long the vehicle is held prior to sale, if the vehicle is stored on property owned, leased, or otherwise controlled by the licensee.

(7) If more than one person holds title to a vehicle, the vehicle may not be repossessed unless all such persons have signed the necessary loan documents.

Stat. Auth.: ORS 725A.092

Stats. Implemented: ORS 725A.056, 725A.062, & 725A.092

Hist.: FCS 7-2010, f. & cert. ef. 6-4-10; FCS 2-2012, f. & cert. ef. 7-23-12

#### **441-735-0280**

##### **Prohibited Provisions in Loan Contract Provisions**

A licensee may not use a contract evidencing a loan that contains any of the following provisions:

(1) A hold harmless clause;

(2) A confession of judgment or other waiver of the right to notice and the opportunity to be heard in the event of suit or process;

(3) A provision in which the consumer agrees not to assert any claim or defense arising out of the contract against the licensee or any holder in due course; or

(4) An executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the consumer, unless the waiver applies solely to property subject to a security interest executed in connection with the loan.

Stat. Auth.: ORS 725A.060, 725A.062, & 725A.092

Stats. Implemented: ORS 725A.056

Hist.: FCS 7-2010, f. & cert. ef. 6-4-10; FCS 2-2012, f. & cert. ef. 7-23-12

**441-735-0310**

**Refund of Unearned Interest and Charges**

(1) If a borrower pays off a loan prior to the due date, the licensee must refund all unearned interest and charges.

(2) For purposes of this rule, a licensee must calculate earned interest and charges by multiplying the loan amount by the interest rate and dividing by 365 to find daily interest then multiply that quotient by the number of days from the date the loan was made to the date of pay-off counting the day after the loan was made as the first day.

**Example:** A borrower gets a loan of \$200 on the 5th day of the month at 36 percent interest and comes on the 25th of the month to pay off the loan. The interest is calculated as follows:  $\$200 \times 0.36 = \$72$  divided by  $365 = \$0.20$  per day  $\times 20$  days = \$4.00 interest. If the borrower gave a lender a check on the 5th for the full 31-day term (\$206.12), the lender must refund the unearned interest of \$2.12. There is no minimum interest amount.

Stat. Auth.: ORS 725A.092

Stats. Implemented: ORS 725A.056 & 725A.092

Hist.: FCS 7-2010, f. & cert. ef. 6-4-10; FCS 2-2012, f. & cert. ef. 7-23-12

**441-735-0320**

**Licensee Reporting**

Licensees are required to file an annual report by March 31 for operations during the previous calendar year. Licensees must also provide known information on any felony conviction, or any conviction involving theft or fraud, of any executive officer, director, managing partner, or the manager of any office location that occurred during the reporting period that had not already been reported to the director. This applies to:

- (1) A new qualified person or office manager;
- (2) A new experienced person;
- (3) Material changes in business plan; or
- (4) Any criminal conviction entered against any person named in the application.

Stat. Auth.: ORS 725A.092

Stats. Implemented: ORS 725A.030

Hist.: FCS 7-2010, f. & cert. ef. 6-4-10; FCS 2-2012, f. & cert. ef. 7-23-12

**DIVISION 740**

**PAWNBROKERS**

**441-740-0000**

**Definitions**

“Advertising” includes signs, inside or outside of a business premise, advertising in newspapers and print media, on radio, television, and electronic media by the licensee or on the licensee’s behalf.

Stat. Auth.: ORS 726.260

Stats. Implemented: ORS 726.010 & 726.040

Hist.: FID 2-1985, f. & ef. 7-22-85; Renumbered from 805-076-0050; FCS 11-2008, f. & cert. ef. 11-13-08; FCS 5-2010, f. & cert. ef. 5-6-10

**441-740-0010**

**Fees Payable by Pawnbrokers to the Director**

(1) The annual fees paid pursuant to ORS 726.125 (2) shall be \$350.

(2) Whenever the Director provides extra services to a pawnbroker under ORS 726.125(3) or conducts an examination of a licensed pawnbroker under 726.250, the Director will collect the cost to the Division for the Director and the examiners and other Division employees used in providing the extra services or conducting the examination. The rate of charge is \$75 an hour per person.

(3) In addition to the charges fixed by section (2) of this rule, the Director will collect any additional costs directly attributable to extra services provided under ORS 726.125(3) or an examination made under 726.250.

(4) The director may, by order, reduce the fees assessed for any specific year.

Stat. Auth.: ORS 726.125 & 726.250

Stats. Implemented: ORS 726.125 & 726.250

Hist.: FID 7-1985, f. & ef. 12-31-85; Renumbered from 805-076-0100; FCS 5-1994, f. & cert. ef. 4-25-94; FCS 11-2000, f. 10-5-00, cert. ef. 9-1-01; FCS 8-2001, f. & cert. ef. 8-1-01; FCS 4-2002, f. & cert. ef. 10-25-02; FCS 3-2005, f. & cert. ef. 9-6-05; FCS 8-2008, f. & cert. ef. 8-28-08; FCS 5-2010, f. & cert. ef. 5-6-10

**441-740-0015**

**Fees Charged by Pawnbrokers to Pledgors**

A pawnbroker may pass through to the pledgor “a reasonable fee” for preparing a notice for delivery by certified mail, return receipt

requested. A fee not to exceed \$5 will be deemed reasonable. Postal costs may also be recovered. Mileage costs and employee time to travel to and from the post office are not considered “preparing the notice” and are not recoverable. A pawnbroker may not charge a fee for preparing and mailing a notice sent by regular mail.

Stat. Auth.: ORS 726.260

Stats. Implemented: ORS 726.340, 726.390, 726.395 & 726.400

Hist.: FCS 11-2008, f. & cert. ef. 11-13-08; FCS 5-2010, f. & cert. ef. 5-6-10

**441-740-0016**

**Daily-Interest Computation**

Interest on a loan must be computed on a daily basis using a 365-day year. The maximum charge for each day shall be 1/365th of the annual rate when calculating the elapsed time of the loan.

Stat. Auth.: ORS 726.260

Stats. Implemented: ORS 726.390

Hist.: FCS 11-2008, f. & cert. ef. 11-13-08

**441-740-0020**

**Pawnbrokers Required to Use Reasonable Care in Caring for Pledges; “Reasonable Care” Defined**

(1) A pawnbroker shall exercise reasonable care to protect pledges from theft and burglary.

(2) As used in this rule unless otherwise required, “reasonable care” means:

(a) Having a method or system of promptly notifying the police or a security company when a burglary or theft occurs or is in progress; and

(b) Having a structure or enclosure in which the business is conducted that is designed, constructed, furnished and maintained so as to create physical deterrents to unauthorized entry or unauthorized removal of pledged goods, giving special consideration to security of high value items and weapons.

(3) In complying with section (2) of this rule, a pawnbroker shall give serious consideration to:

(a) An alarm system with a direct connection to an off-site security company or a police agency;

(b) Bars on the windows, extra thick doors, vaults of heavy metal and similar structural deterrents to unauthorized entry;

(c) Safes for jewelry, gems and coins and storage areas for guns, all of which are so constructed and located as to deter and delay unauthorized entry and to provide time for a police agency or other security company to respond to a call in the event of a burglary or theft;

(d) The suggestions and recommendations of the local law enforcement agency or agencies; and

(e) Other or similar security precautions and systems.

Stat. Auth.: ORS 726.260

Stats. Implemented: ORS 726.380

Hist.: FID 2-1985, f. & ef. 7-22-85; Renumbered from 805-076-0300; FCS 11-2008, f. & cert. ef. 11-13-08; FCS 11-2008, f. & cert. ef. 11-13-08

**441-740-0025**

**Description of Pledged Items**

(1) The description of items in the register maintained by the pawnbroker, to satisfy needs of local law enforcement, must include:

- (a) Brand name;
- (b) Model number, if evident;
- (c) Serial number, if evident; and
- (d) Any other unique identifying marks, numbers, names, or letters.

(2) Notwithstanding section (1) of this rule, in the case of multiple similar items delivered in one transaction which do not bear model or serial numbers and which do not include precious metal or gemstones, the description of the items is adequate if it contains the quantity of items and a description of the type of items delivered. For example, if a tool box containing hand tools was pledged, it would be sufficient to identify the number of hand tools and the type of hand tools contained in the tool box.

Stat. Auth.: ORS 726.260

Stats. Implemented: ORS 726.280

Hist.: FCS 11-2008, f. & cert. ef. 11-13-08

**441-740-0035**

**Other Information to be Submitted with Annual Report**

At the same time the pawnbroker files an annual report, the pawnbroker must include with that annual report:

(1) A copy of the front and back of the pawn ticket currently used by the pawnbroker;

(2) Any change of its mailing address;

(3) Specific details about any change of ownership of the pawnbroker;

(4) Any change in the surety bond or issuer of the surety bond;

(5) The current rate of interest and schedule of fees being charged; and

(6) A copy of the declarations page of an insurance policy or policies showing current fire, theft and burglary coverage.

Stat. Auth.: ORS 726.260

Stats. Implemented: ORS 726.130

Hist.: FCS 11-2008, f. & cert. ef. 11-13-08

#### **441-740-0040**

##### **Loan Agreement**

A pawnbroker may not capture a pledgor's race or sex on any copy of a loan agreement other than the copy to be provided to law enforcement.

Stat. Auth.: ORS 726.260

Stats. Implemented: ORS 726.280 and 726.285

Hist.: FCS 11-2008, f. & cert. ef. 11-13-08

#### **441-740-0045**

##### **Advertising**

(1) A licensed pawnbroker must use its Oregon license number in any paid advertising.

(2) Without a pawnbroker license, a business may not use an assumed business name or advertising of a business that would lead the public to believe the business is a licensed pawnbroker, including use of "pawn," "hawk," "hock," or any synonym of any of those terms, in the assumed business name or in advertising referring to the business, whether used as a single word or part of a word.

Stat. Auth.: ORS 726.260

Stats. Implemented: ORS 726.040

Hist.: FCS 11-2008, f. & cert. ef. 11-13-08

#### **441-740-0055**

##### **Surrender of License**

When a pawnbroker surrenders a license, the written notice to the director must include:

(1) The original pawnbroker license;

(2) A copy of the notice posted on the front of the pawnbroker's place of business notifying customers of the closure of the pawnbroker business;

(3) A list of outstanding pledge loans and a description of how those loans will be handled;

(4) The physical location where pledged items will be held; and

(5) The physical location where the pawnbroker's books and records will be held.

Stat. Auth.: ORS 726.260

Stats. Implemented: ORS 726.190

Hist.: FCS 11-2008, f. & cert. ef. 11-13-08

## **DIVISION 745**

### **MONEY TRANSMITTER PROGRAM**

#### **General Provisions**

#### **441-745-0000**

##### **Definitions**

(1) Unless a specific definition is provided or the context otherwise requires, the words and phrases used in OAR chapter 441, division 745 have the meaning given them in ORS 183.310.

(2) A "Director" means the Director of the Department of Consumer and Business Services and the Director's authorized representatives.

(3) A "Department" means the Department of Consumer and Business Services.

(4) A "Person" includes individuals, partnerships, corporations, associations, firms, and joint stock companies.

Stat. Auth.: ORS 717.310

Stats. Implemented: ORS 717.200

Hist.: FCS 8-2000, f. & cert. ef. 6-27-00

#### **441-745-0010**

##### **Waiver by Director**

The Director may, either upon request or upon the Director's motion, waive or modify the application of any particular rule to a particular person when, in the Director's opinion, just and reasonable cause exists for such action and the waiving or modifying of such a rule would not be contrary to the provisions of ORS Chapter 717.

Stat. Auth.: ORS 717.310

Stats. Implemented: ORS 717

Hist.: FCS 8-2000, f. & cert. ef. 6-27-00

#### **Licensing of Money Transmitters**

#### **441-745-0300**

##### **Application Procedure**

Each person desiring to obtain a money transmitters license shall apply to the Director by submitting all information required pursuant to ORS 717.220 plus a list of permissible investments pursuant to 717.215(3), if required.

Stat. Auth.: ORS 717.310

Stats. Implemented: ORS 717.215 & 717.220

Hist.: FCS 8-2000, f. & cert. ef. 6-27-00

#### **441-745-0310**

##### **Renewal of License**

(1) A licensee may renew their license to conduct the business of a Money Transmitter by submitting:

(a) A completed renewal application.

(b) A renewal fee of \$500.00 pursuant to ORS 717.240(1).

(c) The information required pursuant to ORS 717.240(2).

(2) The director may by order reduce the fees assessed for any specific year.

Stat. Auth.: ORS 717.240 & 717.310

Stats. Implemented: ORS 717.240

Hist.: FCS 8-2000, f. & cert. ef. 6-27-00; FCS 3-2005, f. & cert. ef. 9-6-05

#### **441-745-0330**

##### **Security Device**

Persons who were originally licensed as Sale of Checks licensees who renew their license under the provision of ORS 717.245 and who currently have on file a security device may continue the use of the security device provided:

(1) The security device is in an amount sufficient to meet the requirements of ORS 717.225; or

(2) The security device has been amended, by filing a rider or otherwise, to increase the amount of the security device to an amount required by ORS 717.225 and to reference 717.225.

Stat. Auth.: ORS 717.310

Stats. Implemented: ORS 717.225

Hist.: FCS 8-2000, f. & cert. ef. 6-27-00

#### **441-745-0340**

##### **Fees, Charges Money Transmitters Pay to the Director**

(1) The rate of charge payable by a licensee is \$75 an hour per person payable by the licensee for the Director and each examiner or other division employee used in an examination conducted under ORS 717.255 and for extra services provided a license under 717.255(2).

(2) Notwithstanding the rate of charge fixed by section (1) of this rule:

(a) If an examiner or other division employee or the Director is required to travel out of state in conducting the examination or providing the extra services, the rate of charge payable by the licensee is \$75 an hour per person, plus actual cost of travel;

(b) If the extra services or examination is performed by a consultant hired by contract for the particular service or examination, the charge payable by the licensee is the actual cost to the division of the contract consultant.

(3) As used in this rule;

(a) "Extra services" means any attention other than an annual examination given under ORS 717.255(1).

(b) Actual travel costs include air fare, lodging, food, car usage out of state, mileage to the Oregon airport and return, and travel time beginning from the departure time and ending at the departure time at the destination city.

Stat. Auth.: ORS 717.310

Stats. Implemented: ORS 717.255

Hist.: FCS 8-2000, f. & cert. ef. 6-27-00; FCS 8-2008, f. & cert. ef. 8-28-08

## DIVISION 755

## CHECK-CASHER RULES

## General Provisions

## 441-755-0000

## Definitions

For purposes of ORS 697.500 through 697.555 and the rules in Division 755:

(1) "Automated check-cashing machine" means an unstaffed communications terminal that cashes payment instruments and charges a fee.

(2) "Conspicuously post" means to place in plain and unobstructed public view in a location and in a way, including form and size and typeface, that any person seeking the services of a licensee could clearly and easily see and read the contents of the posted notice.

(3) "Control" means:

(a) In the case of a corporation, direct or indirect ownership or the right to control 25 percent or more of the voting shares of the corporation, or the ability to elect a majority of the directors;

(b) In the case of an entity other than a corporation, the ability to change the principles, policies or practices of the organization, whether through active or passive means.

(4) "Control persons" means the president, vice-president, secretary, treasurer, and directors of a corporation, partners, members, or persons with equivalent titles or duties.

(5) "Director" means the Director of the Department of Consumer and Business Services.

(6) "Licensed location" means a staffed or unstaffed place other than the principal place of business where the activity of cashing checks is conducted.

(7) "Mobile unit" means any vehicle or other movable means from which the business of cashing payment instruments is to be conducted.

(8) "Person" means an individual, partnership, company, corporation, association or any other form of legal entity, other than the state or any political subdivision of the state.

Stat. Auth.: ORS 697.550

Stats. Implemented: ORS 697.504, 697.510, & 697.526

Hist.: FCS 8-2007, f. & cert. ef. 11-30-07; FCS 3-2012, f. & cert. ef. 7-23-12

## 441-755-0010

## Fees Payable to the Director

(1) All fees described in this rule must be payable to the Department of Consumer and Business Services, and submitted to the Director either by mail to the mailing address specified on the application form, in-person delivery to the address specified on the application form, or through online application or renewal when online transactions are available.

(2) An investigation fee in the amount of \$150 must accompany every initial application for a check-casher license. An applicant that received a consumer finance or pawnbroker license from the Department of Consumer and Business Services, Division of Finance and Corporate Securities and that license is still valid and in good standing, using the same legal entity name and identifying the same control persons as on the check-casher license application, must pay an investigation fee of \$75. The investigation fee is per application regardless of the number of locations being licensed. The investigation fee is nonrefundable.

(3) An initial license fee in the amount of \$150 for each location where check-cashing activity will be conducted must also accompany every initial application for a check-casher license. The location where an applicant places or will place an automated check-cashing machine or the use of a mobile unit is a location that must be licensed. This fee must be paid for the principal place of business only if check-cashing activity will be conducted at this location. This initial license fee is nonrefundable.

(4) A renewal license fee in the amount of \$150 for each location where check-cashing activity will be conducted must be paid by the licensee in the year the licensee's licenses expire. This fee is nonrefundable.

(5) The investigation fee is a one-time fee paid at the time of initial application. An initial license fee paid during December 2007 covers calendar years 2008 and 2009, if the license is issued. An initial

license fee paid on or after January 2, 2008 covers the calendar year from the date the license is issued plus the following full calendar year. The license fee for an additional licensed location covers the remaining period until that licensee's current licenses expire. A renewal fee covers the two year period beginning on the day after the expiration date of the current license.

(6) For any compliance examination conducted by the Director:

(a) The check-cashing business will be billed for time spent preparing for, traveling to the location where the records are maintained, conducting, and completing a report on the examination by the Director's staff at the rate of \$75 per hour per staff person, plus actual travel expenses; and

(b) If out-of-state travel is required to conduct the examination, actual travel expenses will include air fare, lodging, food, rental car at destination, and mileage to and from the Oregon airport.

(7) To avoid enforcement action against the licensee, the check-cashing business must pay the billed examination expenses no later than 30 days from the date of the invoice.

(8) By order, the Director may reduce the fees assessed during any specific biennial period, applying the reduction equally to all licensed locations.

Stat. Auth.: ORS 697.550

Stats. Implemented: ORS 697.512, 697.514 & 697.528

Hist.: FCS 8-2007, f. & cert. ef. 11-30-07

## Licensing

## 441-755-0100

## Initial Application

In addition to the items specified in ORS 697.510, an applicant must submit:

(1) The applicant's business telephone number and fax number, if any;

(2) The mailing address for the applicant's principal place of business, if different than the street address;

(3) The applicant's taxpayer identification number;

(4) A statement of current financial condition, including a compiled balance sheet and profit-and-loss statement, or if the applicant is a newly formed entity, the source of funds to be used for check cashing activity;

(5) A resume or other document listing the past five (5) years work experience for control persons, or persons with equivalent duties for the applicant;

(6) Identifying information for control persons sufficient to conduct an investigation to determine the person's financial responsibility;

(7) Disclosures for the applicant and each person identified in section (5) of this rule, including dates and specific details, for any of the following events that occurred in the 10 years before the date the application is submitted:

(a) A felony conviction;

(b) A misdemeanor conviction involving fraud, misuse of money, or theft;

(c) An entry of a money judgment that currently remains entirely or partially unpaid;

(d) An administrative action in any state resulting in civil penalties or action taken against a license held by the person; or

(e) A voluntary or involuntary filing for bankruptcy protection;

(8) A listing of any other business regulated by the Division of Finance and Corporate Securities being conducted or to be conducted at the licensed location; and

(9) A copy of the check-cashing fees to be charged, and if the fee schedule will be different at some licensed locations, what fee schedule applies to which locations.

Stat. Auth.: ORS 697.550

Stats. Implemented: ORS 697.510

Hist.: FCS 8-2007, f. & cert. ef. 11-30-07; FCS 3-2012, f. & cert. ef. 7-23-12

## 441-755-0110

## Licensing Exemptions

(1) A person engaging in the bona fide retail sale of goods or services, cashing checks only from time to time, and not purporting to be a check-cashing business, is exempted from licensing, regulatory fees and record keeping requirements.

(a) A person purports to be a check-cashing business if the person:

(A) Advertises its check-cashing service through radio, television, print media, or the Internet; or

(B) Places signs on the outside or facing outside of its retail location offering its check-cashing service to the public.

(b) A person cashes checks only from time to time when the number of checks cashed in a calendar year does not exceed three percent of the number of retail transactions at that retail location during the previous calendar year.

(2) A money transmitter licensed in Oregon that is conducting check-cashing activity is exempt from licensing and regulatory fees, but must keep records and provide annual reports. The exemption from licensing and regulatory fees extends to any location of the licensed money transmitter where:

(a) The location is listed in filings with the director;

(b) Revenue and expenses of that location are incorporated into the license money transmitter's annual financial statements; and

(c) The licensed money transmitter owns and operates, through its employees, that location.

Stat. Auth.: ORS 697.550

Stats. Implemented: ORS 697.502

Hist.: FCS 8-2007, f. & cert. ef. 11-30-07; FCS 3-2012, f. & cert. ef. 7-23-12

#### **441-755-0120**

##### **When Initial Application Deemed Abandoned**

(1) An initial application is deemed deficient when:

(a) Responses to questions on the application form created by the director are missing or incomplete;

(b) Additional documents or information specified in OAR 441-755-0100 are not submitted;

(c) Questions raised by the director to clarify information submitted are not answered; or

(d) Fees required by OAR 441-755-0020 are not submitted, or are submitted but not honored by the applicant's financial institution or credit card company.

(2) An initial application for a check-casher license is deemed abandoned if:

(a) The application has been on file for at least three months;

(b) The application is deficient; and

(c) The applicant has failed to respond to the director's written notice of warning of abandonment within 30 calendar days of the date of warning.

(3) Fees paid in connection with an abandoned registration will not be refunded.

(4) An applicant whose application has been abandoned may reapply by submitting a new application including new fees.

Stat. Auth.: ORS 697.550

Stats. Implemented: ORS 697.512 & 697.514

Hist.: FCS 8-2007, f. & cert. ef. 11-30-07; FCS 3-2012, f. & cert. ef. 7-23-12

#### **441-755-0130**

##### **Renewal of License**

(1) A licensee may renew its license or licenses by identifying any principal place of business and licensed locations being renewed, and paying the renewal fees specified in OAR 441-755-0010. New locations may be added during this process.

(2) Renewal fees must be actually received by the Director on or before the last business day in December. Fees submitted but subsequently not honored by the licensee's financial institution or credit card company are considered not received.

(3) If not timely renewed, a license will automatically expire and become void without further action of the Director.

Stat. Auth.: ORS 697.550

Stats. Implemented: ORS 697.514

Hist.: FCS 8-2007, f. & cert. ef. 11-30-07

#### **441-755-0140**

##### **Change of Licensed Location**

(1) When a licensee wishes to change the place of business of a licensed location, the licensee must submit to the director the original license for that location, together with a written notice identifying the new location and the proposed effective date of the change. The proposed effective date may not be prior to the date of notice to the director. The licensee must make a photocopy of the current license and post it at the licensed location. The photocopied license is valid only

until the effective date reflected on the amended license and is then void.

(2) The director will amend the license to reflect the new location and the effective date of the change and return an amended original license to the licensee.

(3) No fee is required for issuing an amended license.

Stat. Auth.: ORS 697.550

Stats. Implemented: ORS 697.510, 697.514, & 697.530

Hist.: FCS 8-2007, f. & cert. ef. 11-30-07; FCS 3-2012, f. & cert. ef. 7-23-12

#### **441-755-0150**

##### **Material Changes**

(1) A licensee must make written notification to the director if there is a material change to any information the licensee previously filed with the director.

(2) A material change includes the following:

(a) Change to or a new item required to be disclosed under OAR

441-755-0100(6);

(b) Change in form of ownership not resulting in a change of control;

(c) Change of address of the principal place of business;

(d) Discontinuing check-cashing activity at a licensed location;

(e) Change in fees charged;

(f) Identifying a significant error in the data provided in an annual report;

(g) Moving required records to a new location.

(3) Written notification must include the updated or corrected information, may be made by in-person delivery, mail or fax, and must be made within 30 calendar days of the occurrence of the material change.

Stat. Auth.: ORS 697.550

Stats. Implemented: ORS 697.510, 697.526 & 697.530

Hist.: FCS 8-2007, f. & cert. ef. 11-30-07; FCS 3-2012, f. & cert. ef. 7-23-12

#### **441-755-0160**

##### **Assignment or Transfer of License Prohibited**

(1) The following events will be considered an assignment or transfer of the license, which is prohibited by ORS 697.514:

(a) A change in control of the licensee;

(b) The sale or assignment of all or substantially all assets of the licensee's business to another person;

(c) The merger of a licensee with another business that is not a licensed check-casher; or

(d) A reorganization of the licensee's form of business entity into another form of business entity, if the reorganization results in a change of control.

(2) On the effective date of any event described in section (1) of this rule, the licensee's license or licenses become void, and the licensee must surrender the license or licenses to the director within 10 business days of the event.

(3) If the entity that survives the event described in section (1) of this rule desires and intends to engage in a check-cashing business, it may not engage in a check-cashing business under the former entity's license but must apply and qualify for the license as a new applicant. The application may be submitted prior to the effective date of the event described in section (1) of this rule.

Stat. Auth.: ORS 697.550

Stats. Implemented: ORS 697.514

Hist.: FCS 8-2007, f. & cert. ef. 11-30-07; FCS 3-2012, f. & cert. ef. 7-23-12

#### **441-755-0170**

##### **Termination of License**

(1) A licensee must notify the director in writing of its decision to cease operations as a check-cashing business within seven days of its decision, and return all licenses to the director within 30 days after it has voluntarily ceased operations in this state.

(2) A licensee that fails to timely renew or chooses not to renew the license of a licensed location must return that license to the director within 15 days of the expiration date of the license.

(3) A licensee that has had its license or licenses suspended or revoked by the director, following opportunity for hearing as provided in ORS 697.540(2), must return the suspended or revoked license or licenses within 15 days of being notified of the entry of the Final Order.

Stat. Auth.: ORS 697.550

Stats. Implemented: ORS 697.504, 697.514 & 697.540

Hist.: FCS 8-2007, f. & cert. ef. 11-30-07; FCS 3-2012, f. & cert. ef. 7-23-12

**Business Activities****441-755-0200****Posting of Information**

(1) A licensee must conspicuously post the following items at each licensed location:

- (a) The license issued for that location by the Director; and
- (b) The fees the licensee will charge customers.

(2) For an automated check-cashing machine, the items may be displayed on the terminal screen or permanently affixed to the machine.

(3) For a mobile unit, the items may be displayed in a window of the mobile unit when it is stopped during the check-cashing activity, or affixed to the outside of the mobile unit.

Stat. Auth.: ORS 697.550

Stats. Implemented: ORS 697.504 & 697.526

Hist.: FCS 8-2007, f. & cert. ef. 11-30-07

**441-755-0210****Unfair or Deceptive Practices**

It is an unfair or deceptive practice for a licensee to:

(1) Impose fees contrary to posted information at the location where the payment instrument is cashed.

(2) Refuse to accept valid and current government-issued photo identification presented by the customer, resulting in greater fees being charged to the customer.

(3) Charge fees other than the rate most favorable to the consumer when a payment instrument could fit into more than one category described in ORS 697.520.

(4) Limit the amount of cash provided to a customer or require a customer to receive a payment, in whole or in part, by a method that causes the customer to pay additional or further fees to the licensee or other persons. This section does not apply to a transaction initiated by a customer request for a money order or other alternative forms of payment.

(5) Require a customer to cash separate payment instruments in a manner to avoid the limitations on the fees that may be charged.

(6) Alter or delete any information on a cashed payment instrument.

(7) Charge check-cashing fees on a postdated payment instrument accepted from a customer in a payday loan transaction with a licensee that also holds a short-term lending license.

Stat. Auth.: ORS 697.550

Stats. Implemented: ORS 697.520 & 697.530

Hist.: FCS 8-2007, f. & cert. ef. 11-30-07; FCS 3-2012, f. & cert. ef. 7-23-12

**441-755-0220****Responsibility for Actions at Licensed Locations**

Regardless of the employment relationship between the licensee and any manager or staff person in a licensed location, the licensee will be held responsible for any check-cashing statute or rule violation that occurs in the licensed location. The licensee may not delegate or assign this responsibility by contract or otherwise.

Stat. Auth.: ORS 697.550

Stats. Implemented: ORS 697.540 & 697.542

Hist.: FCS 8-2007, f. & cert. ef. 11-30-07

**Books and Records****441-755-0300****Required Books and Records**

(1) For each payment instrument cashed, the licensee must record the following information:

- (a) The face value amount of the payment instrument; and
- (b) The fee charged.

(2) The information required in section (1) of this rule may be maintained manually or in electronic format.

(3) Records for all licensed locations may be maintained at the licensee's principal place of business.

Stat. Auth.: ORS 697.528 & 697.550

Stats. Implemented: ORS 697.526 & 697.528

Hist.: FCS 8-2007, f. & cert. ef. 11-30-07; FCS 7-2009, f. & cert. ef. 9-9-09; FCS 3-2012, f. & cert. ef. 7-23-12

**441-755-0310****Annual Report**

To assist the director to determine whether examination of a licensee is necessary, each licensee must submit a report by April 1 for the previous calendar year's check-cashing activities for each licensed location, including:

- (1) The total number of payment instruments cashed;
- (2) The total amount of the face values of all payment instruments cashed; and
- (3) The total amount of fees charged for all payment instruments cashed.

Stat. Auth.: ORS 697.528 & 697.550

Stats. Implemented: ORS 697.528

Hist.: FCS 8-2007, f. & cert. ef. 11-30-07; FCS 7-2009, f. & cert. ef. 9-9-09; FCS 3-2012, f. & cert. ef. 7-23-12

**DIVISION 810****GENERAL****441-810-0000****Definitions**

The definitions of terms used in ORS 697.005 to 697.098, 697.990 to 697.992 and the rules of this OAR chapter 441 divisions 800 and 810, are:

(1) "Director" means the director of the Department of Consumer and Business Services.

(2) "Employed" means working for a salary or wages.

(3) "Person" means any legal entity, including individuals, corporations, associations, firms and partnerships.

(4) "Repossessor" means a person who takes possession of an item when the installment payment has been defaulted and the creditor has the right to repossess.

(5) "Solicitor" means a person who attempts to obtain clients for a collection agency or payments due a client of a collection agency.

(6) "Trust Account" means a financial institution checking account designated "client trust account" in which all funds received or handled by the collection agency on behalf of the agency's clients are deposited.

Stat. Auth.: ORS 697

Stats. Implemented: ORS 697.085

Hist.: DC 3-1984, f. & ef. 1-16-84; Renumbered from 814-101-0001; FCS 4-2000, f. & cert. ef. 3-9-00

**Registration****441-810-0020****Duration of Registration**

(1) All registrations shall be issued on the date all registration qualifications are met and be valid for one year.

(2) If the registration is issued after the first day of a month, the expiration date will be the last day of the month in which the certification of registration was issued.

Stat. Auth.: ORS 697

Stats. Implemented: ORS 697.031(3)

Hist.: DC 15-1982, f. & ef. 7-26-82; DC 3-1984, f. & ef. 1-16-84; DC 16-1984, f. & ef. 5-1-84; Renumbered from 814-101-0005, 1987

**441-810-0030****Renewal**

A certificate of registration may be renewed on or before the renewal date by payment of the required fee and submission of a current list of solicitors with desk names.

Stat. Auth.: ORS 697

Stats. Implemented: ORS 697.031(3)

Hist.: DC 7-1981(Temp), f. & ef. 7-1-81; DC 15-1982, f. & ef. 7-26-82; DC 3-1984, f. & ef. 1-16-84; Renumbered from 814-101-0010

**441-810-0040****Application**

(1) Application for registration shall be on forms provided by the Division of Finance and Corporate Securities and must be accompanied by the required fee.

(2) Applications shall include:

- (a) The information required by ORS 697.031(1)(a) through (e);
- (b) The name of the collection agency trust account, account number and financial institution name and address;

- (c) Telephone number of the collection agency business;
  - (d) Name of the collection agency business manager; and
  - (e) Address of all business locations.
- Stat. Auth.: ORS 697  
Stats. Implemented: ORS 697.031  
Hist.: DC 15-1982, f. & ef. 7-26-82; DC 3-1984, f. & ef. 1-16-84; Renumbered from 814-101-0015; FCS 4-2000, f. & cert. ef. 3-9-00

**441-810-0050****Update Filings**

At least ten days prior to a change of ownership, business address, business manager, or change in information relating to the trust account, the collection agency business shall notify the Director in writing of the changes.

Stat. Auth.: ORS 697.085  
Stats. Implemented: ORS 697.031(3)  
Hist.: DC 7-1981(Temp), f. & ef. 7-1-81; DC 15-1982, f. & ef. 7-26-82; DC 3-1984, f. & ef. 1-16-84; Renumbered from 814-101-0020; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88; FCS 4-2000, f. & cert. ef. 3-9-00

**441-810-0060****Assumed Business Name**

Before registration or renewal of registration of a collection agency business:

- (1) An individual using an assumed business name shall be registered with the Secretary of State.
- (2) A corporation must be registered to do business in Oregon with the Secretary of State.

Stat. Auth.: ORS 697  
Stats. Implemented: ORS 697.0031(1)  
Hist.: DC 3-1984, f. & ef. 1-16-84; DC 12-1984, f. & ef. 4-17-84; Renumbered from 814-101-0026; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88

**Collection Activities****441-810-0070****Return of Accounts**

(1) Immediately upon receipt of a certified mail request from the client, a collection agency business shall cease all collection attempts, unless a written contract requires otherwise.

(2) A collection agency business shall return all accounts to the client within 20 days from the receipt of the certified mail request from the client. Return of accounts shall include an itemized status report for the accounts being closed, showing name, amount assigned, payments collected, and amount still owing.

(3) If a client requests the return of accounts and there are no stipulations otherwise in a written contract, the collection agency must return all documents given it relating to the accounts; however, the collection agency's own work papers, contact sheets, etc., are the sole property of the collection agency, and need not be sent to the client.

Stat. Auth.: ORS 697  
Stats. Implemented: ORS 697.045(2)  
Hist.: DC 3-1984, f. & ef. 1-16-84; Renumbered from 814-101-0040; DC 2-1986, f. & ef. 1-3-86; Renumbered from 814-101-0031

**441-810-0080****Office Closure**

When an agency permanently closes an office, it shall notify the Director, in writing, within five days from closure and provide the following information:

- (1) Disposition or location of records and clients' moneys.
  - (2) Name and address of a contact person for future inquiries.
- Stat. Auth.: ORS 697.085  
Stats. Implemented: ORS 697.031(3)  
Hist.: DC 3-1984, f. & ef. 1-16-84; Renumbered from 814-101-0036; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88; FCS 4-2000, f. & cert. ef. 3-9-00

**441-810-0090****Joint Trust Accounts**

A trust account may not be used jointly as a trust account and an operating account.

Stat. Auth.: ORS 697  
Stats. Implemented: ORS 697.058  
Hist.: DC 3-1984, f. & ef. 1-16-84; Renumbered from 814-101-0050

**441-810-0100****Audits**

Collection agencies being audited shall provide working space in their office for the auditor or, if office space is not available, sub-

mit the records being audited to the Director within ten working days of the request for records.

Stat. Auth.: ORS 697.085  
Stats. Implemented: ORS 697.632  
Hist.: DC 3-1984, f. & ef. 1-16-84; Renumbered from 814-101-0055; FCS 4-2000, f. & cert. ef. 3-9-00

**441-810-0110****Audit Charges Collection Agencies Pay to the Director**

(1) Audit charges shall be paid upon receipt of the invoice.

(2) The rate of charge payable by a collection agency is \$75 an hour for each person used in performance of the audit conducted under ORS 697.058(5).

(3) Notwithstanding section (2) of this rule:

(a) If a person from the Collection Agency Program is required to travel out of state to perform the work described by section (2) of this rule, the rate of charge is \$75 per hour plus cost to the Program of travel and subsistence for each such person;

(b) If the work described in section (2) of this rule is performed by a consultant hired by contract for the particular work, the charge payable by the collection agency is the actual cost to the Program of the contract consultant.

Stat. Auth.: ORS 697  
Stats. Implemented: ORS 697.058(5)  
Hist.: DC 3-1984, f. & ef. 1-16-84; Renumbered from 814-101-0060; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88; FCS 8-2008, f. & cert. ef. 8-28-08

**441-810-0120****Claims**

(1) Persons having a claim against a collection agency may notify the Director by mail. The information shall include:

- (a) Name, address and telephone number of the claimant;
- (b) Name, address and telephone number of the collection agency;

(c) The amount of money involved;

(d) A brief statement of the nature of the claim;

(e) A copy of the contract with relevant documents attached.

(2) If a court judgment is the basis for the claim, a copy of the judgment shall be attached.

Stat. Auth.: ORS 697.085  
Stats. Implemented: ORS 697.058(5)  
Hist.: DC 12-1984, f. & ef. 4-17-84; Renumbered from 814-101-0070; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88; FCS 4-2000, f. & cert. ef. 3-9-00

**441-810-0130****Response to Claims**

(1) A copy of a claim received by the Director shall be sent to the collection agency.

(2) The collection agency is required to respond in writing to the Director within 15 working days.

Stat. Auth.: ORS 697.085  
Stats. Implemented: ORS 697.058(5)  
Hist.: DC 12-1984, f. & ef. 4-17-84; Renumbered from 814-101-0072; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88; FCS 4-2000, f. & cert. ef. 3-9-00

**441-810-0140****Civil Penalties**

Civil penalties shall be \$400 for the first offense and \$1,000 for each subsequent offense.

Stat. Auth.: ORS 697  
Stats. Implemented: ORS 697.095  
Hist.: DC 12-1984, f. & ef. 4-17-84; Renumbered from 814-101-0075

**441-810-0150****Fees**

(1) Fees established for the Program are:

(a) Initial registration, \$350;

(b) Registration renewal, \$120;

(c) Duplicate registration, \$10;

(d) Certification of registration, \$5.

(2) The director may by order reduce the fees assessed for any specific year.

Stat. Auth.: ORS 697.031  
Stats. Implemented: ORS 697.031  
Hist.: DC 7-1981(Temp), f. & ef. 7-1-81; DC 15-1982, f. & ef. 7-26-82; DC 22-1983(Temp), f. 10-14-83, ef. 11-1-83; DC 3-1984, f. & ef. 1-16-84; Renumbered from 814-101-0035; Renumbered from 814-101-0100; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88; FCS 9-2000, f. & cert. ef. 9-13-00; FCS 3-2005, f. & cert. ef. 9-6-05

**441-810-0160**

**Office and Trust Account Location**

(1) The provisions of ORS 697.058(1), (2), (4), and (5) requiring that a registrant maintain an office location and client trust account in this state are waived provided the registrant submits a written request for waiver; and,

(a) Has been registered by the State of Oregon for the two years immediately preceding the request; or

(b) Has been subject to regulation of the registrant's collection agency activities by another state with laws substantially similar to Oregon's Collection Agency Act for at least five years immediately preceding the request.

(2) Persons who do not qualify for a waiver pursuant to subsection 1 of this section may qualify for a waiver provided they:

(a) Submit a written request for waiver;

(b) Agree to pay the cost of out of state audits; and

(c) Submit an additional \$5,000 bond, which is in addition to the bonding requirements of ORS 697.031(2)(a).

Stat. Auth.: ORS 697.058(9)

Stats. Implemented: ORS 697.058(5)

Hist.: FCS 4-2000, f. & cert. ef. 3-9-00

**441-810-0200**

**Applicability of Rules, Definition**

(1) OAR 441-810-0200 to 441-810-0250 apply to the practices of a collection agency that enters into an agreement with an obligee to collect child support payments as provided in ORS 25.020.

(2) For the purposes of OAR 441-810-0200 to 441-810-0250, the term "debtor" includes the debtor's spouse, parent (if the debtor is a minor), guardian, executor, or administrator.

Stat. Auth.: ORS 697.085 & Ch. 421, Sec. 4, 2003 OL

Stats. Implemented: ORS 25.020 & Ch. 421, Sec. 4, 2003 OL

Hist.: FCS 6-2003, f. 12-30-03 cert. ef. 1-1-04

**441-810-0210**

**Acquisition of Location Information**

Any collection agency communicating with any person other than the debtor for the purpose of acquiring location information about the debtor shall:

(1) Identify himself, state that he is confirming or correcting location information concerning the debtor, and, only if expressly requested, identify his employer;

(2) Not state that such debtor owes any debt;

(3) Not communicate with any such person more than once unless requested to do so by such person or unless the collection agency reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;

(4) Not communicate by post card;

(5) Not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the collection agency is in the debt collection business or that the communication relates to the collection of a debt; and

(6) After the collection agency knows the debtor is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to communication from the collection agency.

Stat. Auth.: ORS 697.085 & Ch. 421, Sec. 4, 2003 OL

Stats. Implemented: ORS 25.020 & Ch. 421, Sec. 4, 2003 OL

Hist.: FCS 6-2003, f. 12-30-03 cert. ef. 1-1-04

**441-810-0220**

**Communication In Connection With Debt Collection**

(1) Without the prior consent of the debtor given directly to the collection agency or the express permission of a court of competent jurisdiction, a collection agency may not communicate with a debtor in connection with the collection of any debt:

(a) At any unusual time or place or a time or place known or which should be known to be inconvenient to the debtor. In the absence of knowledge of circumstances to the contrary, a collection agency shall assume that the convenient time for communicating with a debtor is after 8 a.m. and before 9 p.m., local time at the debtor's location;

(b) If the collection agency knows the debtor is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the collection agency or unless the attorney consents to direct communication with the debtor; or

(c) At the debtor's place of employment if the collection agency knows or has reason to know that the debtor's employer prohibits the debtor from receiving such communication.

(2) Except as provided in OAR 441-810-0210, without the prior consent of the debtor given directly to the collection agency, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a collection agency may not communicate, in connection with the collection of any debt, with any person other than the debtor, his attorney, a consumer reporting agency if otherwise permitted by law, the obligee, the attorney of the obligee, or the attorney of the collection agency.

(3) If a debtor notifies a collection agency in writing that the debtor refuses to pay a debt or that the debtor wishes the collection agency to cease further communication with the debtor, the collection agency shall not communicate further with the debtor with respect to such debt, except:

(a) To advise the debtor that the collection agency's further efforts are being terminated;

(b) To notify the debtor that the collection agency or obligee may invoke specified remedies which are ordinarily invoked by such collection agency or obligee; or

(c) Where applicable, to notify the debtor that the collection agency or obligee intends to invoke a specified remedy. If such notice from the debtor under this section (3) is made by mail, notification shall be complete upon receipt.

Stat. Auth.: ORS 697.085 & Ch. 421, Sec. 4, 2003 OL

Stats. Implemented: ORS 25.020 & Ch. 421, Sec. 4, 2003 OL

Hist.: FCS 6-2003, f. 12-30-03 cert. ef. 1-1-04

**441-810-0230**

**Harassment or Abuse**

A collection agency may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this rule:

(1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.

(2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

(3) The publication of a list of debtors who allegedly refuse to pay debts, except to a consumer reporting agency.

(4) The advertisement for sale of any debt to coerce payment of the debt.

(5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

(6) Except as provided in OAR 441-810-0210, the placement of telephone calls without meaningful disclosure of the caller's identity.

Stat. Auth.: ORS 697.085 & Ch. 421, Sec. 4, 2003 OL

Stats. Implemented: ORS 25.020 & Ch. 421, Sec. 4, 2003 OL

Hist.: FCS 6-2003, f. 12-30-03 cert. ef. 1-1-04

**441-810-0240**

**False or Misleading Representations**

A collection agency may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this rule:

(1) The false representation or implication that the collection agency is vouched for, bonded by, or affiliated with the United States or any state, including the use of any badge, uniform, or facsimile thereof.

(2) The false representation of:

(a) The character, amount, or legal status of any debt; or

(b) Any services rendered or compensation which may be lawfully received by any collection agency for the collection of a debt.

(3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the collection agency or obligee intends to take such action.

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the debtor to:

(a) Lose any claim or defense to payment of the debt; or

(b) Become subject to any practice prohibited by OAR 441-810-0200 to 441-810-0250.

(7) The false representation or implication that the debtor committed any crime or other conduct in order to disgrace the debtor.

(8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

(9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any state, or which creates a false impression as to its source, authorization, or approval.

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a debtor.

(11) The failure to disclose in the initial written communication with the debtor and, in addition, if the initial communication with the debtor is oral, in that initial oral communication, that the collection agency is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a collection agency, except that this section shall not apply to a formal pleading made in connection with a legal action.

(12) The false representation or implication that accounts have been turned over to innocent purchasers for value.

(13) The false representation or implication that documents are legal process.

(14) The use of any business, company, or organization name other than the true name of the collection agency's business, company, or organization.

(15) The false representation or implication that documents are not legal process forms or do not require action by the debtor.

(16) The false representation or implication that a collection agency operates or is employed by a consumer reporting agency.

Stat. Auth.: ORS 697.085 & Ch. 421, Sec. 4, 2003 OL

Stats. Implemented: ORS 25.020 & Ch. 421, Sec. 4, 2003 OL

Hist.: FCS 6-2003, f. 12-30-03 cert. ef. 1-1-04

#### **441-810-0250**

##### **Unfair Practices**

A collection agency may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this rule:

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

(2) The acceptance by a collection agency from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the collection agency's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.

(3) The solicitation by a collection agency of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.

(4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

(5) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such

charges include, but are not limited to, collect telephone calls and telegram fees.

(6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if:

(a) There is no present right to possession of the property claimed as collateral through an enforceable security interest;

(b) There is no present intention to take possession of the property; or

(c) The property is exempt by law from such dispossession or disablement.

(7) Communicating with a debtor regarding a debt by post card.

(8) Using any language or symbol, other than the collection agency's address, on any envelope when communicating with a debtor by use of the mails or by telegram, except that a collection agency may use his business name if such name does not indicate that he is in the debt collection business.

Stat. Auth.: ORS 697.085 & Ch. 421, Sec. 4, 2003 OL

Stats. Implemented: ORS 25.020 & Ch. 421, Sec. 4, 2003 OL

Hist.: FCS 6-2003, f. 12-30-03 cert. ef. 1-1-04

#### **441-810-0260**

##### **Compliance with Fair Debt Collection Practices Act**

A collection agency that is subject to and in compliance with the requirements of the Fair Debt Collection Practices Act (Public Law 95-109, 15 U.S.C. 1692 et seq.) shall also be considered to be in compliance with the requirements of OAR 441-810-0200 through 441-810-0250.

Stat. Auth.: ORS 697.085

Stats. Implemented: ORS 25.020, 697.085 & Ch. 421 Sec. 4, 2003 OL

Hist.: FCS 6-2003, f. 12-30-03 cert. ef. 1-1-04

## **DIVISION 850**

### **MORTGAGE LENDING GENERAL PROVISIONS**

#### **441-850-0005**

##### **Definitions**

As used in OAR chapter 441, divisions 850 to 885, unless the context otherwise requires:

(1) "Advertising" means any distribution of information regarding loan products by or in the name of a mortgage banker or mortgage broker to members of the public, which may appear:

(a) In newspapers, magazines, leaflets, flyers, catalogs, direct mail literature, or other printed material;

(b) On radio or television;

(c) On an inside or outside sign or display, or a window display;

(d) In a facsimile;

(e) In point-of-sale literature, price tags, signs, and billboards; or

(f) Online, such as on the Internet, or via email.

(2) "At least as prominently disclosing" means displaying in the same or most similar type, size, font, color, and general location in the advertisement as the featured term.

(3) "Branch office" means a location, separate from the principal place of business of a mortgage banker or mortgage broker, where a mortgage banker, mortgage broker or mortgage loan originator performs the activities described in ORS 86A.100(3)(a) and 86A.100(5)(a).

(4) "Clients' Trust Account" means an account held in a federally-insured financial institution into which trust funds are deposited.

(5) "Compensation or gain" means anything of economic value that is paid, loaned, granted, given, donated, or transferred to a person or entity for or in consideration of services, personal or real property, or another thing of value.

(6) "Control person" means a managing partner, director, principal, executive officer or other person occupying a similar position or performing similar functions for a person licensed as a mortgage banker or a mortgage broker.

(7) "Director" means the Director of the Department of Consumer and Business Services.

(8) "Deficiency" means information contained in the application for a mortgage banker, mortgage broker, or mortgage loan originator license that is inaccurate, incomplete or otherwise not in conformance with applicable law, policy or provisions of the NMLS Policy Guidebook.

(9) "Department" means the Department of Consumer and Business Services.

(10) "Employee" means any employment relationship, acknowledged by both the employed individual and the mortgage banker or mortgage broker, which meets the following conditions:

(a) The employee receives payment through the mortgage banker or mortgage broker in a manner wherein deductions for federal unemployment taxes, Federal Insurance Contributions Act taxes, and other such federal and state taxes have been withheld by the mortgage banker or mortgage broker;

(b) The mortgage banker or mortgage broker has the right to hire and terminate the employee, and hire and terminate the employee's assistants;

(c) The mortgage banker or mortgage broker provides the methods and procedures for performing the employee's services;

(d) The mortgage banker or mortgage broker supervises the employee in the conduct of the employed individual's business and supervises the employee's compliance with applicable statute and rules; and

(e) The employee does not act in any capacity as an employee or independent contractor for another mortgage banker or mortgage broker.

(11) "Experienced person" means the control person that possesses the required experience under ORS 86A.106 in the mortgage business, negotiating loans, or in lending.

(12) "Financial institution" has the same meaning given to that term in ORS 706.008.

(13) "Form MU1" means the Uniform Mortgage Lender/Mortgage Broker Form, published by the Conference of State Bank Supervisors on April x, 2012, and available at <http://mortgage.nationwidelicensingsystem.org/slr/common/policy/Pages/default.aspx>.

(14) "Form MU2" means the Uniform Mortgage Biographical Statement & Consent Form, published by the Conference of State Bank Supervisors on April x, 2012, and available at <http://mortgage.nationwidelicensingsystem.org/slr/common/policy/Pages/default.aspx>.

(15) "Form MU3" means the Uniform Mortgage Branch Office Form, published by the Conference of State Bank Supervisors on April x, 2012, and available at <http://mortgage.nationwidelicensingsystem.org/slr/common/policy/Pages/default.aspx>.

(16) "Form MU4" means the Uniform Individual Mortgage License/Registration & Consent Form, published by the Conference of State Bank Supervisors on April x, 2012, and available at <http://mortgage.nationwidelicensingsystem.org/slr/common/policy/Pages/default.aspx>.

(17) "Independent accountant" means a certified public accountant or a public accountant who holds an Oregon permit under ORS 673.150 or similar permit or license from another state or province.

(18) "Mortgage loan originator employed by the mortgage banker or mortgage broker" means every mortgage loan originator operating under the authority of a mortgage banker or mortgage broker's license, regardless of whether the mortgage loan originator is an employee of the mortgage banker or mortgage broker or purports to act as an agent or independent contractor for the mortgage banker or mortgage broker;

(19) "Loan terms" include, but are not limited to:

(a) The provisions related to the payment amounts, expressed either as a percentage or dollar amount;

(b) The length of the loan;

(c) The market or fully indexed rate;

(d) The start rate;

(e) The life cap rate; and

(f) Whether the loan permits negative amortization.

(20) "Loan-to-value ratio" means the ratio between the amount of a mortgage loan and the value of the property pledged as security, expressed as a percentage.

(21) "Lock agreement" means an agreement with a borrower made by a mortgage banker, mortgage broker or mortgage loan originator, in which the mortgage banker, mortgage broker or mortgage loan originator agrees that, for a specified period of time, a specific interest rate or other financing term will be the rate or term at which it will make a loan available to that borrower.

(22) "Material litigation" means any past or pending litigation, which would be relevant to the director's action on an application for

a mortgage broker or mortgage banker license, including but not limited to the following types of litigation:

(a) Any civil action within the previous ten years from the date of the application, including suits filed in civil court, administrative actions, arbitration proceedings, or alternative dispute resolutions, resulting in damages or penalties of \$10,000 or more assessed against the applicant;

(b) Any pending civil action including suits filed in civil court, administrative actions, arbitration, or alternative dispute resolution, seeking damages or penalties of \$10,000 or more against the applicant; and

(c) Any bankruptcy filing or declaration of bankruptcy within the previous ten years from the date of the application regardless of final disposition.

(23) "Neutral escrow depository" means the deposit of money with an escrow agent licensed under ORS 696.511.

(24) "NMLS Policy Guidebook" means the Conference of State Bank Supervisors/American Association of Residential Mortgage Regulators NMLS Policy Guidebook for Licensees, published by the State Regulatory Registry, updated on August 1, 2011, and available at <http://mortgage.nationwidelicensingsystem.org/slr/common/policy/Pages/default.aspx>.

(25) "Principal place of business" means that location, designated by the mortgage banker or mortgage broker, where the owners, officers, directors or other control persons conduct business and maintain books and records.

(26) "Savings statement" means written material given to the consumer which outline how much a consumer may save in interest costs if they make additional payments above the required minimum monthly payment on their proposed or current mortgage.

(27) "Supervisor" means a partner, officer, branch manager, or other experienced person with management or supervisory responsibilities who is an employee of the mortgage banker or mortgage broker.

(28) "Trust Funds" mean those funds deposited into a trust account or with a neutral escrow depository. Trust funds shall include, but are not limited to:

(a) All funds received by a licensee or persons authorized to act on behalf of the licensee from or on behalf of a client for payment of services to be provided by persons other than the licensee in connection with processing, arranging, or making a mortgage banking loan or mortgage loan;

(b) All funds received by a licensee or persons authorized to act on behalf of a licensee from or on behalf of a borrower for payment of principal, interest or taxes on a mortgage banking loan or mortgage loan, but shall not include such funds where the licensee and the lender have an agreement providing for the disposition of such funds, and the financial statements of licensee are audited on an annual basis in accordance with generally accepted auditing standards; and

(c) All funds received by a licensee or persons authorized to act on behalf of a licensee from or on behalf of a client for payment of services to be provided by a licensee in connection with processing, arranging, or making a mortgage banking loan or mortgage loan by the licensee, except for those funds received by a licensee on a nonrefundable basis under the provisions of OAR 441-875-0030.

(d) For purposes of this section, "licensee" means a mortgage banker, a mortgage broker or a mortgage loan originator.

Stat. Auth.: ORS 86A.136, 86A.242

Stats. Implemented: ORS 86A.100, 86A.200

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10; FCS 4-2012, f. & cert. ef. 8-1-12

#### **441-850-0015**

##### **Waiver by Director**

The Director may, either upon request or upon the Director's motion, waive or modify the application of any particular rule to a particular person when, in the Director's opinion, just and reasonable cause exists for such action and the waiving or modifying of such a rule would not be contrary to the provisions of ORS 86A.100 through 86A.172

Stat. Auth.: ORS 86A.136

Stats. Implemented: ORS 86A.136

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

**441-850-0035**

**Records and Reports Retention Period**

(1) All books and records required under the provisions of ORS 86A.095 through 86A.189 and OAR chapter 441, divisions 850 to 885 shall be maintained for a five year period beginning from the date of a residential mortgage loan is closed, denied or withdrawn:

(a) At the principal place of business as designated by the mortgage banker or mortgage broker;

(b) At the branch office of the mortgage banker or mortgage broker if the mortgage banker or mortgage broker provides notice to the director; or

(c) At a remote storage location if the file is more than six months old, the mortgage broker or banker provides notice to the director, and the mortgage broker or banker institutes an archiving system which provides for identification of the off site file drawer, box or storage container and exact location.

(2) An electronically produced or microphotographic duplicate of each document may be substituted for the original document at any time.

Stat. Auth.: ORS 86A.112

Stats. Implemented: ORS 86A.112

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 1-1996, f. 11-20-96, cert. 12-1-96; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

**441-850-0042**

**Contents of Foreclosure Notices**

The sender of a notice form required by ORS 86.737 must enter in the form and format adopted by this rule:

(1) The statewide telephone contact number for handling consumer queries as 800-SAFENET (800-723-3638).

(2) The telephone number of the Oregon State Bar's Lawyer Referral Service as 503-684-3763;

(3) The Oregon State Bar's Lawyer Referral Service toll-free number as 800-452-7636;

(4) The website address of the Oregon State Bar as <http://www.osbar.org>;

(5) The website address for the organization providing more information and a directory of legal aid programs as <http://www.oregonlawhelp.org>

(6) The toll-free consumer mortgage foreclosure information number as 800-SAFENET (800-723-3638); and

(7) Information on federal loan modification programs as <http://www.makinghomeaffordable.gov/>.

Stat. Auth.: ORS 86.737

Stats. Implemented: ORS 86.737

Hist.: FCS 9-2008, f. 10-15-08, cert. ef. 10-16-08; FCS 6-2009(Temp), f. 8-21-09 thru 2-17-10; FCS 11-2009, f. 12-2-09, cert. ef. 12-7-09; FCS 13-2011(Temp), f. & cert. ef. 12-15-11 thru 6-12-12; Administrative correction, 6-27-12

**441-850-0050**

**Process to Challenge Information Entered into the National Mortgage Licensing System and Registry**

(1) A person applying for a mortgage loan originator license or a person licensed as a mortgage loan originator has standing to challenge information regarding that person submitted to the National Mortgage Licensing System and Registry and transmitted to the director for the approval or denial of a mortgage loan originator license.

(2) Information subject to challenge by a person with standing under section (1) of this rule is limited to information that is factually inaccurate or incomplete.

(3) A challenge of information shall be made to the director in writing and shall include any documentation that supports the information subject to the challenge is factually inaccurate or incomplete. The director may limit the use of or reject information not relevant to the challenge.

(4) If the director determines that information is factually inaccurate or incomplete, the director may exclude the factually inaccurate or incomplete information in determining whether to issue or deny a mortgage loan originator license. The director may also notify the Nationwide Mortgage Licensing System and Registry of the factually inaccurate or incomplete information.

(5) Any person adversely affected or aggrieved by a decision may request the division reconsider its determination in accordance with OAR 137-004-0080.

Stat. Auth.: ORS 86A.242

Stats. Implemented: ORS 86A.230

Hist.: FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

**DIVISION 860**

**LICENSING OF MORTGAGE BANKERS AND MORTGAGE BROKERS**

**441-860-0020**

**Application Requirements**

Each person applying for a mortgage banker or mortgage broker license shall submit to the director all the following required application materials and information:

(1) A completed Form MU1 submitted through the Nationwide Mortgage Licensing System and Registry and approved by the director.

(2) A completed Form MU2 submitted through the Nationwide Mortgage Licensing System and Registry and approved by the director for any individual that acts as a control person for the mortgage banker or mortgage broker.

(3)(a) A corporate surety bond meeting specified terms and calculated using the appropriate loan volume amounts under OAR 441-860-0085 if the applicant acts as the applicant's sole mortgage loan originator or employs a mortgage loan originator; or

(b) A corporate surety bond or irrevocable letter of credit meeting specified terms and calculated using the appropriate loan volume amounts under OAR 441-860-0090 if the applicant is a mortgage banker and the applicant is either not a mortgage loan originator or the applicant is not required to employ a mortgage loan originator.

(4) Financial statements prepared in accordance with generally accepted accounting principles, including a balance sheet and a statement of income or operations, dated not more than six months prior to submission of the application through the Nationwide Mortgage Licensing System and Registry.

(a) The financial statements may be prepared by the mortgage banker or mortgage broker, except that if the director finds it in the public interest, the director may require that a mortgage banker or mortgage broker submit financial statements prepared by an independent accountant.

(b) If the financial statements are more than six months old, interim period financial statements prepared by the mortgage banker or mortgage broker for the period ending the last full month prior to the date of application shall also be submitted.

(5) A written authorization to examine the applicant's Clients' Trust Account under ORS 86A.157 or, in the case of a neutral escrow depository, a copy of the escrow agreement under OAR 441-875-0040 to the director.

(6) A copy of the written notice to financial institution of establishment of Clients' Trust Accounts under ORS 86A.160. In the event the applicant does not receive client funds except at the time of closing, an affidavit and undertaking in the form and on terms approved by the director.

(7) The name of the registered agent of the mortgage banker or mortgage broker appointed under ORS 60.111 to accept process, notices or demands served upon the mortgage banker or mortgage broker listed on the application submitted through the Nationwide Mortgage Licensing System and Registry.

(8) Biographical information required by OAR 441-860-0021 submitted through the Nationwide Mortgage Licensing System and Registry.

(9) The information required under OAR 441-860-0030 for each branch office submitted through the Nationwide Mortgage Licensing System and Registry.

(10) Payment of fees for application or renewal, as applicable, under OAR 441-860-0101, paid through the Nationwide Mortgage Licensing System and Registry

Stat. Auth.: ORS 86A.106, 86A.109, 86A.212

Stats. Implemented: ORS 86A.103, 86A.106, 86A.212

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 1-1996, f. 11-20-96, cert. ef. 12-1-96; Administrative correction 8-4-97; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 10-2000, f. & cert. ef. 9-13-00; FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 7-2003, f. 12-30-03 cert. ef. 1-1-04; FCS 6-2004, f. 12-14-04, cert. ef. 1-1-05; FCS 3-2005, f. & cert. ef. 9-6-05; FCS 1-2007, f. & cert. ef. 1-17-07; FCS 12-2009, f. 12-2-09, cert. ef. 1-1-10; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10; FCS 4-2012, f. & cert. ef. 8-1-12

**441-860-0021**

**Biographical Information Required for Mortgage Banker or Mortgage Broker License Application**

(1) Each of the following persons listed in section (2) of this rule shall submit a Form MU2 to the director through the Nationwide Mortgage Licensing System and Registry.

(2) This rule applies to:

(A) Any director, officer, and a shareholder with a direct or indirect ownership of greater than or equal to ten percent of outstanding shares of a corporate applicant;

(B) The owner, if the applicant is an unincorporated sole proprietorship;

(C) Each managing partner of a limited partnership or a partner in a general partnership with a partnership interest greater than or equal to ten percent of the total partnership interests in the general or limited partnership;

(D) A member or managing member in a limited liability company with an ownership interest greater than or equal to ten percent of the total membership interests in the limited liability company; and

(E) The person identified in ORS 86A.106(2) as having the requisite experience in the mortgage business, negotiating loans in a related business satisfactory to the director, or lending experience in a related business satisfactory to the director.

Stat. Auth.: ORS 86A.106, 86A.109, 86A.212

Stats. Implemented: ORS 86A.103, 86A.106, 86A.212

Hist.: FCS 4-2012, f. & cert. ef 8-1-12

**441-860-0024**

**Deficiencies in Mortgage Banker or Mortgage Broker License Application**

(1) If an applicant, a mortgage banker or a mortgage broker submits an application, filing or amendment which is incomplete in any respect, the director shall notify the applicant of the deficiencies through the National Mortgage Licensing System. The applicant, the mortgage banker or the mortgage broker shall correct a deficiency associated with an application, filing or amendment within 30 days of being notified through the Nationwide Mortgage Licensing System and Registry that the director placed a deficiency on the person's application, filing or amendment. A challenge submitted to the Nationwide Mortgage Licensing System and Registry as set out in OAR 441-850-0050 shall halt the 30-day period of time for correcting deficiencies for the duration of the challenge process.

(2) If the applicant fails to complete the application or respond to deficiencies within 30 days, the application will be considered abandoned. Any fees paid by the applicant under OAR 441-860-0101 will not be refunded due to abandonment. An applicant whose application is abandoned under this rule may reapply to obtain a mortgage banker or mortgage broker license.

Stat. Auth.: ORS 86A.106, 86A.109, 86A.212

Stats. Implemented: ORS 86A.103, 86A.106, 86A.212

Hist.: FCS 4-2012, f. & cert. ef 8-1-12

**441-860-0025**

**Rules for Use of Assumed Business Names**

(1) In addition to any requirements for registering an assumed business name with the Secretary of State, a mortgage banker or mortgage broker who intends to use an assumed business name to identify the person's mortgage banker or mortgage broker business shall also comply with the following before doing business under the assumed business name:

(a) If the assumed business name contains words or phrases described in ORS 56.023, the mortgage banker or mortgage broker must obtain specific written approval from the director under ORS 705.635 and OAR 441-005-0010.

(b) The assumed business name must be added to the corporate surety bond of the mortgage banker or mortgage broker under either OAR 441-860-0085 or 441-860-0090.

(c) The mortgage banker or mortgage broker may purchase a separate corporate surety bond for the assumed business name if:

(A) The separate corporate surety bond contains the name of the principal mortgage banker or mortgage; and

(B) The separate corporate surety bond complies with either OAR 441-860-0085 or 441-860-0090, as applicable.

(d) Any corporate surety bond must be in force as of the date of the addition of the assumed business name, and must be forwarded to

the director within two weeks from the addition of the assumed business name; and

(e) The assumed business name must be placed upon any client trust account maintained by the mortgage banker or mortgage broker.

(2) Regardless of the lack of any ownership interest in the assumed business name, the mortgage banker or mortgage broker is responsible for all actions of those acting under the assumed business name which relate to mortgage banking loans or mortgage loans.

Stat. Auth.: ORS 86A.106, 86A.136

Stats. Implemented: ORS 86A.106

Hist.: FCS 4-1999, f. & cert. ef. 12-23-99; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10; FCS 4-2012, f. & cert. ef 8-1-12

**441-860-0030**

**Branch Office Licensing**

(1) If a mortgage banker or mortgage broker intends to operate a branch office, the mortgage banker or mortgage broker shall obtain a license for the branch office prior to originating loans from the branch office by submitting the licensing fee specified in OAR 441-860-0101 and submitting a Form MU3 to the Nationwide Mortgage Licensing System and Registry:

(2) Upon satisfaction of the requirements listed in section (1), the director shall issue a separate branch office license.

Stat. Auth.: ORS 86A.106, 86A.136

Stats. Implemented: ORS 86A.103

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 1-2007, f. & cert. ef. 1-17-07; FCS 12-2009, f. 12-2-09, cert. ef. 1-1-10; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10; FCS 4-2012, f. & cert. ef 8-1-12

**441-860-0040**

**Supervision of Branch Offices and Mortgage Loan Originators**

(1) A mortgage banker or a mortgage broker must diligently supervise and control every mortgage loan originator employed by the mortgage banker or the mortgage broker in the mortgage banker or mortgage broker's principal place of business and at each branch office.

(2) A mortgage banker or mortgage broker must personally supervise or designate a control person to supervise each branch office to ensure compliance with ORS 86A.095 through 86A.198 and OAR chapter 441, divisions 850 through 885, as applicable.

(3) In order to diligently supervise and control a mortgage loan originator employed by the mortgage banker or the mortgage broker, the mortgage banker or mortgage broker shall:

(a) Ensure that mortgage loan originators, and persons required to be licensed as mortgage loan originators, employed by the mortgage banker or mortgage broker obtain and maintain a license under ORS 86A.200 through 86A.242 and OAR chapter 441, division 880.

(b) Establish, maintain and enforce written procedures to supervise the activities of mortgage loan originators employed by the mortgage banker or mortgage broker and other associated persons that are subject to its supervision and to supervise the operations of each office of the mortgage banker or mortgage broker transacting loans with Oregon consumers. The procedures shall be reasonably designed to achieve compliance with applicable Oregon and federal lending laws and rules, including ORS 86A.095 through 86A.198.

(c) Review the activities of each office transacting loans with Oregon consumers, which shall include the examination of customer loan files, including closed and opened files. The reviews shall be reasonably designed to assist in detecting violations of, preventing violations of and achieving compliance with applicable mortgage lending laws, regulations and rules, as well as detecting and preventing irregularities or abuses. Each mortgage broker shall retain a record of the dates and findings of each review. The duties of this rule may be delegated to a qualified supervisor.

(d) Provide a copy of the procedures required by this rule to every mortgage loan originator employed by the mortgage banker or mortgage broker in written or electronic format.

(e) Ensure that mortgage loan originators obtain training to address deficiencies identified by the mortgage banker or mortgage broker in loan file and operations reviews or make up deficiencies in continuing education as necessary.

(f) Establish procedures for handling consumer complaints and develop procedures to identify the types of consumer complaints that must be forwarded to a supervisor for review. Complaints that must be forwarded to a supervisor include complaints about material

changes in loan terms, fees or expenses, or material omissions about loan terms, fees or expenses. The mortgage banker or mortgage broker shall also develop procedures for investigating, responding to and keeping a record of complaints forwarded to a supervisor.

(g) Visit at least annually each branch the mortgage banker or mortgage broker licenses in Oregon to review compliance with the procedures listed in this section.

(4) In establishing the procedures in section (2) of this rule and in determining the frequency of office reviews, the mortgage banker or mortgage broker shall consider the following:

(a) The number of loan transactions made by the mortgage banker or mortgage broker;

(b) The number of office locations transacting loans with Oregon consumers;

(c) The number of affiliated persons assigned to each location;

(d) The nature and complexity of the loan transactions that the mortgage banker or mortgage broker predominantly makes;

(e) The number of mortgage loan originators assigned to a location;

(f) The number of mortgage loan originators assigned to the supervision of an individual supervisor; and

(g) The results of previous office reviews.

(5) In establishing the procedures in section (2) of this rule and in determining the number of files from each mortgage loan originator to be reviewed, the mortgage banker or mortgage broker shall consider the following:

(a) The knowledge and years of lending experience of a mortgage loan originator;

(b) The disciplinary history of and the number of complaints received about a mortgage loan originator;

(c) The experience and level of sophistication of the borrowers of a mortgage loan originator, if the mortgage banker, mortgage broker or mortgage loan originator predominantly serves specific segments of society;

(d) The nature and complexity of the loan transactions that the mortgage banker or mortgage broker predominantly makes; and

(e) The results of previous file reviews for a particular mortgage loan originator.

(6) The mortgage banker or mortgage broker is subject to disciplinary action of the director for any violation of ORS 86A.095 through 86A.198 or corresponding rules committed by a mortgage loan originator authorized to make or negotiate residential mortgage loans for the mortgage banker or mortgage broker, whether or not that accountability is documented in any written agreement.

Stat. Auth.: ORS 86A.136

Stats. Implemented: ORS 86A.115

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 1-2007, f. & cert. ef. 1-17-07; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10; FCS 4-2012, f. & cert. ef. 8-1-12

#### **441-860-0045**

##### **State Criminal Records Check**

(1) In addition to the criminal records check required for submission to the National Mortgage Licensing System and Registry under 2009 Or Laws ch. 863, §§ 4 and 10, a mortgage banker or mortgage broker must conduct a state criminal records check of each individual employed by the mortgage banker or mortgage broker as a mortgage loan originator.

(a) The mortgage banker or mortgage broker shall search state records of all states where the individual has resided in the past 10 years using the person's full legal name, date of birth, place of birth and Social Security number.

(b) The mortgage banker or mortgage broker must use the services of law enforcement agencies or an independent private company that complies with the federal Fair Credit Reporting Act to conduct the state criminal records check.

(2) An applicant for a mortgage loan originator license may not be employed and a currently employed mortgage loan originator must be terminated immediately if the state criminal records check discloses a conviction for a felony or a misdemeanor if an essential element of the misdemeanor involved false statements or dishonesty:

(a) During a period of seven years before the date the applicant submits an application for a license as a mortgage loan originator; or

(b) At any time before the date the applicant submits an application a license as a mortgage loan originator if the conviction or plea

involved a felony and an element of the felony was an act of fraud, dishonesty, a breach of trust or laundering a monetary instrument.

(3) State criminal records check documents received by the mortgage banker or mortgage broker shall be maintained in a secure location separate from personnel records, and shall be made available to the director for examination at any reasonable time and may require, without subpoena, the production of such records at the office of the director as often as is reasonably necessary. These records shall be preserved for three years after the mortgage banker or mortgage broker terminates the mortgage loan originator's employment. After the retention period, the records shall be destroyed in a secure manner.

Stat. Auth.: ORS 86A.183 & 86A.186

Stats. Implemented: ORS 86A.183 & 86A.186

Hist.: FCS 5-2003, f. 12-30-03 cert. ef. 1-1-04; FCS 2-2004, f. & cert. ef. 8-5-04; Renumbered from 441-880-0050 by FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

#### **441-860-0050**

##### **Renewal of Mortgage Banker and Mortgage Broker License**

(1) A mortgage banker or a mortgage broker license shall expire on December 31 of each calendar year. At least 30 days prior to the expiration of a mortgage banker or mortgage broker license, an application for renewal of the license shall be submitted to the director through the Nationwide Mortgage Licensing System and Registry and shall include the following:

(a) A completed Form MU1 approved by the director.

(b) Financial statements prepared in accordance with generally accepted accounting principles, including a balance sheet and a statement of income or operations, dated not more than six months prior to submission of the application. If the financial statements are more than six months old, interim period financial statements prepared by the mortgage banker or mortgage broker for the period ending the last full month prior to the date of the application must also be submitted. Notwithstanding section (1) of this rule, a mortgage banker or a mortgage broker shall provide financial statements within 45 days following the end of the company's fiscal year to the Nationwide Mortgage Licensing System and Registry.

(c) Any applicable renewal fees prescribed under OAR 441-860-0101.

(2) A mortgage banker or mortgage broker shall file with the director each calendar year a corporate surety bond meeting specified terms and calculated using the appropriate loan volume amounts under OAR 441-860-0085 or a corporate surety bond or irrevocable letter of credit meeting specified terms and calculated using the appropriate loan volume amounts under OAR 441-860-0090.

(3) The director may refuse to renew a license if a reason exists under ORS 86A.095 through 86A.198 or 86A.200 through 86A.239.

(4) If a mortgage banker or mortgage broker submits an application for renewal which is incomplete in any respect, the director shall notify the mortgage banker or broker of the deficiencies on the application. The mortgage banker or mortgage broker shall have 30 days from the date of the notice or the end of the renewal period, whichever occurs first, to complete the application for renewal. If the mortgage banker or mortgage broker fails to complete the application for renewal, and the license shall be terminated on the expiration date by reason of failure to renew.

Stat. Auth.: ORS 86A.106, 86A.109, 86A.136

Stats. Implemented: ORS 86A.109, 86A.179

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1995, f. 11-4-94, cert. ef. 11-15-94; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 10-2000, f. & cert. ef. 9-13-00; FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 7-2003, f. 12-30-04, 1-1-04; FCS 6-2004, f. 12-14-04, cert. ef. 1-1-05; FCS 12-2009, f. 12-2-09, cert. ef. 1-1-10; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10; FCS 4-2012, f. & cert. ef. 8-1-12

#### **441-860-0060**

##### **Equivalent and Related Experience**

(1) An applicant or an applicant's control person who has experience in the following categories shall be given full credit for such experience toward meeting the experience requirement under ORS 86A.106:

(a) Origination of loans secured by lien interests in real estate;

(b) Negotiation of loans secured by lien interests in real estate;

(c) Underwriting of loans secured by lien interests in real estate;

or

(d) Persons who supervise the activities of those persons enumerated in subsections (a) through (c) of this section.

(2) An applicant who has experience in the following categories, within the five year period preceding the application date, may receive partial credit for such experience toward the experience requirement contained in ORS 86A.095 through 86A.198. Credit may be given in only one category listed and for not more than three years actual experience. Credit given shall be in the ratios of actual years of experience to equivalent years credited toward qualification for a mortgage banker and mortgage broker license as set forth below. The remaining years of experience required to qualify for a mortgage banker or mortgage broker license shall be obtained from experience in categories listed in section (1) of this rule. The categories of possible alternative experience for which partial credit is available, and the ratios of actual years of experience to equivalent years credited toward qualification for a mortgage banker or mortgage broker license are:

- (a) Escrow officer, 3:2;
- (b) Loan processor with responsibility primarily for loans secured by lien interests on real estate, 3:2;
- (c) Branch manager of lender with responsibilities primarily for loans not secured by lien interests on real estate, 3:1.5;
- (d) Loan officer with responsibility primarily for loans not secured by lien interests on real estate, 3:1.5;
- (e) Paralegal with demonstrated experience in real estate financing matters, 3:1;
- (f) Real estate broker with an Oregon license or a license from a state with substantially equivalent real estate licensing requirements, 3:1;
- (g) Title officer with a title company, 3:1;
- (h) Real estate broker, not within subsection (f) of this section, 3:1;
- (i) Real estate salesperson with an Oregon license or a license from a state with substantially equivalent licensing requirements, 3:1;
- (j) Licensed real estate appraiser, 3:1; and
- (k) Real estate salespersons not included in subsection (i) of this section, 3:0.5.

(3) An applicant who does not originate loan applications or negotiate loan terms but who is in the business of selling real estate paper whether as issuer, agent or principal, to persons other than persons enumerated in ORS 59.035, or who engages all or part of the time, for the account of others or for the person's own account, in the business of accepting funds from one or more persons other than persons enumerated in ORS 59.035 for investment in real estate paper, shall be given full credit for experience toward meeting the three of the past five year experience requirement contained for:

- (a) Experience as a licensed securities salesperson under the provisions of ORS 59.165; or,
  - (b) Experience as a securities salesperson effecting transactions in securities which are exempt from registration under the provisions of ORS 59.025 and 59.035.
- (4) The individual listed as the experienced person, as described in ORS 86A.106, on the applicant's licensing application may not work, as an employee or independent contractor as the experienced person, for another mortgage banker or mortgage broker.

Stat. Auth.: ORS 86A.106(2) & 86A.136  
 Stats. Implemented: ORS 86A.100  
 Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 7-2001, f. & cert. ef. 8-1-01; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 1-2007, f. & cert. ef. 1-17-07; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10; FCS 4-2012, f. & cert. ef. 8-1-12

#### **441-860-0070**

##### **Disclosure of Significant Developments**

(1) A mortgage banker or mortgage broker shall be required to notify the director within 30 days of the occurrence of any of the following significant developments:

- (a) Filing for bankruptcy or reorganization.
- (b) Notification of the institution of license revocation procedures against the mortgage banker or mortgage broker by any state.
- (c) Filing of a felony indictment against a mortgage banker or mortgage broker, officer, director, principal, control person or experienced person.
- (d) A mortgage banker or mortgage broker, officer, director, principal, control person or experienced persons being convicted of a felony or misdemeanor involving fraud.
- (e) All material litigation occurring against the mortgage banker or mortgage broker.

(f) The director may require other information as deemed necessary to determine whether a new application is required if a change of control or ownership of a mortgage banker or mortgage broker occurs. For purposes of this rule, a change in control or ownership includes:

- (A) Acquisition of ten percent or more of the stock in a corporation by a person or a group of persons, or the ability of a person or group acting in concert to elect a majority of the directors or otherwise effect a change in policy of the corporation.
- (B) Acquisition of the mortgage banker or mortgage broker business, if the applicant is an unincorporated sole proprietorship;
- (C) Acquisition by a managing partner of a limited partnership or a partner in a general partnership of ten percent or more of the partnership interests in the general or limited partnership;
- (D) Acquisition by a member or managing member in a limited liability company of a membership interest greater than or equal to ten percent of the total membership interests in the limited liability company; and
- (E) In the case of entities other than corporations or those listed in paragraphs (A) through (D) of this subsection, change in control shall mean any change in principals of the organization, whether active or passive.
- (g) In addition to the requirements of OAR 441-860-0030, a mortgage banker or a mortgage broker shall notify the director when a branch office ceases to operate.
- (h) Any changes in the information required on the mortgage banker or mortgage broker's application form, including, but not limited to address changes, phone number changes, etc.
- (i) Any changes in the status of a mortgage loan originator employed by the mortgage banker or mortgage broker.
- (j) Any dismissal of a mortgage loan originator employed by the mortgage banker or mortgage broker due to a change in the mortgage loan originator's licensing status or an event that would constitute grounds for license revocation under ORS 86A.200 through 86A.239 and OAR chapter 441, division 880.

(2) The director may request additional information regarding any of the occurrences outlined in this rule.

Stat. Auth.: ORS 86A.106 & 86A.136  
 Stats. Implemented: ORS 86A.112  
 Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

#### **441-860-0080**

##### **Failure to Continually Satisfy Experience Requirement**

(1) If a mortgage banker or mortgage broker fails to satisfy the experience requirements under ORS 86A.106 during any licensing period regardless of the reason for that failure, the mortgage banker or mortgage broker shall:

- (a) Notify the director within three working days that the mortgage banker or mortgage broker no longer satisfies the experience requirement;
- (b) Submit to the director within seven calendar days of the occurrence, an inventory and status of pending loan application files including an accounting of all Clients' Trust Accounts;
- (c) Account for all investor funds;
- (d) Submit to the director within one week of the occurrence a proposed plan to rectify the deficiency or a plan for the orderly transfer of business to a duly licensed mortgage banker or mortgage broker;
- (e) Immediately cease accepting new applications from borrowers and, in the case of mortgage brokers who fund mortgages from investors other than institutions described in ORS 59.035, solicitation of funds and accepting such investor funds shall immediately cease.

(2) If the mortgage banker or mortgage broker fails to comply with the provisions of section (1) of this rule, the director shall take appropriate action, consistent with the authority granted pursuant to ORS 86A.095 through 86A.198 to ensure that the interests of borrowers and investors are protected.

(3) If the mortgage banker or mortgage broker is unable to satisfy the director that the experience requirement will be satisfied within 30 days, the director may institute action to suspend or revoke the mortgage banker's or mortgage broker's license.

(4) The director may require reports on the status of the mortgage banker or mortgage broker's business. A mortgage banker or mortgage broker

broker shall provide a report containing the content specified by the director as often as the director may specify. The reports may be written or oral, or both as the director may specify.

(5) If a mortgage banker or mortgage broker renews a license but does not conduct business, the time period that the person does not conduct business does not apply to the experience requirement in ORS 86A.106.

Stat. Auth.: ORS 86A.106, 86A.115 & 86A.136

Stats. Implemented: ORS 86A.100

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10; FCS 4-2012, f. & cert. ef. 8-1-12

#### **441-860-0085**

##### **Corporate Surety Bond for Mortgage Bankers or Mortgage Brokers Acting as or Employing a Mortgage Loan Originator**

(1) This rule applies to a mortgage banker or mortgage broker licensed under ORS 86A.095 through 86A.198 and OAR chapter 441, division 860 that either acts as the applicant's sole mortgage loan originator or employs one or more mortgage loan originators. A mortgage banker or mortgage broker must maintain a corporate surety bond during the time the person acts as a mortgage loan originator or during the time the person employs a mortgage loan originator.

(2) The corporate surety bond must be in a form and on terms approved by the director and shall be renewed or replaced each calendar year. The corporate surety bond shall be delivered to the director by December 1 of each calendar year but may be made effective as of December 31 of each calendar year. In no case shall any applicant, mortgage banker or mortgage broker subject to this rule reduce the amount of a corporate surety bond before October 1 of each calendar year.

(2) The corporate surety bond must remain in effect for at least five years after the person ceases to be licensed as a mortgage banker or mortgage broker. A consumer must file a claim against the corporate surety bond before the bond expires as described in this section.

(3) At least five years after a person ceases to be licensed as a mortgage banker or mortgage broker, the person or the writer of the corporate surety bond may apply to the director for release of the corporate surety bond. Unless the director determines that claims are pending against the person for violation of ORS 86A.095 through 86A.198, the director will release the corporate surety bond.

(4) The sum of the corporate surety bond must be calculated based on the last required residential mortgage lending report submitted under OAR 441-865-0025. The sum of the corporate surety bond must be determined as follows:

(a) For a person that has not previously conducted business involving the origination of residential mortgage loans in Oregon, the corporate surety bond must be in the amount of \$50,000.

(b) For a person making or negotiating less than \$10,000,000 in residential mortgage loans in Oregon in the previous calendar year, the corporate surety bond must be in the amount of \$50,000.

(c) For a person making or negotiating \$10,000,000 or more but less than \$25,000,000 in residential mortgage loans in Oregon in the previous calendar year, the corporate surety bond must be in the amount of \$75,000.

(d) For a person making or negotiating \$25,000,000 or more but less than \$50,000,000 in mortgage loans in Oregon in the previous calendar year, the corporate surety bond must be in the amount of \$100,000.

(e) For a person making or negotiating \$50,000,000 or more but less than \$100,000,000 in residential mortgage loans in Oregon in the previous calendar year, the corporate surety bond must be in the amount of \$150,000.

(f) For a person making or negotiating \$100,000,000 or more in residential mortgage loans in Oregon in the previous calendar year, the corporate surety bond must be in the amount of \$200,000.

Stat. Auth.: ORS 86A.242

Stats. Implemented: ORS 86A.227

Hist.: FCS 3-2010, f. 3-18-10, cert. ef. 3-22-10; FCS 4-2012, f. & cert. ef. 8-1-12

#### **441-860-0090**

##### **Corporate Surety Bond or Irrevocable Letter of Credit for Mortgage Bankers Not Employing Mortgage Loan Originators**

(1) Every applicant for a license as a mortgage banker who will not act as or employ a mortgage loan originator and does not take an application for a residential mortgage loan, or offer or negotiate terms

for a residential mortgage loan must file a corporate surety bond or irrevocable letter of credit with the director as specified in this rule in a form and on terms approved by the director. The corporate surety bond shall be renewed or replaced each calendar year. The corporate surety bond or irrevocable letter of credit shall be delivered to the director by December 1 of each calendar year but may be made effective as of December 31 of each calendar year. In no case shall any applicant, mortgage banker or mortgage broker subject to this rule reduce the amount of a corporate surety bond or irrevocable letter of credit before October 1 of each calendar year.

(2) Every person licensed as a mortgage banker must maintain a corporate surety bond or irrevocable letter of credit as specified in this rule during the time the mortgage banker or mortgage broker is licensed but does not act as or employ a mortgage loan originator. The corporate surety bond or irrevocable letter of credit must remain in effect for at least five years after the person ceases to be licensed as a mortgage banker. A consumer must file a claim against the corporate surety bond or irrevocable letter of credit before the corporate surety bond or irrevocable letter of credit expires as described in this section.

(3) At least five years after a person ceases to be licensed as a mortgage banker, the person or the writer of the corporate surety bond or irrevocable letter of credit may apply to the director for release of the corporate surety bond or irrevocable letter of credit. Unless the director determines that claims are pending against the person for violation of ORS 86A.095 through 86A.198, the director will release the corporate surety bond or irrevocable letter of credit.

(4) The corporate surety bond or irrevocable letter of credit must be calculated based on the last required residential mortgage lending report submitted under OAR 441-865-0025. The sum of the corporate surety bond or irrevocable letter of credit must be determined as follows:

(a) For a person that has not previously conducted business involving the origination of residential mortgage loans in Oregon, the corporate surety bond or irrevocable letter of credit must be in the amount of \$50,000.

(b) For a person making or negotiating less than \$10,000,000 in residential mortgage loans in Oregon in the previous calendar year, the corporate surety bond or irrevocable letter of credit must be in the amount of \$50,000.

(c) For a person making or negotiating \$10,000,000 or more but less than \$25,000,000 in residential mortgage loans in Oregon in the previous calendar year, the corporate surety bond or irrevocable letter of credit must be in the amount of \$75,000.

(d) For a person making or negotiating \$25,000,000 or more but less than \$50,000,000 in mortgage loans in Oregon in the previous calendar year, the corporate surety bond or irrevocable letter of credit must be in the amount of \$100,000.

(e) For a person making or negotiating \$50,000,000 or more but less than \$100,000,000 in residential mortgage loans in Oregon in the previous calendar year, the corporate surety bond or irrevocable letter of credit must be in the amount of \$150,000.

(f) For a person making or negotiating \$100,000,000 or more in residential mortgage loans in Oregon in the previous calendar year, the corporate surety bond or irrevocable letter of credit must be in the amount of \$200,000.

Stat. Auth.: ORS 86A.136

Stats. Implemented: ORS 86A.106

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 3-2010, f. 3-18-10, cert. ef. 3-22-10; FCS 4-2012, f. & cert. ef. 8-1-12

#### **441-860-0101**

##### **Fees Payable to the Director**

In addition to any fees required to participate in the National Mortgage Licensing System and Registry, a mortgage banker or a mortgage broker shall pay to the director the following fees at the time of application or renewal:

(1) A nonrefundable application fee for a mortgage banker or mortgage broker license of \$960 plus a \$330 nonrefundable application fee for each branch the mortgage banker or mortgage broker establishes in Oregon.

(2) A nonrefundable renewal application fee for a mortgage banker or mortgage broker license of \$480 plus a \$165 nonrefundable

renewal application fee for each branch the mortgage banker or mortgage broker maintains in Oregon.

Stat. Auth.: ORS 86A.136

Stats. Implemented: ORS 86A.106, 2011 OL Ch. 618 § 1

Hist.: FCS 12-2009, f. 12-2-09, cert. ef. 1-1-10; FCS 5-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-28-11; FCS 8-2011, f. & cert. ef. 10-3-11

**441-860-0110**

**Examination Charges Mortgage Bankers or Mortgage Brokers Pay to the Director**

(1) Examination charges shall be paid upon receipt of the invoice of examination fees.

(2) In addition to the initial application and renewal fees assessed under ORS 86A.124 and these rules, licensees shall pay an examination charge in the amount of \$75 an hour for each person used in performance of the examination.

(3) Notwithstanding section (2) of this rule:

(a) If an employee of the Department is required to travel out of state to perform the work described by section (2) of this rule, the rate of charge is \$75 per hour plus costs for travel and subsistence for each such person;

(b) If the work described in section (2) of this rule is performed by a consultant hired by contract for the particular work, the charge payable by the licensee is the actual cost to the director of the contract consultant.

Stat. Auth.: ORS 86A.124

Stats. Implemented: ORS 86A.124

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 8-2008, f. & cert. ef. 8-28-08; FCS 4-2012, f. & cert. ef. 8-1-12

**441-860-0130**

**Private Money Loans**

A person is not engaged in the business of making loans secured by an interest in real estate as used in ORS 86A.100(3)(a)(C) and (5)(a)(F) if the person is making a loan from their own funds and does not make more than 10 loans secured by an interest in residential real estate during any consecutive twelve month period if they do not advertise or otherwise hold themselves out as being in the business of making mortgage loans.

Stat. Auth.: ORS 86A.136

Stats. Implemented: ORS 86A.100

Hist.: FCS 4-1999, f. & cert. ef. 12-23-99; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

**DIVISION 865**

**RECORDS AND REPORTS**

**441-865-0010**

**General Provisions**

All mortgage bankers and mortgage brokers shall maintain and preserve financial records concerning business operations, transactions with customers, and trust account transactions. The records shall be sufficient for an independent accountant to prepare a compiled, reviewed or audited financial statement on the business of the mortgage banker or mortgage broker.

Stat. Auth.: ORS 86A.112 & 86A.136

Stats. Implemented: ORS 86A.112

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

**441-865-0020**

**Financial Records**

At a minimum the financial records shall include:

(1) A record, such as a cash receipts journal, of all monies received from borrowers showing at least:

(a) Name of payor;

(b) Date of receipt;

(c) Amount received;

(d) Purpose of receipt including identification of the loan to which it relates, if any;

(e) The disposition of all monies received including the date and place of deposit or, if not deposited, the date, name of the person who received the monies and the manner in which the monies were transmitted.

(2) A sequential listing of all checks written for each bank account relating to the mortgage banker or mortgage broker's business, such as a cash disbursement journal, showing at least:

(a) Name of the payee;

(b) Date of payment;

(c) Amount of the payment;

(d) Purpose of the payment including identification of the loan to which it relates, if any.

(3) Bank account activity source documents for every account maintained for the mortgage banker's or mortgage broker's business including at least:

(a) Receipted deposit tickets and if "less cash deposits" are made, an explanation of the use of the cash;

(b) Paid checks if available and if these items are truncated, a copy of a document authorizing the director to request and receive copies of processed items from the financial institution;

(c) Bank advices, including but not limited to debit and credit notices and overdraft notices;

(d) Monthly or periodic statements;

(e) Detail on wire transfers into or out of the account(s) including the name of the person who is the payor or payee, date, amount, purpose of receipt or payment, and identification of the loan to which it relates, if any.

(4) A record or file of all monies owed by the mortgage banker or mortgage broker, such as an accounts payable journal.

Stat. Auth.: ORS 59.860 & 59.900

Stats. Implemented: ORS 59.860

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94 cert. ef. 11-15-94; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

**441-865-0025**

**Residential Mortgage Lending Reports**

No later than March 31 of each calendar year, a mortgage banker or a mortgage broker licensed at any time during the preceding calendar year must file a report with the director concerning the banker's or broker's business and operations conducted during the preceding calendar year related to residential mortgage transactions.

(1) A mortgage banker or mortgage broker must report the total number and dollar amount of all loans made or funded by the mortgage banker or mortgage broker in any state and those loans that are Oregon residential mortgage transactions.

(2) For loans made or funded for a property located in Oregon, a mortgage banker or mortgage broker must report the total number and dollar amount of:

(a) First-lien mortgage loans.

(b) Subordinate-lien mortgage loans including, but not limited to, home equity lines of credit.

(c) Mortgage loans having a fixed periodic payment of principal and interest throughout the mortgage term.

(d) Interest-only first-lien mortgage loans having a fixed interest rate.

(e) Interest-only first-lien mortgage loans having an adjustable interest rate.

(f) Negative amortization mortgage loans.

(g) Home equity conversion mortgages, commonly known as reverse mortgages.

(h) Adjustable rate first-lien mortgage loans.

(i) Adjustable rate subordinate-lien mortgage loans.

(j) Loans with a prepayment penalty in the contract at the time of closing.

(k) Mortgage loans closed for the purchase of a primary owner-occupied residential dwelling.

(L) Mortgage loans closed for the purchase of a secondary residence.

(m) Mortgage loans closed for the purchase of a non-owner occupied property that is a one-to-four family residential dwelling.

(n) Mortgage loans closed for the purpose of refinancing an existing mortgage loan secured by a primary owner-occupied residential dwelling.

(o) Mortgage loans closed for the purpose of refinancing an existing mortgage loan secured by a secondary residence.

(p) Mortgage loans closed for the purpose of refinance an existing mortgage loan secured by a non-owner occupied property that is a one-to-four family residential dwelling.

(q) Mortgage loans insured or guaranteed by a federal agency.

(3) For loans made or funded for a property located in Oregon, a mortgage banker or mortgage broker may report the total number and dollar amount of:

(a) Loans that were originated based on all of the following factors:

- (A) Income documentation;
- (B) Employment documentation; and
- (C) Asset documentation.

(b) Loans that were originated based on one or two of the following factors:

- (A) Income documentation;
- (B) Employment documentation; or
- (C) Asset documentation.

(c) Loans that were not originated based on any of the following factors:

- (A) Income documentation;
- (B) Employment documentation; or
- (C) Asset documentation.

(d) Loans with a combined loan-to-value ratio of 80% or lower made to an individual having a middle credit bureau risk score of 620 or above.

(e) Loans with a combined loan-to-value ratio of 80% or lower made to an individual having a middle credit bureau risk score below 620.

(f) Loans with a loan-to-value ratio of greater than 80% made to an individual having a middle credit bureau risk score of 620 or above.

(g) Loans with a loan-to-value ratio of greater than 80% made to an individual having a middle credit bureau risk score below 620.

(4) In addition, a mortgage banker or a mortgage broker shall file a report of condition with the National Mortgage Licensing System and Registry of the mortgage banker's or mortgage broker's business and operations in Oregon related to residential mortgage transactions. The report shall be filed within 45 days following the end of each calendar quarter.

Stat. Auth.: ORS 86A.112

Stats. Implemented: ORS 86A.112, 86A.239

Hist.: FCS 12-2008, f. 12-8-08, cert. ef. 12-10-08; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10; FCS 3-2010, f. 3-18-10, cert. ef. 3-22-10; FCS 4-2012, f. & cert. ef. 8-1-12

#### **441-865-0030**

##### **Advertising**

All mortgage bankers and mortgage brokers shall maintain copies of:

(1) All printed advertising published in newspapers, magazines, newsletters or other media designed for mass distribution;

(2) Scripts, or audio and video tapes, for advertising broadcast on radio or television; and

(3) Recorded telephone messages or voice mail messages which contain rate information.

Stat. Auth.: ORS 86A.112, 86A.136 & 86A.163

Stats. Implemented: ORS 86A.163

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

#### **441-865-0040**

##### **Borrower and Investor Complaints**

(1) Copies of all written complaints by borrowers and investors shall be maintained in a separate complaint file by the individual's name in alphabetical order and shall contain at a minimum a copy of the original complaint and response.

(2) Copies of correspondence related to the complaints and a written disposition of the complaint by an officer, director or control person of the company shall be maintained in the complaint file or in the borrower or investor file of the mortgage banker or mortgage broker.

(3) Complaints unrelated to borrower or investor transactions need not be retained.

Stat. Auth.: ORS 86A.112 & 86A.136

Stats. Implemented: ORS 86A.112

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

#### **441-865-0050**

##### **Personnel Records**

(1) Each employer shall maintain a personnel ledger which shall contain the name, date of birth, position or title and responsibilities,

unique identifiers, starting date, and date and reason for termination of salaried employees.

(2) For purposes of this rule, personnel shall include salaried employees, independent contractors, and consultants who are involved in loan origination, loan servicing, loan negotiations, investor solicitation, or who transact business with borrowers or lenders.

Stat. Auth.: ORS 86A.112 & 86A.179

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

#### **Additional Borrower Files**

#### **441-865-0060**

##### **Residential Borrower Files**

(1) In addition to the books and records required under the provisions of OAR 441-865-0010 to 441-865-0090, a mortgage banker or mortgage broker that takes an application for a residential mortgage transaction must prepare and maintain the following:

(a) A copy of each executed loan application form, including the unique identifier of the mortgage loan originator that took the residential mortgage loan application and offered to negotiate or negotiated the terms of the loan;

(b) A copy of each executed fee agreement, if prepared;

(c) In the case of residential or single family loans, a borrower acknowledged statement that a loan interest rate will float or a copy of the executed lock agreement. The lock agreement shall specify at a minimum the: date of the agreement; file identification, and property address; lock-in rate; lock expiration date; disclosure that the lock may be subject to change if any of the loan factors change; and disclosure that if the lock expires, the rate and points are subject to change; and the term of the loan.

(d) A copy of all correspondence with the borrower in writing or in a format easily converted to writing;

(e) A copy of any documents noting approval or denial of a borrower's mortgage loan application;

(f) A copy of all documents submitted by a borrower to the mortgage banker or mortgage broker in connection with the loan application;

(g) If required to be prepared for the residential mortgage transaction, a copy of the good faith estimate required by Regulation X, 12 C.F.R. Part 1024, and translated as applicable to comply with 86A.198;

(h) A copy of the executed Authorization to Release Credit Information Form;

(i) Copies of every credit report accessed by the mortgage banker or mortgage broker in connection with the transaction;

(j) If required to be prepared for the residential mortgage transaction, copies of the Truth in Lending Disclosure Statement required by Regulation Z, 12 C.F.R. Part 1026 and translated as applicable to comply with ORS 86A.198;

(k) If required to be prepared for the residential mortgage transaction, a copy of the final HUD-1 settlement statement required by 12 C.F.R. Part 1024; and

(2) In addition to the books and records required under the provisions of section (1) of this rule and OAR 441-865-0010 to 441-865-0090, a mortgage banker that funds a residential mortgage transaction must also prepare and maintain the following in the loan file:

(a) A summary of information on the loan funding program parameters required for the loan's key terms;

(b) A copy of each executed loan application form, including on the form the unique identifier of the mortgage loan originator that took the residential mortgage loan application and offered to negotiate or negotiated the terms of the loan;

(c) A copy of all documentation relied upon in making the loan decision;

(d) A copy of the borrower executed note and executed trust deed;

(e) A copy of the good faith estimate prepared under Regulation X, 12 C.F.R. Part 1024 and translated as applicable to comply with ORS 86A.198;

(f) If required to be prepared for the residential mortgage transaction, a copy of the every credit report accessed by the mortgage banker or mortgage broker in connection with the transaction;

(g) If required to be prepared for the residential mortgage transaction, a copy of any disclosure required by Regulation Z, 12 C.F.R. Part 1026 and translated as applicable to comply with ORS 86A.198, including, but not limited to, the Truth in Lending disclosure statement;

(h) A copy of the final HUD-1 settlement statement required by 12 C.F.R. Part 1024; and

(i) A copy of the statement that notifies the borrower that loan documents associated with the transaction will be in English and that advises the borrower to obtain appropriate assistance, with any necessary translations as required by ORS 86A.195.

(3) A mortgage broker that closes a residential mortgage loan in the name of the broker shall retain the records required in Sections (1) and (2) of this rule.

(4) If the loan is funded by an investor other than persons enumerated in ORS 59.035(4) or (5), the mortgage banker or mortgage broker must comply with the records requirements under OAR 441-865-0080.

Stat. Auth.: ORS 86A.112 & 86A.136

Stats. Implemented: ORS 86A.112

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 7-2001, f. & cert. ef. 8-1-01; FCS 3-2010, f. 3-18-10, cert. ef. 3-22-10; FCS 4-2012, f. & cert. ef. 8-1-12

#### **441-865-0080**

##### **Investor Files**

(1) In addition to all other books and records required under the provisions of OAR 441-865-0010 to 441-865-0090, a mortgage banker or a mortgage broker must maintain the following documents and records when borrower loans are funded by investors who are persons other than those exempt under ORS 59.035(4) or (5):

(a) A copy of the written disclosure document described in OAR 441-870-0050(1);

(b) A written statement, signed and dated by the investor acknowledging receipt of the written disclosure document and an opportunity to review the supporting documentation;

(c) The supporting documentation evidencing the summarized information contained in the disclosure document.

(d) A copy of the written evidence of obligation and the instrument creating the investor's lien or assignment of the lien as required pursuant to OAR 441-870-0060;

(e) A copy of documents evidencing that the instrument creating the lien or assignment has been recorded pursuant to the provisions of OAR 441-870-0060;

(f) Copies of guarantees, surety agreements, "with-recourse" agreements or guarantees, and correspondence related to the sale of real estate paper to the investor.

(2) The documents required under the provisions of subsections (1)(a) through (f) of this rule may be maintained in separate files designated "Investor Files" or in the borrower file at the option of the mortgage banker or mortgage broker.

(3) For those documents which do not contain the original executed signature of the investor, the requirements of this rule shall be deemed to be satisfied if the mortgage banker or mortgage broker maintains computerized records from which hard copies or reports can be generated if the reports contain all the information required under the provisions of this rule.

Stat. Auth.: ORS 86A.112 & 86A.136

Stats. Implemented: ORS 86A.112

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

#### **Client Funds**

#### **441-865-0090**

##### **Trust Account and Escrow Depository**

In addition to the books and records required pursuant to the provision of OAR 441-865-0010 to 441-865-0080, a mortgage banker or a mortgage broker is required to maintain the books and records required under the provisions of OAR chapter 441, division 875.

Stat. Auth.: ORS 86A.112 & 86A.136

Stats. Implemented: ORS 86A.157

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

#### **DIVISION 870**

### **DISHONEST, FRAUDULENT, UNFAIR AND UNETHICAL PRACTICES**

#### **General Provisions**

#### **441-870-0010**

##### **Dishonest, Fraudulent, Unfair and Unethical Practices**

As used in ORS 86A.115(2), the terms "dishonest, fraudulent, or illegal practices or conduct" and "unfair or unethical practices or conduct," separately or in any combination thereof, shall include but not be limited to those acts defined herein as "Manipulative, deceptive, or fraudulent device or contrivance" or "fraudulent, deceptive or manipulative act or practice."

Stat. Auth.: ORS 86A.136

Stats. Implemented: ORS 86A.115

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

#### **441-870-0020**

##### **General Definition**

"Manipulative, Deceptive, or Fraudulent Device or Contrivance" and "Fraudulent, Deceptive, or Manipulative Act or Practice" are defined to include:

(1) Any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

(2) The making of any untrue statement of a material fact and any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(3) Any representation by a licensee or a person acting on behalf of a licensee, that the licensing of any person with the Director or the failure of the Director to deny or revoke such license, indicates, in any way, that the Director has passed upon or approved the financial standing, business, or conduct of any person, or the merits of any transaction.

Stat. Auth.: ORS 86A.136

Stats. Implemented: ORS 86A.115

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94

#### **441-870-0030**

##### **Borrower Transactions**

A dishonest, fraudulent or illegal practice or conduct under ORS 86A.115 includes, but is not limited to, the following conduct by a person in connection with a mortgage loan:

(1) Making any representation or guarantee to a customer that a loan can be secured by a date certain;

(2) Entering into a lock agreement for a specific interest rate or advertising the availability of a lock agreement for a specific interest rate unless:

(a) The agreement or advertisement also specifies the terms of the lock agreement including the length of the lock period and the costs to the borrower associated with the lock agreement; and

(b) The mortgage banker or mortgage broker can demonstrate that they have successfully closed loans under lock agreements, which provided for similar interest rates within similar time frames;

(3) Making a representation to a customer that interest rates, points, or other financing terms are available at the time the representation was made unless the interest rates, points, or terms are actually available within the time frame represented from:

(a) A lender with whom the mortgage banker or mortgage broker maintains a correspondent or loan brokerage agreement;

(b) A person exempt from licensing pursuant to ORS 86A.100(5)(b); or

(c) One or more persons, other than persons exempt under ORS 59.035(4), if the mortgage banker or mortgage broker has a written commitment from such persons to fund the mortgage loan at the interest rate, points or other financing term offered to the borrower.

(4) Failing to disclose in writing to a borrower before negotiating loan terms for a mortgage loan that the person, mortgage banker or mortgage broker, or mortgage loan originator has a verbal or written contract, joint venture agreement or any other type of understanding with a builder or a realtor who is a party to the transaction and that this relationship may result in the borrower getting less favorable loan terms.

(5) Failing to refund within 72 hours of rejecting a loan, the advance fees paid which have not been distributed pursuant to a signed loan agreement or, in the event the loan agreement does not contain provisions for acceptance and distribution of advance fees, pursuant to a fee agreement;

(6) Failing to account, after reasonable notice, to any person whose property secures a loan made by the mortgage banker or mortgage broker for any money which that person has paid to the mortgage banker or mortgage broker for the payment of third party obligations including, but not limited to, appraisal fees, title search fees, taxes, and insurance premiums;

(7) Failing to comply within 30 working days of a written request by a borrower made within 90 days of notice that the loan will not be obtained, for copies of any appraisal, title report, or credit report paid for by the borrower, unless the agreement between the mortgage banker or mortgage broker and the credit service prohibits such distribution;

(8) Providing a savings statement to the borrower, unless:

(a) The amount of savings the borrower will realize can be projected with certainty;

(b) The amount of savings actually realized is within \$1,000.00 of the amount projected;

(c) The savings statement includes a disclaimer that the actual amount of savings may vary; and

(d) The savings statement shows changing payments over the life of the loan when the loan being offered is an adjustable rate product.

(9) Requiring or permitting a consumer to sign promissory notes and trust deeds prior to:

(a) The loan receiving final written loan approval;

(b) Full disclosure to the consumer of repayment terms; and

(c) The lender having funds available to fund the loan.

(10) Delaying release of loan funds to the borrower, the borrower's approved representative or escrow for more than one business day following recording of the lien.

Stat. Auth.: ORS 86A.136

Stats. Implemented: ORS 86A.115

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 3-2008, f. 5-2-08, cert. ef. 5-7-08; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

#### 441-870-0040

##### Legend Requirements

A dishonest, fraudulent or illegal practice or conduct under ORS 86A.115 includes, but is not limited to, the following conduct a person in connection with a mortgage loan:

(1) Negotiating a residential loan agreement that provides for a penalty to be charged for repaying the loan prior to the date provided for repayment in the loan agreement without providing notice in writing of a size equal to at least ten-point bold or underlined type that substantially conforms to the following:

**NOTICE TO THE BORROWER: Do not sign this loan agreement before you read it. This loan agreement provides for the payment of a penalty if you wish to repay the loan prior to the date provided for repayment in the loan agreement.**

If a residential loan agreement does not contain a notice as required by this section, a lender shall not collect from the borrower a penalty for payment of the loan prior to the date provided for repayment.

(2) Negotiating a residential mortgage loan agreement that authorizes the lender to refuse to accept repayment of the loan prior to the date provided for repayment in the loan agreement without providing notice in writing of a size equal to at least ten-point bold or underlined type that substantially conforms to the following:

**NOTICE TO THE BORROWER: Do not sign this loan agreement before you read it. This loan agreement authorizes the lender to refuse to accept repayment of this loan prior to the date provided for repayment in this loan agreement.**

If a residential loan agreement does not contain a notice as required by this section, a lender shall not refuse to accept repayment of the loan by the borrower prior to the date provided for repayment.

Stat. Auth.: ORS 86A.136

Stats. Implemented: ORS 86A.115

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

#### 441-870-0050

##### Investor Transactions

A dishonest, fraudulent or illegal practice or conduct under ORS 86A.115 includes, but is not limited to, the following conduct by a person in connection with a mortgage loan:

(1) Failing to provide to investors who are persons other than persons enumerated pursuant to ORS 59.035(4) and (5), prior to the time of sale of any interest in real estate paper, a written disclosure document which contains the following information:

(a) The priority of the lien created by the security and the total face amount of any senior liens;

(b) A statement whether any future advances may have a priority senior to that of the lien created by the security;

(c) A copy of the most recent complete property tax statement, covering the real property underlying the security;

(d) The value of the real property underlying the security. This value must be provided by:

(A) The tax assessed value if it is 100 percent of the true cash value and is on the same property underlying the security; or

(B) An appraisal by an independent licensed appraiser.

(e) The debtor's payment record, on the instrument being sold for the two years immediately preceding the sale. When the debtor's payment record is less than two years or not available:

(A) The payment record to date or a statement that payment records are not available; and

(B) A current credit report on the debtor prepared by a credit reporting agency or a current financial statement of the debtor.

(f) The terms of any senior lien or a copy of the instrument creating the lien and any assignments;

(g) If the mortgage seller, seller's agent, or any affiliate is the debtor, a statement disclosing that fact and the amount of cash paid to the debtor in consideration for the issuance of the real estate paper;

(h) A statement of any commissions, collection fees, and other costs chargeable to the purchaser of the real estate paper;

(i) A prominent statement of any balloon payments;

(j) In the case of a sale of junior real estate paper, a statement of the risk of loss on foreclosure of a senior lien; and

(k) A statement of whether or not the purchaser of the real estate paper will be insured against casualty loss.

(2) In the case of transactions involving securities sold under a registration which is currently effective, compliance with the provisions of this rule shall be deemed to be satisfied if the mortgage banker or mortgage broker provides to the investor a copy of the offering memorandum which was submitted to the director as part of the application to register securities pursuant to ORS Chapter 59.

(3) In the case of transactions which are exempt from registration under the provisions of ORS 59.035(7), compliance with the provisions of this rule shall be deemed to be satisfied if the mortgage banker or mortgage broker provides to the investor a copy of the risk disclosure section of an offering memorandum prepared for sales of similar, but non-exempt securities, if the memorandum was submitted to the director as a part of the registration application and that the registration is effective at the time the document is provided to the investor.

Stat. Auth.: ORS 59.035(7) & 86A.136

Stats. Implemented: ORS 86A.115

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

#### 441-870-0060

##### Delivery of Additional Documentation

"Manipulative, Deceptive, or Fraudulent Device or Contrivance" and "Fraudulent, Deceptive, or Manipulative Act or Practice" are defined to include:

(1) Failure to deliver to the purchaser or licensed escrow agent or title company the written evidence of the obligation, properly endorsed, together with the instrument creating the lien; and

(2) Failure to record the instrument creating the lien or assignment of the lien in a timely manner in the county or counties where the property is located and retain a copy of the recorded instrument in the customer file maintained by the licensee.

(3) The provisions of section (2) of this rule do not apply when the purchaser is an institutional investor as enumerated in ORS 59.035(4) or an accredited investor as enumerated in 59.035(5) provided the accredited investor has submitted an unsolicited written request that the instrument creating the lien or the assignment of the lien not be filed in the county or counties where the property is located.

Stat. Auth.: ORS 86A.136

Stats. Implemented: ORS 86A.115

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94

**441-870-0070****Servicing Transactions**

A dishonest, fraudulent or illegal practice or conduct under ORS 59.865 includes, but is not limited to, the following conduct by a person in connection with a mortgage loan:

- (1) Failing to disclose that the lender may sell the loan to another party.
- (2) Failing to provide to borrowers an annual statement of the account of the borrower showing the unpaid principal balance of the mortgage loan at the end of the immediately preceding 12-month period, the interest paid during such period, the amounts deposited into escrow and the amounts disbursed from escrow during the period.

Stat. Auth.: ORS 86A.136

Stats. Implemented: ORS 86A.115

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

**441-870-0080****Advertising**

(1) Advertising containing any of the following is false, misleading or deceptive:

(a) A statement or representation of a specific installment amount in repayment of a loan without at least as prominently disclosing the following information about the loan:

- (A) Principal amount;
- (B) Annual percentage rate;
- (C) Whether the interest rate is fixed or variable, and if variable, the loan terms;
- (D) Number, amount and period of payments scheduled to the date of maturity; and
- (E) Balance due at maturity (balloon payment) if not fully amortized;

(b) An interest rate without at least as prominently disclosing the annual percentage rate of the note;

(c) A statement or representation that the person can make or negotiate “low doc/no doc,” “no income/no asset,” “alt doc,” “stated income,” “stated asset,” “no ratio,” or similar loan products without at least as prominently disclosing that these products may have a higher interest rate, more points, or more fees than other products that require income documentation;

(d) An interest rate or annual percentage rate expressed in less than three decimal places, provided that ending zeros following the decimal point may be omitted;

(e) An offer to procure, arrange, or otherwise assist a borrower to obtain a mortgage loan on terms which the person cannot, does not intend, or does not want to provide, or which the person knows or should know cannot be reasonably provided;

(f) A statement or representation that all or most borrowers may or will qualify for a loan or that persons with bad credit histories or no credit histories may or will qualify for this loan unless the person can demonstrate that borrowers with bad credit or no credit have been routinely and successfully qualified for loans by that lender;

(g) Any statement or representation that would be in violation of Regulation X, 24 C.F.R. Part 3500 regarding kickbacks and unearned fees, including soliciting referrals with a promise to pay the advertising costs of any settlement provider;

(h) Any statement or representation that would be in violation of Regulation Z, 12 C.F.R. Part 226, regarding advertising;

(i) The phrase “wholesale rates” when the advertising is directed to or accessible by the public;

(j) Any statement or representation about a loan that carries the potential for negative amortization without clearly identifying that potential and without at least as prominently disclosing:

- (A) The market or fully indexed rate;
- (B) The term of the reduced payments;
- (C) The term of the entire loan; and
- (D) The annual percentage rate;

(k) Official looking emblems or logos, such as eagles, crests, or flags, which resemble a format similar to that used by any governmental agency;

(L) Envelopes which resemble an official government mailing, from entities such as the Internal Revenue Service, U.S. Treasury, a state taxing authority, or other governmental mailer;

(m) Slogans such as “Buy U.S. Savings Bonds” without at least as prominently disclosing that the mailing is an advertisement and not from a government agency;

(n) The name or logo of a financial institution or the holder of an existing loan when the person responsible for the advertisement or named in the advertisement has no association, affiliation or cooperative agreement with the financial institution or holder of the loan, without at least as prominently disclosing that person’s name and the following statements:

(A) “This is an advertisement”;

(B) “This is an offer for a new loan”; and

(C) “This offer is not related to your existing mortgage lender or holder of your loan”.

(o) Terms such as “verified as eligible”, “preapproved”, “pre-qualified” or similar words or phrases, without at least as prominently disclosing language that describes prerequisites to qualify for the loan, including, but not limited to, income verification, credit check, and property appraisal or evaluation;

(p) Solicitations from a particular mortgage loan originator or a group of mortgage loan originators without the unique identifier of each mortgage loan originator;

(q) Advertisements pertaining to a particular mortgage loan originator or a group of mortgage loan originators without the unique identifier of each mortgage loan originator;

(r) Promotional materials pertaining to a particular mortgage loan originator or a group of mortgage loan originators without the unique identifier of each mortgage loan originator; and

(s) Websites if the website lists the mortgage loan originator’s name in relation to residential mortgage lending without the unique identifier of the particular mortgage loan originator.

(2) All advertisements a mortgage banker or mortgage broker disseminates by any means must contain the mortgage banker or mortgage broker’s Oregon-issued license number, the mortgage banker or mortgage broker’s name, or the mortgage banker or mortgage broker’s assumed business name that conforms to a name on file with the director.

Stat. Auth.: ORS 86A.136 & 86A.163

Stats. Implemented: ORS 86A.115, 86A.154, 86A.163

Hist.: FCS 3-2008, f. 5-2-08, cert. ef. 5-7-08; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10; FCS 3-2010, f. 3-18-10, cert. ef. 3-22-10

**441-870-0081****Use of Certification or Professional Designations by Mortgage Banker, Mortgage Broker, or Mortgage Loan Originator**

(1) The use of a certification or professional designation by any mortgage banker, mortgage broker, or mortgage loan originator in connection with making, negotiating or offering to make or negotiate a mortgage banking loan or a mortgage loan, taking a residential mortgage loan application, offering or negotiating the terms of a residential mortgage loan, selling real estate paper, or accepting funds for investment in real estate paper, that indicates or implies that the person has special certification or training, in such a way as to mislead any person is a dishonest, fraudulent or illegal practice or conduct under ORS 86A.115. Prohibited use of a certification or designation under this rule includes, but is not limited to, the following activities:

(a) Use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use the certification or designation.

(b) Use of a nonexistent or self-conferred certification or professional designation.

(c) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training or experience that the person using the certification or professional designation does not have.

(d) Use of a certification that falsely states or implies specialized knowledge of the financial needs of a particular segment of the population or class of borrowers that the person using the certification or professional designation does not have.

(e) Use of a certification or professional designation that was obtained from a designating or certifying organization that:

(A) Is primarily engaged in the business of instruction in sales or marketing, or both;

(B) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(C) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(D) Does not have reasonable continuing education requirements for its designees to maintain the designation or certificate.

(2) The director recognizes a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of section (1) (e) of this rule when the organization is accredited by:

- (a) The American National Standards Institute;
- (b) The National Commission for Certifying Agencies;
- (c) The National Association of Mortgage Brokers;
- (d) The Mortgage Bankers Association; or
- (e) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued from the organization does not primarily apply to sales or marketing, or both.

(3) The director will consider whether a combination of words or an acronym would constitute a certification or professional designation that falsely indicates or implies that a person has special certification or training in advising or servicing a particular segment of the population or class of borrower.

(4) This rule does not apply to use of any of the following designations, titles, degrees, or certifications used by a person unless the facts and circumstances associated with the use of the designation indicate that the designation suggests or implies a greater degree of certification or training than the person possesses or that the designation otherwise misleads borrowers:

(a) A job title within an organization that is licensed, registered, or authorized by a state or federal financial services regulatory agency, when that job title:

- (A) Indicates seniority or standing within the organization; or
- (B) Specifies an individual's area of specialization within the organization.

(b) A degree, certificate, or designation evidencing completion of an academic program at an institution of higher education that has been accredited by an organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes."

(5) Violation of section (1) of this rule is an act, practice, or course of business which operates or would operate as a fraud or deceit upon a person, for the purposes of ORS 86A.154.

(6) The prohibitions in this rule and the remedy available to the director do not limit the director's authority to enforce existing provisions of law and apply existing remedies.

Stat. Auth.: ORS 86A.136, 86A.163, 86A.242  
Stats. Implemented: ORS 86A.115, 86A.154, 86A.163  
Hist.: FCS 3-2010, f. 3-18-10, cert. ef. 3-22-10

## **DIVISION 875**

### **CUSTODY AND POSSESSION OF CLIENT FUNDS**

#### **441-875-0020**

##### **Branch Office Trust Accounts**

(1) Branch offices shall maintain a separate trust account if:

(a) The main office of the mortgage banker or mortgage broker does not maintain a trust account or deposit funds into a neutral escrow depository on behalf of the branch offices' clients; or

(b) The main office of the mortgage banker or mortgage broker is not located within the State of Oregon.

(2) If the branch office maintains a trust account separate from the main office, the mortgage banker or mortgage broker shall be responsible for supervision of the branch office trust account to ensure compliance with the provisions of OAR 441-875-0030 and ORS 86A.157 and 86A.160.

(3) If the branch office places funds into a neutral escrow depository, the mortgage banker or mortgage broker shall be responsible for supervision of the branch office activities to ensure compliance with the provisions of OAR 441-875-0030 and ORS 86A.157(1).

(4) Branch offices may maintain a trust account separate from any trust account maintained by the main office provided the branch office complies with all provisions under OAR 441-875-0030 and ORS 86A.157(4).

(5) Examination of the branch office books and records relating to the trust accounts may be made at such time as the director may choose.

(6) Compliance with the provisions of OAR 441-875-0020 through 441-875-0040 does not relieve any person of any other duties and liabilities under ORS Chapter 86A, applicable administrative rules, or any other provisions of law.

Stat. Auth.: ORS 86A.136, 86A.157

Stats. Implemented: ORS 86A.157

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 1-2007, f. & cert. ef. 1-17-07; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

#### **441-875-0030**

##### **Manner of Deposit**

(1) A mortgage banker or mortgage broker shall deposit all trust funds received from a client into the trust account or neutral escrow depository and shall keep such funds in the trust account or neutral escrow depository until:

(a) In the case of a neutral escrow depository, the written escrow instructions prepared pursuant to the provisions of OAR 441-875-0040(3) and agreed to by all parties have been fulfilled; or

(b) In the case of a trust account, the instructions for disbursement of trust funds have been fulfilled as contained in:

(A) The loan application form; or

(B) A separate fee agreement, if any.

(2) A mortgage banker or mortgage broker shall not commingle any monies received from a client for deposit into a trust account with personal funds of the mortgage banker or mortgage broker. For purposes of OAR 441-875-0010 through 441-875-0040, the following shall not constitute commingling of trust funds with personal funds if the funds are removed from the trust account within 30 days:

(a) Earned, but untransferred interest income accruing to the mortgage banker or mortgage broker pursuant to a written agreement with the client;

(b) Earned, but untransferred fees due the mortgage banker or mortgage broker.

(3) Every deposit into a trust account shall be made with deposit slips or other evidence of deposit identifying each transaction by a written notation of the file identification assigned to the transaction on whose behalf the deposit is made. Compliance with this rule may be satisfied when a mortgage banker or mortgage broker has attached a copy of the client's check to the deposit slips.

(4) Every deposit into a neutral escrow depository shall be accompanied by a letter of transmittal which shall include a written notation of the file identification assigned to the transaction on whose behalf the deposit is made. Compliance with this rule may be satisfied when a mortgage banker or mortgage broker has attached a copy of the client's check to the letter of transmittal.

(5) All customer securities must be held in trust and kept in a secure depository. The securities must be held in such a manner that they will be free from claims, levy, or attachment by creditors of the mortgage banker or mortgage broker.

(6) All funds, whether in the form of money, checks, drafts, or warrants belonging to others and accepted by any mortgage banker or mortgage broker engaged in professional activity shall be deposited prior to the close of business of the third banking day following the date of the receipt of the funds into a trust account or neutral escrow depository established by the mortgage banker or mortgage broker. The mortgage banker or mortgage broker shall account for all funds received.

(7) Every mortgage banker or mortgage broker which requires a residential loan client to pay an amount for services prior to the time that the services are rendered may maintain a separate trust account in this state for prepayments and shall keep prepayment funds subject to refund in the trust account until the services are performed according to the provisions contained in OAR 441-875-0040(5) and (6), or the loan is rejected.

(8) In the event that the mortgage banker or mortgage broker accepts fees in advance of completing professional services, or accepts fees paid as a retainer to secure the availability of the mortgage banker or mortgage broker, or accepts a consulting fee for professional services, the fees shall be refundable and are trust funds unless the mortgage banker or mortgage broker provides written notice to the client prior to or at the time of receipt of the fees that such fees are not refundable. A record of this written notice to a client shall be main-

tained in the client file pursuant to the provisions of OAR 441-865-0020 through 441-865-0090.

Stat. Auth.: ORS 86A.136 & 86A.157

Stats. Implemented: ORS 86A.157

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

#### **441-875-0040**

##### **Financial Practices; Manner of Disbursement**

(1) In addition to those books and records required under ORS 86A.095 through 86A.189 and OAR 441-865-0010 through 441-865-0090, a mortgage banker or mortgage broker shall maintain books and records for each trust account in accordance with this rule:

(a) Mortgage bankers and mortgage brokers must reconcile at least monthly all trust accounts:

(A) The reconciled bank balance of the trust account must equal the sum of the balances in the individual owner's ledger accounts and also must equal the balance shown in the check register or the journal of receipts and disbursements for the trust account;

(B) The mortgage banker or mortgage broker must sign and date the reconciliation upon its completion.

(b) Each mortgage banker or mortgage broker shall set up and maintain a subsidiary ledger for each trust account showing the receipts and disbursements and maintaining a running total of every transaction pertaining to the trust account.

(2) The mortgage banker's or mortgage broker's offices, places of business, books, records, accounts, files and papers relating to the trust account shall be available for examination by the director under OAR 441-865-0010 through 441-865-0090.

(3) If funds are placed in a neutral escrow depository pursuant to the written agreement required by ORS 86A.157(1), the agreement shall provide authorization for the director to examine the offices, places of business, books, records, accounts, files and papers relating to the client funds.

(4) Funds disbursed from a trust account shall be by checks which are prenumbered and bear the words "Client Trust Account" upon the face of the check. A mortgage banker or mortgage broker shall account for all checks, including voided checks, as part of the books and records maintained by the mortgage banker or mortgage broker.

(5) In the case of residential loan applications, escrow instructions and instructions for trust fund disbursement of fees shall provide that no trust funds may be disbursed to the mortgage banker or mortgage broker until the mortgage banker or mortgage broker has provided the following minimum services and disclosures:

(a) A good faith estimate required by Regulation X, 24 C.F.R. Part 3500;

(b) A completed loan application;

(c) If prepared, a fee agreement;

(d) HUD guide(s) for home buyers;

(e) The adjustable rate mortgage booklet as prepared by the Federal Reserve Board, if applicable;

(f) Truth in Lending Act disclosures as required by 12 C.F.R. Part 226.

(6) In the event that the mortgage banker or mortgage broker accepts fees in advance of completing professional services, or accepts fees paid as a retainer to secure the availability of the mortgage banker or mortgage broker, or accepts a consulting fee for professional services, and such fees are subject to refund under the provisions of these rules, such amounts may be withdrawn from the trust account for the benefit of the mortgage banker or mortgage broker only when actually expended for the benefit of the client or five days after notice of the proposed withdrawal has been mailed to the client.

(7) Every mortgage banker or mortgage broker must maintain a record listing all persons employed by that firm who have signatory authority to disburse funds held in the trust account and the date such authority begins and ends.

Stat. Auth.: ORS 86A.136 & 86A.157

Stats. Implemented: ORS 86A.157

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 4-1999, f. & cert. ef. 12-23-99; Administrative correction 4-18-00; FCS 7-2001, f. & cert. ef. 8-1-01; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## **DIVISION 880**

### **LICENSING OF MORTGAGE LOAN ORIGINATORS**

#### **441-880-0005**

##### **Application of ORS 86A.200 to 86A.239 to Employees of Agencies of the United States, State Agencies, Local Governments and Housing Authorities**

As permitted by 12 C.F.R. § 1008.103(e)(6), the licensing provisions of ORS 86A.200 to 86A.239 do not apply to an employee of an agency of the United States, the executive department, a local government, a special government body, or a housing authority. The application of this rule is self-executing. For purposes of this rule:

(1) "Executive department" has the same meaning as the term is defined in ORS 174.112.

(2) "Local government" has the same meaning as the term is defined in ORS 174.116.

(3) "Special government body" has the same meaning as the term is defined in ORS 174.117.

(4) "Housing authority" has the same meaning as that term is used in ORS chapter 456.

Stat. Auth.: ORS 86A.242

Stats. Implemented: ORS 86A.203

Hist.: FCS 11-2011, f. & cert. ef. 11-23-11; FCS 4-2012, f. & cert. ef. 8-1-12

#### **441-880-0006**

##### **Application of ORS 86A.200 to 86A.239 to Employees of Bona Fide Nonprofit Organizations**

(1) As permitted by 12 C.F.R. § 1008.103(e)(7), the licensing provisions of ORS 86A.200 to 86A.239 do not apply to an employee of a bona fide nonprofit organization as that term is described by criteria established in OAR 441-880-0008, including a limited liability company of which the nonprofit corporation is the sole member, and subject to the following conditions:

(a) The employee may not originate residential mortgage loans outside the scope of the employee's duties and employment at the bona fide nonprofit organization without obtaining a mortgage loan originator license.

(b) The employee shall act as a mortgage loan originator only with respect to residential mortgage loans with terms that are in the best interest of the borrower, as that term is described by criteria established in OAR 441-880-0008.

(2) For purposes of OAR 441-880-0006 through 441-880-0008, "employee" has the same meaning as the criteria listed in OAR 441-850-0005, as applied to the nonprofit organization.

Stat. Auth.: ORS 86A.242

Stats. Implemented: ORS 86A.203

Hist.: FCS 11-2011, f. & cert. ef. 11-23-11; FCS 4-2012, f. & cert. ef. 8-1-12

#### **441-880-0007**

##### **Process for Determining if Nonprofit Organization is Bona Fide**

As required by 12 C.F.R. § 1008.103(e)(7)(ii), the process for determining whether a nonprofit organization is a bona fide nonprofit organization is as follows:

(1) A nonprofit organization may request in writing that the director determine whether the nonprofit organization is a bona fide nonprofit organization with respect to the licensing of employees as mortgage loan originators under ORS 86A.200 to 86A.239. The nonprofit organization shall supply all information and documentation necessary for the director to make a determination that the nonprofit organization meets the criteria established in 441-880-0008 in a timely manner. If the nonprofit organization registers a member-managed limited liability company for the purpose of loan origination activities, the determination request and supporting documentation must be provided by and address the limited liability company. The request will be denied if the nonprofit organization fails to provide documents requested by the director within 30 days following the request.

(2) A nonprofit organization shall submit, at a minimum, all the following information:

(a) The determination letter or other indicia from the Internal Revenue Service recognizing the nonprofit organization as exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, 26 U.S.C. § 501(c)(3).

(b) The nonprofit organization's organizing documents, including articles of incorporation filed under ORS 65.047 and bylaws filed under ORS 65.061.

(c) The nonprofit organization's evidence of registration as a charitable organization with the Attorney General under ORS 128.650.

(d) The most recent report filed with the Attorney General under ORS 128.670 detailing the nature of the assets held by the nonprofit organization and the administration of those assets by the organization.

(e) The nonprofit organization's most recent Form 990, Return of Organization Exempt from Income Tax, filed by the nonprofit organization.

(f) If not included within the nonprofit organization's Form 990 tax return, a description of the compensation and incentive structure for employees subject to any determination under these rules.

(g) A description of each loan program provided by the nonprofit organization, including a description of eligibility, purpose, loan terms, key features and servicing or securitization plans, if any.

(h) A copy of the nonprofit organization's complaint process, as required by 441-880-0008.

(i) Other information as requested by the director.

(3)(a) An employee of a nonprofit organization that has requested that the director make a determination that the organization is a bona fide nonprofit organization, and where the statements in such application are true and correct at the time made, is not subject to the licensing requirements of ORS 86A.200 to 86A.239 during the time that the director is making the determination.

(b) An employee of a nonprofit organization entity that has not requested that the director determine if the organization is a bona fide nonprofit organization is subject to the licensing requirements of ORS 86A.200 to 86A.239.

(4) A determination by the director on the application of ORS 86A.200 to 86A.239 to employees of bona fide nonprofit organizations, or during the period of time when the director is making a determination under (2)(a) of this rule, does not relieve the nonprofit organization from meeting any applicable requirements of laws other than ORS 86A.200 to 86A.239, including but not limited to federal and state laws related to lending, charitable activities or consumer protection.

(5)(a) A nonprofit organization determined by the director to be a bona fide nonprofit organization with respect to the licensing of employees as mortgage loan originators under ORS 86A.200 to 86A.239 shall submit to the director at least annually a certification that the nonprofit organization continues to meet the criteria under which the nonprofit organization requested a determination under this rule.

(b) The nonprofit organization shall attach with the certification the most recent financial audit performed by an independent third-party auditor including, but not limited to, audits performed on nonprofit organizations receiving federal funds according to OMB Circular A-133, published by the Office of Management and Budget and in effect as of the adoption of this rule.

(c) A nonprofit organization determined by the director to be a bona fide nonprofit organization with respect to the licensing of employees as mortgage loan originators under ORS 86A.200 to 86A.239 shall disclose to the director any significant changes to the materials submitted under this rule or to the nonprofit organization's operations affecting a determination under ORS 441-880-0008 as soon as is practicable.

(6)(a) In addition to the certifications required under this section, the director shall be authorized to periodically examine the books and activities of an organization determined to be a bona fide nonprofit organization by the director for compliance with OAR 441-880-0008.

(b) If the director determines that a nonprofit organization no longer satisfies the criteria established in OAR 441-880-0008, the director shall, subject to ORS chapter 183, rescind the director's determination that the organization's is a bona fide nonprofit organization with respect to the licensing of employees as mortgage loan originators under ORS 86A.200 to 86A.239.

(c) An examination under this section is an audit or examination for purposes of OAR 441-860-0110.

Stat. Auth.: ORS 86A.242

Stats. Implemented: ORS 86A.203

Hist.: FCS 11-2011, f. & cert. ef. 11-23-11; FCS 4-2012, f. & cert. ef. 8-1-12

#### **441-880-0008**

##### **Criteria for Determining if Nonprofit Organization is Bona Fide**

As required by 12 C.F.R. § 1008.103(e)(7)(ii), a bona fide nonprofit organization is an organization that meets all of the following criteria:

(1) The nonprofit organization has been granted a tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, 26 U.S.C. § 501(c)(3).

(2) The nonprofit organization promotes affordable housing, provides homeownership education, or provides similar services.

(3) The nonprofit organization conducts its activities in a manner that serves public or charitable purposes.

(a) The director may consider the following activities conclusive when making a determination under this section: (A) Making loans for the purpose of providing assistance for downpayments, closing costs, or other home purchase subsidies;

(B) Making loans for the purpose of funding housing rehabilitation projects;

(C) Making loans for the purpose of providing energy efficiency assistance; or

(D) Making loans for the purpose of avoiding or preventing foreclosure.

(b) For purposes of this section, organizations that engage in the brokering of mortgage loans in a manner that would require a license under ORS 86A.100(5) will not be considered to have conclusively met the presumption in subsection (a).

(4) The nonprofit organization charges no more in fees than is necessary to support the organization's loan origination program activities. The director may consider recordation fees, application fees and housing counseling fees that together do not exceed one percent of the principal of loan as conclusive when making a determination under this section.

(5) The nonprofit organization compensates its employees in a manner that does not incentivize employees to act other than in the best interests of the borrower. For purposes of this section, compensation based on loan volume, loan terms, or other measures of performance will not be considered to have conclusively met the presumption that the nonprofit organization compensates employees in a manner that does not incentivize employees to act other than in the best interests of the borrower. (6) The nonprofit organization provides for the borrower residential mortgage loans that are consistent with loan origination in a public or charitable context, that contain terms in the best interest of the borrower, and that are comparable to mortgage loans and housing assistance provided under government housing assistance programs. The director may consider any one of the following loan terms conclusive when making a determination that a loan is made in the best interest of the borrower:

(a) Loan terms that do not charge a recipient for the accrual of interest;

(b) Loan terms that charge interest at below market rates;

(c) Loan terms that require a borrower to qualify for the loan by the contribution of sweat equity;

(d) Loan terms that forgive repayment in whole or in part, whether over a period of time, on a specified date, or subject to ownership or occupancy conditions; or

(e) Loan terms that defer repayment for a minimum amount of time, until the residential dwelling is sold, or until the recipient no longer occupies the residential dwelling. This subsection does not apply to home equity conversion mortgages, commonly known as reverse mortgages.

(f) A loan whose terms restrict the use of the property by the borrower to the borrower's principal residence shall not be deemed to be a term that is unfavorable to the borrower so long as the loan otherwise qualifies under subsections (a) through (e) of this rule.

(7) The nonprofit organization requires or provides to employees subject to 441-880-0006 training on state and federal fair lending laws and consumer protection laws that are relevant to the loan origination services that the nonprofit organization provides to its borrowers. The director may consider training in one or more of the following laws directly related to the nonprofit organization's loan origination activities conclusive when making a determination under this section:

(a) The Equal Credit Opportunity Act, 15 U.S.C. § 1601 et seq. and Regulation B, 12 C.F.R. Part 1002.

(b) The Truth in Lending Act, 15 U.S.C. § 1601 et seq. and Regulation Z, 12 C.F.R. Part 1026.

(c) The Fair Credit Reporting Act, 15 U.S.C. §§ 1681 et seq. and Regulation V, 12 C.F.R. Part 1022.

(d) The Home Ownership and Equity Protection Act, 15 U.S.C. § 1639 et seq.

(e) The Home Mortgage Disclosure Act, 12 U.S.C. § 2801 et seq. and Regulation C, 12 C.F.R. Part 1003.

(f) The Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 et seq. and regulations implementing the Act, 12 C.F.R. Part 1024.

(g) The Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. and Regulation F, 12 C.F.R. Part 1006.

(h) Portions of the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801-6809 and §§ 6821-6827, and regulations implementing the Act, 12 C.F.R. Part 1016, that relate to the privacy of consumers' personal financial information.

(i) The S.A.F.E. Mortgage Licensing Act of 2008, 12 U.S.C. § 5101 et seq., and regulations implementing the Act, 12 C.F.R. Part 1008.

(8) The nonprofit organization requires a state criminal records check of each individual employed by the nonprofit organization to engage, in whole or in part, in loan origination activities.

(9) The nonprofit organization requires or provides continuing education on state and federal fair lending laws and consumer protection laws referenced under section (8) of this rule that are relevant to the loan origination services that the nonprofit organization provides to its borrowers.

(10) The nonprofit organization implements and administers a complaint process that, at a minimum, provides a process for receiving complaints from borrowers and creates a record of the resolution of the complaint, if any.

Stat. Auth.: ORS 86A.242

Stats. Implemented: ORS 86A.203

Hist.: FCS 11-2011, f. & cert. ef. 11-23-11; FCS 4-2012, f. & cert. ef. 8-1-12

#### **441-880-0020 [Renumbered to 441-880-0215]**

#### **441-880-0050 [Renumbered to 441-860-0045]**

#### **441-880-0200**

##### **Application Process; Correcting Deficiencies in Application; Abandonment**

(1) An applicant for a license as a mortgage loan originator shall submit a completed Form MU4 together with all required application materials and information to the Nationwide Mortgage Licensing System and Registry.

(2) If an applicant or a mortgage loan originator submits an application, filing or amendment which is incomplete in any respect, the director shall notify the applicant of a deficiency through the National Mortgage Licensing System and Registry. The applicant or mortgage loan originator shall correct any deficiencies associated with the application, filing or amendment within 30 days of being notified that the director placed a deficiency on the person's application. A challenge submitted to the Nationwide Mortgage Licensing System and Registry as set out in OAR 441-850-0050 shall extend the time allowed for correcting deficiencies for the duration of the challenge.

(3) If an applicant fails to correct deficiencies as described in section (2) of this rule, the application shall be deemed to be abandoned. Any fees paid by the applicant under OAR 441-880-0400 will not be refunded due to abandonment. An applicant whose application is abandoned under this rule may reapply to obtain a mortgage loan originator license.

Stat. Auth.: ORS 86A.242

Stats. Implemented: ORS 86A.209

Hist.: FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10; FCS 4-2012, f. & cert. ef. 8-1-12

#### **441-880-0205**

##### **Interim Licenses**

Reserved.

Stat. Auth.: ORS 86A.242

Stats. Implemented: ORS 86A.209

Hist.: FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10; FCS 4-2012, f. & cert. ef. 8-1-12

#### **441-880-0210**

##### **Financial Responsibility Criteria**

(1) For purposes of this rule, an applicant is not financially responsible if the applicant has shown a disregard of his or her own financial circumstances, taking into consideration the totality of the applicant's financial circumstances.

(2) Factors that the director may consider in determining whether an applicant has not demonstrated financial responsibility include, but are not limited to, the following:

(a) Current outstanding judgments or material litigation, excluding judgments solely as a result of medical expenses;

(b) Current outstanding tax liens or other government liens and filings;

(c) A foreclosure within the past three years and the type of property subject to foreclosure, whether residential or commercial;

(d) Pending or completed bankruptcy proceedings, and the nature of the proceedings, occurring within the past five years; or

(e) A pattern of seriously delinquent accounts within the past three years.

(3) In assessing the financial responsibility of the applicant, the director may consider extenuating or mitigating factors, including but not limited to the following:

(a) Involuntary loss of job or income;

(b) Involuntary medical expenses;

(c) Divorce;

(d) Attempting workout arrangements with creditors; or

(e) Any other factor the director believes reflects circumstances beyond the control of the applicant.

Stat. Auth.: ORS 86A.242

Stats. Implemented: ORS 86A.215

Hist.: FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10; FCS 4-2012, f. & cert. ef. 8-1-12

#### **441-880-0215**

##### **Oregon Examination For Mortgage Loan Originators**

(1) Each applicant for a mortgage loan originator license must pass an entry-level examination approved by the National Mortgage Licensing System and Registry and an examination on Oregon statutes and rules approved by the director and the National Mortgage Licensing System and Registry prior to engaging in activities as an Oregon mortgage loan originator.

(a) A passing score on either examination described in section (1) of this rule is 75 percent or greater.

(b) A passing score on either examination described in section (1) of this rule is valid for 2 years from the date of passing the examination.

(2) An applicant that fails to pass an examination may retake the examination consistent with ORS 86A.215.

(3) Notwithstanding section (2), an applicant that knowingly acts in a dishonest or deceitful manner in connection with an examination required under this rule is considered to have engaged in an act, practice or course of business that operates or would operate as a fraud or deceit as used in ORS 86A.236(2). In addition to other remedies available, the director may refuse to issue the person a license as a mortgage loan originator.

Stat. Auth.: ORS 86A.242

Stats. Implemented: ORS 86A.215

Hist.: FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 1-2007, f. & cert. ef. 1-17-07; Renumbered from 441-880-0020 by FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10; FCS 4-2012, f. & cert. ef. 8-1-12

#### **441-880-0300**

##### **License Renewal; Reinstatement Process**

(1) A mortgage loan originator license shall expire on December 31 of each calendar year. At least 30 days prior to the expiration of a mortgage loan originator license, a mortgage loan originator shall submit all information required to the National Mortgage Licensing System and Registry. The renewal application shall include evidence that:

(a) The mortgage loan originator submitted a complete Form MU4 and all required application materials and information to the Nationwide Mortgage Licensing System and Registry;

(b) The applicant continues to meet the minimum requirements for a mortgage loan originator license in ORS 86A.212;

(c) The applicant paid any required fee, as applicable, under OAR 441-880-0400; and

(d) The applicant completed ten hours of continuing education approved by the Nationwide Mortgage Licensing System and Registry as reported for the current calendar year.

(2) A person applying to reinstate a mortgage loan originator license that has lapsed for a period of five or more years, whether or not the applicant was employed or continued to engage in business as a mortgage loan originator during the period of the lapse, shall:

(a) Complete the continuing education requirements under this section (1) of this rule; and

(b) Pass a qualified written test under ORS 86A.215 and OAR 441-880-0215.

Stat. Auth.: ORS 86A.242

Stats. Implemented: ORS 86A.215 & 86A.218

Hist.: FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10; FCS 4-2012, f. & cert. ef. 8-1-12

#### **441-880-0310**

##### **Mortgage Loan Originator Continuing Education Requirements; Curing Deficiencies; License Sanctions for Failure to Maintain Continuing Education**

A mortgage loan originator shall take and maintain continuing education courses in order to take an application for a residential mortgage loan or negotiate the terms of a residential mortgage loan, consistent with the requirements of this rule.

(1) A mortgage loan originator shall take a continuing education course or courses approved by the Nationwide Mortgage Licensing System and Registry. A mortgage loan originator shall complete at least ten hours of continuing education per calendar year.

(2) A mortgage loan originator who fails to meet the continuing education requirement shall not take an application for a residential mortgage loan or negotiate the terms of a residential mortgage loan until the mortgage loan originator makes up any continuing education required by this rule.

(3)(a) A mortgage loan originator may submit a written request to make up missing hours in continuing education due to hardship or illness. A written request shall:

(A) Describe the hardship or illness; and

(B) Describe why the mortgage loan originator was unable to meet requirements for continuing education.

(b) In all requests under this rule, the mortgage loan originator has the burden of proving the hardship or illness responsible for the missing hours in continuing education.

(c) The director shall consider and may grant a request, but the director shall not grant a request for the following:

(A) Failure or inability to pay applicable fees to obtain or maintain a mortgage loan originator license;

(B) A suspension of business activities as a mortgage loan originator; or

(C) Incapacity due to imprisonment.

(4) Nothing in this rule affects the director's authority to require by order a mortgage loan originator to make up missing hours in continuing education under ORS 86A.218 or to decline to renew the person's mortgage loan originator license.

(5) The director may deny, suspend, make inactive, or refuse to renew the mortgage loan originator's license until the mortgage loan originator makes up any missing hours of continuing education required this section.

Stat. Auth.: ORS 86A.242

Stats. Implemented: ORS 86A.218

Hist.: FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10; FCS 4-2012, f. & cert. ef. 8-1-12

#### **441-880-0315**

##### **Notice of Employment Status by Employer of Mortgage Loan Originator; Prohibition on Origination Activities Before Sponsorship**

(1) All mortgage brokers or mortgage bankers employing mortgage loan originators shall provide notice to the Nationwide Mortgage Licensing System and Registry when it authorizes a mortgage loan originator to originate Oregon residential mortgage loans. Notice must be made by submitting a request to sponsor the mortgage loan originator's license.

(2) No mortgage banker or broker shall allow a mortgage loan originator to originate residential mortgage loans for the mortgage banker or mortgage broker until the Director has accepted the mortgage banker or mortgage broker's sponsorship request.

(3) All mortgage bankers or mortgage brokers shall provide notice within 30 days to the Nationwide Mortgage Licensing System and Registry when a mortgage loan originator ceases to originate loans for the mortgage banker or mortgage broker. Notice must be made by terminating the sponsorship of the mortgage loan originator.

Stat. Auth.: ORS 86A.136

Stats. Implemented: ORS 86A.179

Hist.: FCS 4-2012, f. & cert. ef. 8-1-12

#### **441-880-0320**

##### **Notice of Significant Events by Mortgage Loan Originator**

A mortgage loan originator shall be required to notify the director within 30 days of the occurrence of any of the following significant developments:

(1) Filing for bankruptcy;

(2) Notice that a state began license revocation proceedings against the mortgage loan originator;

(3) Filing of a felony indictment against the mortgage loan originator;

(4) Convictions for any felony or conviction for a misdemeanor involving fraud;

(5) Instances of material litigation occurring against the mortgage loan originator;

(6) Changes in the information required on the mortgage loan originator's application form, including, but not limited to address changes, phone number changes, and other information; and

(7) Changes in the employment status of a mortgage loan originator.

Stat. Auth.: ORS 86A.188

Stats. Implemented: ORS 86A.188

Hist.: FCS 4-2012, f. & cert. ef. 8-1-12

#### **441-880-0400**

##### **Fees Payable to the Director**

(1) In addition to any fees required to participate in the National Mortgage Licensing System and Registry, a person applying for a mortgage loan originator license shall pay to the director a nonrefundable fee of \$80 for the issuance of a mortgage loan originator license.

(2) In addition to any fees required to participate in the National Mortgage Licensing System and Registry, a person renewing a mortgage loan originator license shall pay to the director a nonrefundable fee of \$65 for the renewal of a mortgage loan originator license.

Stat. Auth.: ORS 86A.242

Stats. Implemented: ORS 86A.136, 86A.206, 2011 OL Ch. 816 § 1

Hist.: FCS 12-2009, f. 12-2-09, cert. ef. 1-1-10; FCS 5-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-28-11; FCS 8-2011, f. & cert. ef. 10-3-11

## **DIVISION 885**

### **CANCELLATION OF LICENSE**

#### **441-885-0010**

##### **Cancellation of Mortgage Banker Or Mortgage Broker License for Failure to Maintain Corporate Surety Bond or Irrevocable Letter of Credit**

(1) The director may cancel the license of a mortgage banker or mortgage broker for failing to maintain a corporate surety bond or irrevocable letter of credit as required by ORS 86A.106 and OAR 441-860-0090 or ORS 86A.227 and OAR 441-860-0085. The procedure for canceling a mortgage banker or mortgage broker license under this rule is as follows:

(a) Upon notification from the surety of notice of intent to cancel the corporate surety bond, or upon notification from the financial institution of notice of intent to cancel the irrevocable letter of credit, the director shall send written notice to the mortgage banker or mortgage broker. This notice shall be sent by certified mail within three business days of receipt of notification from the surety or financial institution. Failure to send the notice within three business days will not preclude cancellation under subsection (1)(b) of this rule.

(b) If the director does not receive an effective corporate surety bond or irrevocable letter of credit by 5 p.m. Pacific Time seven business days after the corporate surety bond or letter of credit cancellation date, the director shall cancel the license of the mortgage banker or mortgage broker. The cancellation of the mortgage banker or mortgage broker license shall be effective as of the corporate surety bond

or irrevocable letter of credit cancellation date. For purposes of this rule, an effective corporate surety bond or irrevocable letter of credit is one that commences no later than the cancellation date of the previous corporate surety bond or irrevocable letter of credit.

(2) A mortgage banker or mortgage broker whose license has been cancelled may obtain a mortgage banker or mortgage broker license in Oregon by submitting a new application.

(3) Upon cancellation of a mortgage banker or mortgage broker license all rights under the license are terminated, except that the director shall retain jurisdiction to investigate the professional activities pursuant to ORS 86A.124.

(4)(a) The director may change the mortgage loan originator's license status to inactive if the director finds that the mortgage loan originator is not covered by a corporate surety bond or the corporate surety bond covering the mortgage loan originator is maintained in an insufficient amount under OAR 441-860-0085.

(b) The director may change the mortgage loan originator's license status to approved if the mortgage loan originator provides evidence acceptable to the director that the mortgage loan originator is covered by a corporate surety bond or the corporate surety bond covering the mortgage loan originator is maintained in a sufficient amount under OAR 441-860-0085.

Stat. Auth.: ORS 86A.106, 86A.242

Stats. Implemented: ORS 86A.121, 86A.227

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## **DIVISION 910**

### **DEBT MANAGEMENT**

#### **441-910-0000**

##### **Definitions**

The definitions of terms used in ORS 697.602 and the rules of OAR chapter 441, division 910 are:

(1) "Act as a broker" or "brokering" includes any of the following activities undertaken for the payment of money or other valuable consideration:

(a) Soliciting or receiving an application from a consumer for a debt management service;

(b) Providing a consumer's name, address or other information that identifies the consumer to a debt management service provider for the purpose of arranging the provision of a debt management service;

(c) Referring a consumer to another debt management service provider, if the person is a debt management service provider; or

(d) Forwarding or providing a completed application for a debt management service to a debt management service provider.

(2) "Advantageous to the consumer" means a plan for a debt management service that places a consumer in a more favorable or beneficial position in relation to the consumer's debt than if the consumer did not agree to debt management services, taking into consideration the suitability of the proposed services and the customer's ability to pay for services. A plan under this section includes, but is not limited to, the following:

(a) A plan that improves or preserves a consumer's credit record, history or rating;

(b) A plan that enables a consumer to obtain or use credit in the future; or

(c) A plan that obtains favorable or beneficial changes to the principal, interest, loan term, or other key terms of an existing debt obligation.

(3) "An activity for which a person receives money or other valuable consideration or expects to receive money or other valuable consideration" under ORS 697.602 does not include a negotiation, an offer, an attempt or an agreement to negotiate the sale, exchange, purchase, rental or leasing of real estate by a licensed real estate broker if:

(a) The sale price of the real estate is for an amount that is less than the amount of the seller's outstanding obligation on the home loan, commonly known as a short sale; and

(b) The real estate broker receives compensation that is usual and customary for a real estate broker and under the terms of an executed real estate contract with the debtor as a real estate seller.

(4) "Director" means the Director of the Department of Consumer and Business Services.

(5) "Trust account" means an account held at an insured institution taking deposits at its headquarters in Oregon or a branch in Oregon into which all funds received or handled on behalf of Oregon consumers by the debt management service provider are initially deposited.

Stat. Auth.: ORS 697, 2009 OL ch. 604, § 21

Stats. Implemented: ORS 697.632

Hist.: DC 2-1984, f. & ef. 1-16-84; Renumbered from 814-106-0000; FCS 4-2005, f. 12-8-05, cert. ef. 1-1-06; FCS 5-2009(Temp), f. & cert. ef. 8-14-09 thru 2-9-10; FCS 13-2009, f. 12-18-09, cert. ef. 1-1-10; FCS 12-2011, f. 12-15-11, cert. ef. 1-1-12

### **Registration**

#### **441-910-0005**

##### **Exemptions from Debt Management Service Provider Registration**

(1) An attorney provides debt management services only incidentally to the practice of law if:

(a) The attorney only provides the services to a client of the attorney and only while acting as an attorney on behalf of the client;

(b) The attorney does not act as a broker for debt management services;

(c) If the attorney refers a consumer who is a client of the attorney to a third party debt management services provider, the attorney does not receive compensation, directly or indirectly, for the referral and in the attorney's professional judgment the attorney believes the referral will be beneficial to the client;

(d) The attorney does not provide debt management services to a third party on behalf of a consumer who is a client of the attorney; and

(e) Any advertisement used by the attorney concerning debt management services complies with the Oregon Rules of Professional Conduct and formal ethics opinions published by the Oregon State Bar applicable to advertising.

(2) An individual licensed as a real estate broker under ORS 696.020 may negotiate, offer, attempt or agree to negotiate the sale, exchange, purchase, rental or leasing of real estate without being registered as a debt management service provider if the licensed real estate broker only receives the usual and customary fees of a real estate broker under the terms of an executed real estate contract with the debtor as a real estate seller.

(3) A nonprofit budget and credit counseling agency approved by the United States trustee overseeing the administration of bankruptcy cases may claim the exemption in ORS 697.612(3)(L) if:

(a) The nonprofit budget and credit counseling agency provides an individual or group briefing that outlines the opportunities for available credit counseling and assisted such individual in performing a related budget analysis that is not a budget analysis under OAR 441-910-0140;

(b) An individual or group briefing is provided only for persons likely to become debtors under 11 U.S.C. § 109(h); and

(c) The nonprofit budget and credit counseling agency does not otherwise engage in any activity constituting debt management services or act as a broker for debt management services.

(4) A nonprofit entity that only provides advice, assistance, instruction or instructional materials to a consumer in return for a fee reasonably calculated to pay the cost of making the advice, assistance, instruction or instructional materials available may claim the exemption in ORS 697.612(3)(m) if:

(a) The nonprofit entity does not conduct any activities constituting debt management services or act as a broker for debt management services;

(b) The nonprofit entity does not advise a consumer in whole or in part by conducting a budget analysis described in OAR 441-910-0415; and

(c) The nonprofit entity's reasonably calculated fee to pay the cost of making the advice, assistance, instruction or instructional materials available does not in any case exceed \$25.

(5) An organization or a counselor approved by the United States Department of Housing and Urban Development may claim the exemption in ORS 697.612(3)(n) if the organization or counselor:

(a) Is under contract or receiving a grant through the Department of Housing and Urban Development's Housing Counseling program;

(b) The contract or grant under subsection (a) of this section is made or funded only for the purposes of:

(A) Providing assistance to eligible homebuyers to find and purchase homes;

(B) Helping renters locate and qualify for assisted rental units;

(C) Helping eligible homebuyers obtain affordable housing;

(D) Assisting homeowners to avoid or mitigate foreclosures;

(E) Assisting renters to avoid evictions;

(F) Helping the homeless find temporary or permanent shelter;

(G) Reporting fair housing and discrimination complaints; or

(H) Addressing housing problems; and

(c) The organization or counselor does not otherwise engage in any activity constituting debt management services or act as a broker for debt management services.

Stat. Auth.: 2009 Or Laws ch. 604, § 21

Stats. Implemented: ORS 697.612

Hist.: FCS 13-2009, f. 12-18-09, cert. ef. 1-1-10

#### **441-910-0010**

##### **Registration Requirements**

(1) All persons performing debt management services shall apply for registration on a form provided by the director. The application form shall require the person to supply the information required by ORS 697.632 and the following:

(a) The identification number of the applicant's Oregon issued certified public accountant or law license, if the applicant holds a certified public accountant or law license;

(b) The name and identifying number, if any, of an applicant's license, registration, or similar indicia of permission as a debt management service provider or similar form of license or registration in any other state;

(c) A description of any other business activities not constituting debt management services and a description or depiction of the debt management service provider's organizational structure;

(d) Any assumed business name registered with the Secretary of State under which the applicant will conduct business as a debt management service provider; and

(e) The name and the location of the insured institution the applicant establishes to keep the consumer funds that the debt management service provider holds.

(2) The person shall attach to the application for registration as a debt management service provider the following:

(a) A correct and true copy of the surety bond required by ORS 697.642 in a form and on terms approved by the director in the amount of \$25,000.

(b) A copy of any disclosure documents, agreements, or contracts to be signed by a consumer for any debt management services.

(c) A sample budget analysis conforming to the minimum requirements in OAR 441-910-0415.

(d) A copy of the applicant's proposed fee schedule.

(e) A resume of the debt management service provider's managing members, managing partners, executive officers, directors, principals, or persons authorized to enter into contracts or make changes in policy for a debt management service provider.

(f) Financial statements prepared in accordance with generally accepted accounting principles, consisting of a balance sheet and a statement of income or operations and are dated not more than 12 months prior to submission of the application; and

(g) A signed disclosure for the applicant and each person identified in subsection (e) of this section of the following occurring within the five year period prior to application:

(A) Any adverse judgment by a state or federal court;

(B) Any pending bankruptcy proceedings or any bankruptcy judgments;

(C) Any injunctions issued to stop an act involving a debt management practice;

(D) Any arbitration award made in favor of another person;

(E) Any adverse final order issued by a federal or state agency;

(F) Any cease and desist order issued by the director; and

(G) Any criminal convictions, if an essential element of the crime involved fraud.

(3) An application for registration as a debt management service provider shall be considered abandoned if:

(a) The director has had one or more incomplete documents as part of an application for a minimum of 60 days; and

(b) The applicant has not responded within 30 days following a written notice from the director requesting submission of all fees, documents, or information necessary to make the application complete.

(4) The director shall not issue a registration as a debt management service provider unless the applicant pays any applicable fee specified in OAR 441-910-0605.

(5) A debt management services provider registration expires on December 31 two years after issuance.

Stat. Auth.: 2009 OL Ch. 604, § 21

Stats. Implemented: ORS 697.632 & 697.752

Hist.: DC 16-1983(Temp), f. & ef. 6-28-83; DC 2-1984, f. & ef. 1-16-84; Renumbered from 814-106-0005; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88; FCS 5-2000, f. & cert. ef. 3-9-00; FCS 4-2005, f. 12-8-05, cert. ef. 1-1-06; FCS 13-2009, f. 12-18-09, cert. ef. 1-1-10

#### **441-910-0030**

##### **Renewal**

A debt management service provider shall renew a registration by completing the following on or before December 31 of the year the debt management service provider's registration expires:

(1) Completing the renewal form supplied by the director; and

(2) Paying any required fee for renewal under OAR 441-910-0600.

Stat. Auth.: 2009 OL Ch 604, § 21

Stats. Implemented: ORS 697.632

Hist.: DC 16-1983(Temp), f. & ef. 6-28-83; DC 2-1984, f. & ef. 1-16-84; Renumbered from 814-106-0015; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88; FCS 4-2005, f. 12-8-05, cert. ef. 1-1-06; FCS 13-2009, f. 12-18-09, cert. ef. 1-1-10

#### **441-910-0050**

##### **Update Filings**

(1) At least ten days prior to a change in ownership, address, bonding company, or information relating to the trust or operating account, the debt management service provider shall notify the director in writing of the changes.

(2) Within ten days after learning of an arrest of any debt management service provider owner, supervisor, or employee on a charge an essential element of which is fraud, the debt management service provider shall notify the director in writing of the known allegations.

Stat. Auth.: 2009 OL Ch 604, § 21

Stats. Implemented: ORS 697.632

Hist.: DC 16-1983(Temp), f. & ef. 6-28-83; DC 2-1984, f. & ef. 1-16-84; Renumbered from 814-106-0030; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88; FCS 4-2005, f. 12-8-05, cert. ef. 1-1-06; FCS 13-2009, f. 12-18-09, cert. ef. 1-1-10

#### **441-910-0055**

##### **Fees Payable to the Director**

(1) A debt management service provider shall pay to the director the following fees:

(a) At the initial application for a registration, a nonrefundable application fee of \$350.

(b) On or before the date in which a debt management service provider's registration expires, a nonrefundable renewal fee of \$350.

(2) When the director conducts an examination under ORS 697.732, the debt management service provider shall pay an examination fee of \$75 per hour for each person conducting the examination.

(3) Notwithstanding section (2) of this rule:

(a) When the director conducts an examination under ORS 697.732 outside of Oregon, the debt management service provider shall pay an examination fee of \$75 per hour for each person conducting the examination plus the actual cost associated with the examination, including travel.

(b) If the work described in section (2) of this rule is performed by a consultant hired by contract for the particular work, the charge payable by the debt management service provider is the actual cost to the director for the contract consultant.

Stat. Auth.: 2009 OL Ch 604, § 21

Stats. Implemented: ORS 697.732

Hist.: DC 2-1984, f. & ef. 1-16-84; Renumbered from 814-106-0055; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88; Renumbered from 441-910-0100, FCS 4-2005, f. 12-8-05, cert. ef. 1-1-06; FCS 8-2008, f. & cert. ef. 8-28-08; FCS 13-2009, f. 12-18-09, cert. ef. 1-1-10

**Business Activities**

**441-910-0080**

**Joint Trust Accounts**

An account at an insured institution may not be used jointly as a trust account and an operating account.

Stat. Auth.: 2009 OL Ch 604, § 21

Stats. Implemented: ORS 697.682

Hist.: DC 2-1984, f. & ef. 1-16-84; Renumbered from 814-106-0045; FCS 4-2005, f. 12-8-05, cert. ef. 1-1-06; FCS 13-2009, f. 12-18-09, cert. ef. 1-1-10

**441-910-0091**

**Initial Counseling Fees**

If a debt management service provider charges an initial fee for debt management services as allowed under ORS 697.692(1)(a), the debt management service provider shall charge the fee within 120 days of signing a contract with the consumer for debt management services.

Stat. Auth.: 2009 OL Ch 604, § 21

Stats. Implemented: ORS 697.692

Hist.: FCS 13-2009, f. 12-18-09, cert. ef. 1-1-10

**441-910-0094**

**Contracts for Debt Management Services**

(1) A debt management service provider may not enter into separate contracts for each debt or obligation due by a consumer. A debt management service provider may enter into a single contract with a consumer for debt management services that specifies the provision of different debt management services for each debt or obligation. If a debt management service provider enters into an agreement with more than one consumer for debt management services, each consumer party to the agreement shall be considered one consumer.

(2) For purposes of this rule, “consumer” means an individual that has entered into a contract for debt management services. However, when a contract covers jointly-held debt and the services will be provided to the co-debtors, such as husband and wife or domestic partners, then “consumer” shall be both of the co-debtors and they shall only be charged a single set of fees.

(3) Notwithstanding subsection (2)(a), a debt management provider may enter into separate debt management service contracts and charge separate fees for each spouse and domestic partners if the spouses or domestic partners seek services for individually held debt. The burden will be upon the debt management service provider to establish the basis for charging two sets of fees.

Stat. Auth.: 2009 OL Ch 604, § 21

Stats. Implemented: ORS 697.652

Hist.: FCS 13-2009, f. 12-18-09, cert. ef. 1-1-10

**441-910-0099**

**Fee Schedules**

Appendix A is incorporated by reference for the purpose of illustrating the fee structure in ORS 697.692 and OAR 441-910-0092.

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: 2009 OL Ch 604, § 21

Stats. Implemented: ORS 697.692

Hist.: FCS 13-2009, f. 12-18-09, cert. ef. 1-1-10

**441-910-0135**

**Loan Modifications**

(1) A person registered as a debt management service provider may modify or offer to modify the terms and conditions of a consumer’s existing loan or obligation as described in ORS 697.602 if the modification meets all the following conditions:

(a) The existing loan or obligation is in default, is in imminent danger of default, or there is an objectively reasonable basis to believe that the loan or obligation will default;

(b) The borrower is not required to pay fees normally assessed for a new loan or obligation to receive the modification; and

(c) The contract or agreement makes or is anticipated to make permanent or long-term changes to the principal, interest, length of the loan or obligation, or other key terms of the existing loan or obligation.

(2) A debt management service provider meeting the requirements of section (1) of this rule may charge the fees allowed under ORS 697.692.

(3) Section (1) of this rule shall not be construed to allow a debt management service provider to make or offer to make a new loan or obligation, including residential mortgage loans.

(4) Notwithstanding section (3) of this rule, a mortgage loan originator regulated by the director under applicable law may modify or offer to modify the terms and conditions of an existing residential mortgage loan without a registration as a debt management service provider.

(5) The term “modifying or offering to modify terms and conditions of an existing loan or obligation” does not include an individual who negotiates with a consumer to modify a loan if:

(a) The individual is either an employee or has contracted to represent a lender or loan servicer;

(b) The loan modification activity is within the scope of the individual’s responsibilities for the lender or loan servicer; and

(c) The individual receives no direct compensation from the consumer for the individual’s services.

Stat. Auth.: 2009 OL Ch 604, § 21

Stats. Implemented: ORS 697.602

Hist.: FCS 13-2009, f. 12-18-09, cert. ef. 1-1-10

**441-910-0145**

**Budget Analysis**

(1) A debt management service provider shall not enter into an agreement for debt management services with a consumer until the debt management service provider completes a budget analysis that conforms to the requirements of this rule and determines that debt management services will be feasible and advantageous to the consumer. The budget analysis shall be in writing or be in a form easily reducible to written form. The budget analysis shall include, but not be limited to, the following information:

(a) The name and address of the consumer;

(b) The consumer’s number of dependents;

(c) All wages, salary, and other income;

(d) The number of exemptions claimed for federal income tax withholding;

(e) Any payroll deductions and net take-home pay;

(f)(A) Housing costs, including rents, leases or other consideration paid for the use of property; or

(B) If the consumer is the owner of a home, any liens, mortgages or other claims or liabilities attached to the consumer’s property other than taxes and monthly payment on the residence;

(g) The type and amount of other fixed periodic payments;

(h) A complete list of reasonable and necessary living expenses for food, clothing, utilities, transportation, insurance, and other items;

(i) A complete list of creditors, showing accounts subject to debt management services and accounts not subject to debt management services;

(j) Information on any existing garnishments and judgments;

(k) Periodic amount available for payment toward the plan; and

(L) Anticipated near-term changes in the consumer’s economic circumstances.

(2) If a debt management service provider enters into an agreement for debt management services with a consumer to improve or preserve a consumer’s credit record, history or rating, the budget analysis shall include, but not be limited to, the following information:

(a) The name and address of the consumer;

(b) All wages, salary, and other income;

(c)(A) Housing costs, including rents, leases or other consideration paid for the use of property; or

(B) If the consumer is the owner of a home, any liens, mortgages or other claims or liabilities attached to the consumer’s property other than taxes and monthly payment on the residence;

(d) The type and amount of other fixed periodic payments;

(e) A complete list of creditors, showing accounts subject to debt management services and accounts not subject to debt management services; and

(f) Anticipated near-term changes in the consumer’s economic circumstances.

(3) A debt management service provider that completes a budget analysis shall give the consumer a written document that:

(a) Informs the consumer that the budget analysis is conditioned on the information provided by the consumer;

(b) Includes a statement that discusses the options for debt management services that may be advantageous for the consumer.

(c) Includes a copy of the budget that formed the basis for the analysis

(d) Warns the consumer that a creditor may not accept a plan for debt management services based on the budget analysis.

Stat. Auth.: 2009 OL Ch 604, § 21

Stats. Implemented: ORS 697.652

Hist.: FCS 13-2009, f. 12-18-09, cert. ef. 1-1-10

**441-910-0150**

**Disclosure of Pass-Through Charges by Debt Management Service Providers**

(1) When a debt management service provider is required to disclose information under ORS 697.707(3)(b), the debt management service provider must disclose

(a) Any credit report costs that they will pass on to the consumer.

(b) Any actual insufficient funds fees the debt management service provider is charged and that they will pass on to the consumer, but in no case may a debt management service provider pass on to a consumer more than \$25 in insufficient fund fees.

(2) If a debt management service provider does not disclose the information required by section (1) of this rule, a consumer shall not be obligated to pay such costs.

Stat. Auth.: 2009 OL Ch 604 § 21

Stats. Implemented: ORS 697.707

Hist.: FCS 13-2009, f. 12-18-09, cert. ef. 1-1-10

**441-910-0151**

**Advertisements**

(1) A debt management service provider shall disclose the debt management service provider's registration number on an advertisement, presentation or other communication or promotional material designed or made to promote the debt management provider's services.

(2) Failure to meet the requirements of section (1) of this rule constitutes a misrepresentation of the debt management service provider's qualifications under ORS 697.662 and a dishonest, fraudulent or illegal practices or conduct in a business or profession, or unfair or unethical practices or conduct in connection with a debt management service under ORS 697.752.

Stat. Auth.: 2009 OL Ch 604 § 21

Stats. Implemented: ORS 697.662

Hist.: FCS 13-2009, f. 12-18-09, cert. ef. 1-1-10

**Records; Reports**

**441-910-0200**

**Records Retained by Registrants**

(1) In addition to any records required to be kept and maintained under applicable law, a debt management service provider shall retain records on consumers that paid fees and signed a contract for debt management services. Documents that a debt management services must keep under this rule include, but is not limited to, the following:

(a) Copies of disclosure documents signed by the consumer prior to entering into a contract for debt management services.

(b) Copies of all written agreements for debt management services with a consumer.

(c) Copies of written authorizations by a consumer to withdraw fees for debt management services.

(d) Copies of contract cancellation notices by either a consumer or the debt management service provider.

(e) Copies of budget analyses performed for a consumer and kept in the consumer's file.

(f) Copies of all correspondence or notes of conversations between the debt management service provider and a consumer's creditor.

(g) Copies of all correspondence between the debt management service provider and the consumer.

(2) In addition to any records required to be kept and maintained under applicable law, a debt management service provider shall retain general records related to their debt management services. Documents that a debt management services must keep under this rule include, but is not limited to, the following:

(a) Copies of the debt management service provider fee schedule for debt management services.

(b) A accounting ledger separately showing each consumer trust account, including entries for debits, credits and any interest in excess of banking fees to maintain the trust account.

(c) An account ledger separately recording the receipt of all funds the debt management service provider agrees to remit to the creditors of a consumer.

(d) An account ledger separately recording the disbursement of all funds the debt management service provider agrees to remit to the creditors of a consumer.

(e) The original surety bond that the debt management service provider certifies as correct and true under OAR 441-910-0010.

(f) Copies of all advertisements for debt management services.

(g) Copies of all consumer complaints and notes, correspondence and memoranda generated as a result of the consumer complaint.

(3) A debt management service provider shall maintain records in written form or in a format that can be easily reduced to written form.

(4) A debt management service provider shall maintain records for a period of three years after the last entry is made into the record. After the three year period, a debt management service provider may dispose of the records in accordance with applicable law.

Stat. Auth.: 2009 OL Ch 604, § 21

Stats. Implemented: ORS 697.672, 697.682

Hist.: FCS 13-2009, f. 12-18-09, cert. ef. 1-1-10

**DIVISION 930**

**PREARRANGEMENT AND PRECONSTRUCTION PLANS**

**441-930-0010**

**Definitions**

In addition to the definitions in ORS 97.010 and 97.923, the following definitions apply to OAR 441-930-0010 to 441-930-0360:

(1) "Applicant" means an entity applying to the director for a certification concerning prearrangement plans or for a registration to serve as a master trustee.

(2) "Director" means the Director of the Department of Consumer and Business Services.

(3) "Limited Operations Certified Provider" means a certified provider responsible for administering 10 or fewer prearrangement or preconstruction sales contracts which have a cumulative value of less than \$20,000.

(4) "Registrant" means an entity holding a registration for a master trustee, issued by the director.

(5) "Trust Agreement" means any agreement governing a trust fund established to receive the proceeds of a prearrangement or preconstruction plan and administered by a registered master trustee.

(6) "Trust fund balance" means the total of all prearrangement or preconstruction contract payments provided through certified providers, installment payments, plus the earnings of the trust fund through investments. Both deposits and accumulated earnings become part of the principal of the trust fund for the subsequent year.

(7) "Unconscionable tactics" include, but are not limited to, actions by which a person:

(a) Knowingly takes advantage of a customer's physical infirmity, ignorance, illiteracy or inability to understand the language of the agreement; or

(b) Knowingly permits a customer to enter into a transaction from which the customer will derive no material benefit.

Stat. Auth.: ORS 97.926

Stats. Implemented: ORS 97.926

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0010; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 2-2006, f. & cert. ef. 2-22-06; FCS 5-2007, f. 10-11-07, cert. ef. 1-1-08; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11; FCS 6-2012, f. & cert. ef. 11-9-12

**Master Trustees**

**441-930-0030**

**Applications for Registration of Master Trustees**

(1) Each entity desiring to register as master trustee shall apply by submitting a written application with the director.

(2) The application must contain the following on a form prescribed by the director:

(a) Information concerning the applicant's identity and business address(es);

(b) A list of all officers, directors, and owners of the business;

(c) Personal background and business, professional, or work history of all persons identified in subsection (2)(b) of this rule;

(d) Proof that the entity is legally qualified to conduct business in this state, having made the appropriate filings with the Secretary of State;

(e) The depositories the applicant will use for funds received under the appointment from the certified provider;

(f) Financial statements including:

(A) A copy of the applicant's most recent audited financial statement, including balance sheet, statement of income or loss, statement of changes in shareholder equity, and statement of changes in financial position. All financial statements must be prepared by an independent certified public accountant in accordance with generally accepted accounting principles;

(B) If the audited financial statement is more than six months old, an internally prepared statement for the most recent month end; and

(g) A registration fee as set in OAR 441-930-0270.

(3) The director may conduct a background check of any of the officers, directors, and owners applying for registration. The background check may include information solicited from the Oregon State Police.

(4) A registration is continuing and remains in effect until it is surrendered by the registrant or revoked or suspended by the director.

Stat. Auth.: ORS 97.926 & 97.935

Stats. Implemented: ORS 97.935

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0030; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 7-2004, f. 12-14-04, cert. ef. 1-1-05; FCS 2-2006, f. & cert. ef. 2-22-06; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

#### **441-930-0035**

##### **Renewal Procedure**

Submission of the annual report pursuant to OAR 441-930-0068 and the fees pursuant to 441-930-0270 shall constitute renewal of the application for registration.

Stat. Auth.: ORS 97.926 & 97.935

Stats. Implemented: ORS 97.935

Hist.: FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

#### **441-930-0045**

##### **Material Changes, Notice of Civil and Criminal Actions**

A master trustee must provide information to the director within 30 days of a material change to any information contained in the original application or any documents submitted with or as part of the application, including:

- (1) Bankruptcy;
- (2) Civil or criminal actions described on the application;
- (3) Disciplinary disclosure answers;
- (4) Change in additional affiliated business entity name;
- (5) Change in control or ownership;
- (6) Change in form of organization;
- (7) Change of address;
- (8) Change in scope of business; or
- (9) Change in the depository used by a master trustee.

Stat. Auth.: ORS 97.926 & 97.935

Stats. Implemented: ORS 97.935

Hist.: FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

#### **441-930-0065**

##### **When Application Deemed Abandoned**

(1) For purposes of this rule, the term "application" includes all documents, information and fees prescribed for the registration of a master trustee.

(2) An application shall be deemed deficient when:

(a) The applicant has paid insufficient fees and the director has notified the applicant that fees are insufficient;

(b) Documents required to be submitted to the director by OAR 441-930-0030 and 441-930-0035 have not been submitted by the applicant; or

(c) The applicant has not submitted information requested by the director.

(3) An application shall be deemed abandoned if:

(a) The application has been on file for a minimum of 60 days;

(b) The application is deficient; and

(c) The applicant has failed to respond within 30 days to the director's written notice of warning of abandonment.

(4) An applicant whose application has been abandoned may reapply by submitting a new application and registration fee.

Stat. Auth.: ORS 97.926 & 97.935

Stats. Implemented: ORS 97.935

Hist.: FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

#### **441-930-0068**

##### **Annual Report**

Each master trustee is responsible for and shall file an annual report with the director by April 1 of each year on forms provided by the director. The report shall cover the preceding calendar year and shall include information on trusted funds:

(1) The actual value at the beginning and end of the calendar year;

(2) Deposits and withdrawals;

(3) Income earned and fees paid;

(4) Taxes paid for beneficiaries;

(5) Gains and losses; and

(6) The balance of all trust accounts as of December 31.

Stat. Auth.: ORS 97.926 & 97.935

Stats. Implemented: ORS 97.935

Hist.: FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

#### **441-930-0070**

##### **Examination of Master Trustee**

(1) Each master trustee that is or should be registered may be subject to an annual examination by the director. The director may, conduct an examination at the office of the master trustee or at the office of the director. The examination will be of the condition and resources of the master trustee, including:

(a) A review of the minutes of the annual meeting of owners and any special meeting;

(b) A review of all board or management meetings;

(c) Operating policies and procedures;

(d) Security of funds, including documentation demonstrating that all trust funds are received from each certified provider;

(e) Investment vehicles;

(f) Receipt and dispersal of funds;

(g) Investment and banking accounts;

(h) Audit reports; and

(i) Regulatory audit reports.

(2) A master trustee shall pay to the director the fees and costs of examination described in OAR 441-930-0270.

(3) At the discretion of the director, a master trustee located outside Oregon may make the books and records available for examination in Oregon.

(4) Upon completion of an examination conducted pursuant to OAR 441-930-0070 or 441-930-0260 the director shall issue a written report to the master trustee indicating the examination procedures applied and the examination findings.

Stat. Auth.: ORS 97.926, 97.935, & 97.947

Stats. Implemented: ORS 97.935 & 97.947

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0070; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 2-2006, f. & cert. ef. 2-22-06; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

#### **441-930-0080**

##### **Master Trustee Rules of Conduct**

(1) A master trustee is a fiduciary and has a duty to act solely for the benefit of purchasers of prearrangement sales contracts.

(2) The fees to be charged shall be described in a written agreement between the master trustee and each certified provider that has appointed the master trustee.

(3) A master trustee may delegate administration, record keeping, custody, investment or management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The master trustee may not delegate, and shall exercise reasonable care, skill and caution in:

(a) Selecting an agent;

(b) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust;

(c) Periodically reviewing the agent's actions to monitor and ensure the agent's performance and compliance with the terms of the delegation; and

(d) Ensuring that all trust funds received are from a certified provider by a sales contract, including, but not limited to ensuring that all contracts are accounted for and ensuring certification of providers from whom they accept trust funds.

(4) A master trustee shall invest and manage trust assets as a prudent investor would. A master trustee that complies with ORS 130.755 satisfies this requirement.

(5) In investing and managing trust assets, regardless of whether those functions have been delegated, a master trustee may only incur fees and expenses that are appropriate and reasonable in relation to the assets, the purposes of the trust and the skills of the master trustee, not to exceed the maximum specified in ORS 97.943.

Stat. Auth.: ORS 97.926 & 97.935

Stats. Implemented: ORS 97.935

Hist.: FCS 2-2006, f. & cert. ef. 2-22-06; FCS 5-2007, f. 10-11-07, cert. ef. 1-1-08; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

#### **441-930-0085**

##### **Calculation of Trust Fund Deposit Earnings**

If a master trustee elects to pay administrative fees and expenses, as described in ORS 97.943(9), from earnings on trust fund deposits for administrative fees, the master trustee or the certified provider shall calculate the principal amount of the trust fund in accordance with this rule.

(1) A master trustee or certified provider must calculate the allowable amount of earnings available by determining the principal amount of the trust fund on January 1 and on July 1 of the calendar year in which the earnings are appropriated for administrative expenses.

(2) By January 1 of each calendar year, a master trustee must submit, in a form and format fixed by the director, notice that the master trustee elects to pay administrative fees and expenses from the trust fund balance.

(3) By July 31 each calendar year, a master trustee must submit, in a form and format fixed by the director, the following calculations:

(a) The principal amount of the trust fund as of January 1;

(b) Two percent of the principal amount of the trust fund as of January 1;

(c) The principal amount of the trust fund as of July 1;

(d) Two percent of the principal amount of the trust fund as of July 1;

(4) The calculation completed under subsection (3)(d) of this rule shall be the maximum amount of earnings on the principal amount of the trust fund that may be appropriated for administrative expenses.

Stat. Auth.: ORS 97.926

Stats. Implemented: ORS 97.935

Hist.: FCS 6-2012, f. & cert. ef. 11-9-12

#### **Certified Providers**

#### **441-930-0210**

##### **Application for Certification**

(1) Each entity desiring to obtain a certification shall apply by submitting a written application with the director.

(2) An application must contain the following on or with a form prescribed by the director:

(a) A list of all officers, directors, and owners of the business;

(b) Information concerning the applicant's identity and business address(es);

(c) If the applicant is an individual or sole proprietorship, the applicant's social security number. Provision of this number is mandatory and failure to provide the applicant's social security number shall be considered grounds for denying certification to the applicant.

(d) The business, professional or work history of all persons identified in subsection (2)(a) of this rule;

(e) Proof that the entity is legally qualified to conduct business in this state, having made the appropriate filings with the Secretary of State;

(f) The master trustee and depository(ies) the applicant intends to use for funds received from the sale of the prearrangement plans;

(g) For certified providers who place trust funds in a depository and will not be using a master trustee for long-term trust investment, financial statements including:

(A) A copy of the applicant's most recent audited financial statement, including balance sheet, statement of income or loss, statement of changes in shareholder equity and statement of changes in financial position. All financial statements must be prepared by an independent certified public accountant in accordance with generally accepted accounting principles; and

(B) If the audited financial statement is more than six months old, an internally prepared statement for the most recent month;

(h) A list of prearrangement plans to which the applicant was a party at the date of application; and

(i) A certification fee as set in OAR 441-930-0270.

(3) The director may conduct a background check of any officer, director, or owner applying for certification. The background check may include information solicited from Oregon State Police.

(4) Authority for operation as a certified provider is continuing and remains in effect until surrendered by the provider or revoked or suspended by the director.

Stat. Auth.: ORS 97.926, 97.933, & 97.948

Stats. Implemented: ORS 97.933 & 97.948

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; DOC 2-2002(Temp) f. & cert. ef. 2-12-02 thru 8-1-02; DO 3-2002, f. & cert. ef. 5-23-02; Renumbered from 440-300-0210; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 7-2004, f. 12-14-04, cert. ef. 1-1-05; FCS 2-2006, f. & cert. ef. 2-22-06; FCS 5-2007, f. 10-11-07, cert. ef. 1-1-08; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

#### **441-930-0220**

##### **Renewal Procedure**

Submission of the annual report pursuant to OAR 441-930-0250 and the fees pursuant to 441-930-0270 shall constitute renewal of the application for certification.

Stat. Auth.: ORS 97.926 & 97.933

Stats. Implemented: ORS 97.933

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0220; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 2-2006, f. & cert. ef. 2-22-06; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

#### **441-930-0230**

##### **Material Changes, Notice of Civil and Criminal Actions**

A certified provider must provide information to the director within 30 days of a material change to any information contained in the original application or any documents submitted with or as a part of the application, including:

(1) Bankruptcy;

(2) Civil or criminal actions described on the application;

(3) Disciplinary disclosure answers on the application;

(4) Change in additional affiliated business entity name;

(5) Change in control or ownership;

(6) Change in form of organization;

(7) Change of address for a master trustee;

(8) Change in scope of business;

(9) Change in any depository used by the certified provider; or

(10) Change in the master trustee being used by the certified provider.

Stat. Auth.: ORS 97.926 & 97.933

Stats. Implemented: ORS 97.933

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0230; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 2-2006, f. & cert. ef. 2-22-06; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

#### **441-930-0240**

##### **When Application Deemed Abandoned**

(1) For purposes of this rule, the term "application" includes all documents, information and fees prescribed for a certified provider as set forth in ORS 97.923 to 97.949, OAR 441-930-0030, 441-930-0210 and 441-930-0270.

(2) An application shall be deemed deficient when:

(a) Insufficient fees have been paid and the director has notified the applicant that fees are insufficient;

(b) Documents required to be submitted to the director by OAR 441-930-0210 or 441-930-0020 have not been submitted by the applicant; or

(c) Information requested by the director has not been submitted by the applicant.

(3) An application shall be deemed abandoned if:

(a) The application has been on file for a minimum of 60 days;

(b) The application is deficient; and

(c) The applicant has failed to respond within 30 days to the director's written notice of warning of abandonment.

(4) An applicant whose application has been abandoned may reapply by submitting a new application, including fees.

Stat. Auth.: ORS 97.926 & 97.933

Stats. Implemented: ORS 97.933

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0240; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 2-2006, f. & cert. ef. 2-22-06; FCS 5-2007, f. 10-11-07, cert. ef. 1-1-08; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

**441-930-0250**

**Annual Report**

Each certified provider is responsible for and shall file an annual report with the director by April 1 of each year on forms provided by the director. The report shall cover the preceding calendar year and shall include:

- (1) The actual value at of all trusted funds at the beginning and end of the calendar year;
- (2) Deposits and withdrawals from trusted funds;
- (3) Income earned and fees paid on trust accounts;
- (4) Withdrawals from principal of the trust account;
- (5) Expenses withdrawn from trust account income for master trustee, accounting, record keeping and administration, depository and investment fees;
- (6) Taxes paid for the benefit of beneficiaries;
- (7) Gains and losses of trusted funds;
- (8) For certified providers who have placed trust funds with a depository, a copy of their most recent audited annual financial statement, including a balance sheet, statement of income or loss, statement of changes in shareholder equity and statement of changes in financial position. All financial statements must be prepared by an independent certified public accountant in accordance with generally accepted accounting principles; and
- (9) An inventory of the details of the merchandise specified in ORS 97.933 from a certified provider that has sold and delivered funeral merchandise, cemetery merchandise, or a combination..

Stat. Auth.: ORS 97.926 & 97.933  
 Stats. Implemented: ORS 97.933  
 Hist.: DO 1-2002, f. & cert. ef. 1-10-02; DOC 2-2002(Temp) f. & cert. ef. 2-12-02 thru 8-1-02; DO 3-2002, f. & cert. ef. 5-23-02; Renumbered from 440-300-0250; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 2-2006, f. & cert. ef. 2-22-06; FCS 5-2007, f. 10-11-07, cert. ef. 1-1-08; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

**441-930-0255**

**Reporting by Limited Operations Certified Provider**

A limited operations certified provider must report the following activities to the director within 15 days of the occurrence:

- (1) Transfer of any contract to another certified provider; or
  - (2) Sale of any new prearrangement or preconstruction contract.
- Stat. Auth.: ORS 97.926  
 Stats. Implemented: ORS 97.933  
 Hist.: FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

**441-930-0260**

**Examination of Certified Providers**

(1) Each provider that is or should be certified is subject to an examination by the director. The director may conduct an examination of the condition and resources, including a review of the sales contracts used by the certified provider, to determine whether the provider is complying with requirements of ORS 97.923 to 97.949, the laws of this state and the rules of the director.

(2) A provider shall pay to the director all fees and costs of an examination pursuant to the provisions of OAR 441-930-0270.

(3) Upon the motion of the director or upon receipt of a complaint by a customer of the provider, the director may examine the provider with respect to any violation. In lieu of an annual on-site examination, the director may accept a report prepared by an independent accounting firm. Reports so accepted are considered for all purposes as an official report of the director.

(4) The director may examine a record relating to a prearrangement plan at any place and in any manner the director considers necessary to protect the interests of the purchasers or beneficiaries.

(5) Certified providers who maintain books and records outside the state of Oregon may, at the discretion of the director, produce the records in Oregon for examination.

(6) Upon completion of an examination conducted by the director shall issue a written report to the certified provider indicating the examination procedures applied and the examination findings.

Stat. Auth.: ORS 97.926, 97.933, & 97.947  
 Stats. Implemented: ORS 97.947  
 Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0260; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 2-2006, f. & cert. ef. 2-22-06; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

**441-930-0267**

**Irrevocable Prearrangement Sales Contracts**

(1) Certified providers may only issue an irrevocable prearrangement sales contract in limited circumstances. The certified

provider must receive proof from the purchaser or beneficiary that the beneficiary of the trust is:

- (a) Currently receiving public assistance; or
- (b) Has filed the necessary papers and started the formal process to receive benefits.

(2) An irrevocable trust may not be cancelled, changed, or revised to become any other type of preneed funding mechanism and may not be distributed for any purpose other than the death of the beneficiary.

(3) A revocable contract may be converted to an irrevocable contract upon agreement of all parties to reflect a change of circumstances of the beneficiary of the sales contract.

Stat. Auth.: ORS 97.926  
 Stats. Implemented: ORS 97.939 & 97.943  
 Hist.: FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

**Certified Providers and Registered Master Trustees**

**441-930-0270**

**Fees Assessed to Certified Providers and Registered Master Trustees**

The director shall annually assess the following fees for each registered master trustee, certified provider, or applicant:

- (1) Certification Fee — \$390 per certified provider. Each location is a separate entity for purposes of this fee.
- (2) Registration Fee — \$390 per master trustee.
- (3) Limited Operations Fee — \$80.
- (4) Exam Fees — \$75 per hour for each examiner, plus costs of an examination.

(5) If the books and records are located outside Oregon, the certified provider or master trustee must pay travel and per diem expenses.

Stat. Auth.: ORS 97.926, 97.933 & 97.935  
 Stats. Implemented: ORS 97.933, 97.935, 2011 HB 5014  
 Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0270; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 7-2004, f. 12-14-04, cert. ef. 1-1-05; FCS 3-2005, f. & cert. ef. 9-6-05; FCS 2-2006, f. & cert. ef. 2-22-06; FCS 8-2008, f. & cert. ef. 8-28-08; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11; FCS 6-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-28-11; FCS 9-2011, f. & cert. ef. 10-3-11

**441-930-0290**

**Unprofessional Conduct**

An entity engaging in the following conduct is subject to probation, suspension, revocation, or denial of a certification or registration and assessment of a civil penalty pursuant to ORS 97.948 and OAR 441-930-0310:

(1) Furnishing false or misleading information to the director in connection with:

(a) Obtaining, renewing, reinstating, or maintaining certification or registration;

(b) The filing of an annual report; or

(c) An investigation;

(2) Failing to furnish accurate and understandable price information to consumers;

(3) Employing any unconscionable tactic in connection with the offer or sale of a prearrangement plan;

(4) Failing to make and verify trust deposits in the amounts and within the times specified in ORS 97.941;

(5) Withdrawing principal or income of a trust account in excess of what is permitted pursuant to ORS 97.943;

(6) Failing to comply with the annual reporting requirements as required by ORS 97.933 or these rules;

(7) Failing to provide the goods and services agreed to in a sales contract;

(8) Using trust funds for non-trust purposes;

(9) Failing to release trust funds to the rightful payee within 30 days of the date of request for release; or

(10) Failing to comply with any other provision of ORS 97.923 to 97.949, or these rules.

Stat. Auth.: ORS 97.926, 97.933, & 97.935  
 Stats. Implemented: ORS 97.933, 97.935, 97.941, & 97.948  
 Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0290; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 2-2006, f. & cert. ef. 2-22-06; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

**441-930-0300**

**Notice of Complaint**

(1) Each certified provider and each master trustee who has filed a complaint against any of its partners, officers, or directors, or, associated persons located in Oregon, with any law enforcement agency, any other regulatory agency with jurisdiction over prearrangement plans, or any bonding company regarding any loss arising from alleged acts of such person, shall send a copy of the complaint to the director within ten calendar days following its filing with the other agency or bonding company.

(2) The certified provider or master trustee shall notify the director within ten calendar days of learning of any action initiated by a law enforcement agency or regulatory agency against any of its partners, officers, or directors, or associated persons located in Oregon on the basis of something other than a complaint from the certified provider or master trustee.

(3) The certified provider or master trustee shall file a copy of any finding, censure, fine, suspension, or expulsion made as a result of an action by any law enforcement agency or other regulatory agency with the director within ten calendar days following receipt of the document.

Stat. Auth.: ORS 97.926

Stats. Implemented: ORS 97.933 & 97.935

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0300; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 2-2006, f. & cert. ef. 2-22-06; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

**441-930-0310**

**Revocation, Suspension and Denial of Certificate or Registration**

The director may impose a civil penalty or probation, or revoke, suspend, or deny a certification of a certified provider or a registration of a master trustee when one or more of the following conditions exist:

(1) The certified provider's license under ORS 692.160 expires or is suspended or revoked by the State Mortuary and Cemetery Board;

(2) The certified provider or master trustee fails to submit an annual report required by ORS 97.933;

(3) The certified provider or master trustee fails to submit the certification or registration fee required by OAR 441-930-0270;

(4) The certified provider or master trustee fails to maintain or denies the director access to the financial records and supporting documents necessary to examine their annual report;

(5) The certified provider or master trustee has filed a materially false or misleading report with the director;

(6) The certified provider fails to deliver or deposit prearrangement plan receipts to the master trustee or depository within five business days as required by ORS 97.941;

(7) The certified provider or master trustee fails to account to interested persons for monies received;

(8) The certified provider or master trustee has willfully or repeatedly violated or failed to comply with any provision of ORS 97.923 to 97.949, or OAR 441-930-0030 through 441-930-0360;

(9) The certified provider or master trustee is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the business of a certified provider or master trustee, respectively;

(10) The certified provider or master trustee is the subject of disciplinary action by another state or government agency provided the activity subject to discipline would constitute a violation of Oregon law or administrative rules;

(11) The director finds that the certified provider, master trustee, or an applicant for certification or for registration has been convicted of a felony or a misdemeanor that involved dishonesty or fraud, in this state or any other state;

(12) The director finds that an administrative agency, in this state or any other state, has issued a final order against the certified provider, master trustee, or an applicant for certification or for registration;

(13) The director finds that the certified provider, master trustee, or an applicant for certification or for registration has an outstanding judgment by a court, in this state or any other state; or

(14) The director finds that the applicant or an officer, director, or owner of the applicant does not possess the financial and business experience required by these rules.

Stat. Auth.: ORS 97.926, 97.933 & 97.935

Stats. Implemented: ORS 97.948

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0310; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 2-2006, f. & cert. ef. 2-22-06; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

**441-930-0320**

**Notice Requirements**

(1) The director shall provide written notice to the certified provider, master trustee, or applicant and to the State Mortuary and Cemetery Board of the director's intent to impose discipline pursuant to ORS 97.936, 97.948, or to deny an application.

(2) The director shall provide written notice of the Director's Final Order to impose discipline pursuant to ORS 97.936, 97.948, or to deny an application from:

(a) A certified provider or certified provider applicant that sells or is responsible for administering a prearrangement or preconstruction plan trust accounts; or

(b) A master trustee or master trustee applicant, holding trust funds from a certified provider

(3) This notice shall state:

(a) The reasons for the action;

(b) The effective date of the action; and

(c) The right to request a hearing under ORS Chapter 183.

Stat. Auth.: ORS 97.933 & 97.935

Stats. Implemented: ORS 97.936 & 97.948

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0320; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 2-2006, f. & cert. ef. 2-22-06; FCS 5-2007, f. 10-11-07, cert. ef. 1-1-08; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

**441-930-0330**

**Records to be Retained**

(1) Each certified provider and master trustee shall maintain records to document the balances and transactions included in its annual report filed pursuant to OAR 441-930-0068 and 441-930-0250 and shall retain these records for examination by the director. Each certified provider and master trustee shall make, keep and preserve the following books, accounts and other records for a period of three years after funds from all trust have been distributed, at need or upon cancellation of the contract. The records required to be maintained include, but are not limited to:

(a) Work papers documenting preparation of the annual report;

(b) General ledger or subsidiary ledger account records relating to prearrangement plans;

(c) Receipts register;

(d) Sales registers that show the delivered merchandise and/or services provided in the appropriate trust agreement file, including the name and date of birth of the beneficiary and a description of the merchandise;

(e) Work papers documenting distribution of interest income to individual trusts in a common trust account;

(f) Prearrangement or preconstruction contract files, trust agreement files, and other supporting documentation related to prearrangement transactions. Every contract sold or to be administered by the certified provider must be accounted for and retained, even if they were voided or not issued;

(g) Bank statements; and

(h) Statements from other financial institutions.

(2) Books, accounts, and other records required to be maintained under section (1) of this rule may be maintained:

(a) In a photographic, electronic, and other similar form; or

(b) At a location in Oregon, unless specifically authorized by the director.

Stat. Auth.: ORS 97.926, 97.933 & 97.935

Stats. Implemented: ORS 97.947

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0330; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 2-2006, f. & cert. ef. 2-22-06; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

**Funeral and Cemetery Consumer Protection Trust Fund**

**441-930-0350**

**Funeral and Cemetery Consumer Protection Trust Fund**

(1) The director shall order restitution from the Funeral and Cemetery Consumer Protection Trust Fund when the following conditions are met:

(a) A claim for restitution is submitted to the director on forms supplied by the director accompanied by:

(b) A copy of the prearrangement or preconstruction contract;

(c) Copies of canceled checks or payment receipts demonstrating payment;

(d) Correspondence with the provider concerning attempts to obtain repayment; and

(e) Any other information the claimant believes may be helpful to document the claim.

(2) The director will review the claim form and accompanying documentation to determine if a loss was incurred by the claimant on a prearrangement or preconstruction sales contract.

(3) Sufficient funds must be available in the Funeral and Cemetery Consumer Protection Trust Fund to pay the claim.

(4) The director shall provide written notice of its intent to order restitution or not to order restitution to the maker of the claim and to the person or entity that is the subject of the claim.

Stat. Auth.: ORS 97.926 & 97.945

Stats. Implemented: ORS 97.945

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0350; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 2-2006, f. & cert. ef. 2-22-06; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

### **Endowment Care Cemeteries**

#### **441-930-0360**

##### **Surety Bond Requirements for Endowment Care Cemeteries**

(1) If a surety bond is revoked, or otherwise terminated, the endowment care cemetery must immediately file a replacement bond. Failure to send the notice at least 30 days in advance will not preclude the endowment care cemetery from being subject to the provisions of ORS 97.923 to 97.949 and 692.180.

(2) An endowment care cemetery may cancel the surety bond or letter of credit upon 30 days advance notice to the director of completion of the covered construction of all crypts and niches or burial vaults or markers that were part of the development.

Stat. Auth.: ORS 97.926

Stats. Implemented: ORS 97.929

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0360; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 2-2006, f. & cert. ef. 2-22-06; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11