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Chapter No. 499
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SENATE BILL NO. 2696

Originated in Senate

Liz Welch

Secretary

SENATE BILL NO. 2696

AN ACT TO AMEND SECTION 81-18-3, MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF THE TERM "QUALIFYING INDIVIDUAL" AS USED IN THE MISSISSIPPI S.A.F.E. MORTGAGE ACT; TO AMEND SECTION 81-18-9, MISSISSIPPI CODE OF 1972, TO REVISE THE CONTENTS OF THE MORTGAGE BROKER AND LENDER APPLICATIONS AND TO INCREASE THE INITIAL LOAN ORIGINATOR LICENSE FEE; TO AMEND SECTION 81-18-13, MISSISSIPPI CODE OF 1972, TO DELETE CERTAIN LICENSING PROCEDURES AND CRITERIA; TO AMEND SECTION 81-18-15, MISSISSIPPI CODE OF 1972, TO INCREASE THE LICENSE AND RENEWAL FEES FOR MORTGAGE BROKERS, MORTGAGE LENDERS AND LOAN ORIGINATORS; TO AMEND SECTION 81-18-17, MISSISSIPPI CODE OF 1972, TO INCREASE THE BRANCH LICENSE AND RENEWAL FEES; TO AMEND SECTION 81-18-21, MISSISSIPPI CODE OF 1972, TO REVISE THE EXAMINATION FEE WHICH MAY BE CHARGED BY THE COMMISSIONER OF BANKING FOR THE EXAMINATION OF THE BOOKS AND RECORDS OF ANY LICENSEE; TO AMEND SECTION 81-18-23, MISSISSIPPI CODE OF 1972, TO REQUIRE LICENSEES WHO ARE INVOLVED IN CIVIL ACTIONS TO NOTIFY THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY; TO AMEND SECTION 81-18-35, MISSISSIPPI CODE OF 1972, TO REQUIRE EACH LICENSEE TO MAINTAIN A JOURNAL OF SERVICED LOANS AT ITS PRINCIPAL PLACE OF BUSINESS FOR ALL MISSISSIPPI RESIDENTIAL LOANS THAT THE LICENSEE OWNS AND/OR SERVICES; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 81-18-3, Mississippi Code of 1972, is amended as follows:

81-18-3. For purposes of this chapter, the following terms shall have the following meanings:

(a) "Application" means the submission of a borrower's financial information in anticipation of a credit decision, whether written or computer-generated. If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a federally related mortgage loan. The subsequent addition of an identified property to the submission converts the submission to an application for a federally related mortgage loan.

(b) "Borrower" means a person who submits an application for a residential mortgage loan.

(c) "Branch" means a location of a company in or outside of the state that conducts business as a mortgage broker or mortgage lender. A location shall be considered a branch regarding mortgage broker or mortgage lender activities in any of the following:

(i) If the location is used on any type of advertisement;

(ii) If any type of record, loan file or application of the company is located at the location, with the exception of unstaffed storage facilities; or

(iii) If the activities of a mortgage loan originator occur at the location.

(d) "Commissioner" means the Commissioner of the Mississippi Department of Banking and Consumer Finance.

(e) "Commitment" means a statement by a lender required to be licensed under this chapter that sets forth the terms and conditions upon which the lender is willing to make a particular mortgage loan to a particular borrower.

(f) "Company" means a licensed mortgage broker or mortgage lender under this chapter.

(g) "Control" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise, and shall include "controlling," "controlled by," and "under common control with."

(h) "Department" means the Department of Banking and Consumer Finance of the State of Mississippi.

(i) "Depository institution" has the same meaning as in Section 3 of the Federal Deposit Insurance Act, and includes any credit union.

(j) "Executive officer" means the chief executive officer, the president, the principal financial officer, the principal operating officer, each vice president with responsibility involving policy-making functions for a significant aspect of a person's business, the secretary, the treasurer, or any other person performing similar managerial or supervisory

functions with respect to any organization whether incorporated or unincorporated.

(k) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(l) "Housing finance agency" means any authority that is chartered by a state to help meet the affordable housing needs of the residents of the state, is supervised directly or indirectly by the state government, is subject to audit and review by the state in which it operates, and whose activities make it eligible to be a member of the National Council of State Housing Agencies.

(m) "Immediate family member" means a spouse, child, sibling, parent, grandparent or grandchild. This term includes stepparents, stepchildren, stepsiblings and adoptive relationships.

(n) "Individual" means a "natural person."

(o) "License" means a license to act as a mortgage broker or mortgage lender issued by the department under this chapter.

(p) "Licensee" means a person who is required to be licensed as a mortgage broker or mortgage lender under this chapter.

(q) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed or exempt from licensing under this chapter.

For the purposes of this paragraph (q), the term "clerical or support duties" may include, after the receipt of an application:

(i) The receipt, collection, distribution and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(ii) Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that the communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

An individual engaging solely in loan processor or underwriter activities, shall not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

(r) "Lock-in agreement" means a written agreement stating the terms of the lock-in fee.

(s) "Lock-in fee" means a fee collected by a licensee to be paid to a lender to guarantee an interest rate or a certain number of points on a mortgage loan from the lender.

(t) "Make a mortgage loan" means to advance funds, offer to advance funds or make a commitment to advance funds to a borrower.

(u) "Misrepresent" means to make a false statement of a substantive fact or to engage in, with intent to deceive or mislead, any conduct that leads to a false belief that is material to the transaction.

(v) "Mortgage broker" means any person who directly or indirectly or by electronic activity solicits, places or negotiates residential mortgage loans for others, or offers to solicit, place or negotiate residential mortgage loans for others that does not close residential mortgage loans in the company name, does not use its own funds, or who closes residential mortgage loans in the name of the company, and sells, assigns or transfers the loan to others within forty-eight (48) hours of the closing.

(w) "Mortgage lender" means any person who directly or indirectly or by electronic activity originates, makes, funds or purchases or offers to originate, make, or fund or purchase a residential mortgage loan or who services residential mortgage loans.

(x) "Mortgage_lending process" means the process through which a person seeks or obtains a mortgage loan, including, but not limited to, solicitation, application, origination, negotiation of terms, third-party provider services, underwriting, signing and closing, and funding of the loan. Documents involved in the mortgage_lending process include, but are not limited to, uniform residential loan applications or other loan applications, appraisal reports, HUD-1 Settlement Statements, supporting personal documentation for loan applications such as W-2 forms, verifications of income and employment, bank statements, tax returns, payroll stubs and any required disclosures.

(y) "Mortgage loan originator" means an individual who:

(i) Takes a residential mortgage loan application;

and

(ii) Offers or negotiates terms of a residential mortgage loan for compensation or gain. The term "mortgage loan originator" does not include:

* * *1. An individual engaged solely as a loan processor or underwriter except as otherwise provided in this chapter;

* * *2. A person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with Mississippi law, unless the person or entity is compensated by a lender, a mortgage broker, or other

mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; and

* * *3. A person or entity solely involved in extensions of credit relating to time-share plans, as that term is defined in Title 11 USCS, Section 101(53D).

(z) "Nationwide Mortgage Licensing System and Registry" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators.

(aa) "Natural person" means a human being, as distinguished from an artificial person created by law.

(bb) "Nontraditional mortgage product" means any mortgage product other than a thirty-year fixed rate mortgage.

(cc) "Offering or negotiating a residential mortgage loan" means:

(i) Presenting particular mortgage loan terms for consideration by a borrower; or

(ii) Communicating directly or indirectly with a borrower for purposes of reaching a mutual understanding about prospective loan terms * * *.

"Offering or negotiating" does not include the following: the mere sharing of general information about a financing source; discussing hypothetical financing options, i.e., options not related to specific financing source; giving the homebuyer a list

of available financing sources; discussing a buyer's ability to afford a home; presenting or discussing generic facts or generic rate sheets; closing personal property transactions.

(dd) "Person" means a natural person, sole proprietorship, corporation, company, limited liability company, partnership or association.

(ee) "Principal" means a person who, directly or indirectly, owns or controls an ownership interest of ten percent (10%) or more in a corporation or any other form of business organization, regardless of whether the person owns or controls the ownership interest through one or more persons or one or more proxies, powers of attorney, nominees, corporations, associations, limited liability companies, partnerships, trusts, joint-stock companies, other entities or devises, or any combination thereof.

(ff) "Qualifying individual" means an owner or employee of a mortgage broker or mortgage lender who submits documentation of two (2) years' experience directly related to mortgage * * * activities and who shall be primarily responsible for the operations of the licensed mortgage broker or mortgage lender. This individual will also be designated as the qualifying individual in the Nationwide Mortgage Licensing System and Registry.

(gg) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(i) Acting as a real estate agent or real estate broker for a buyer, seller, lessor or lessee of real property;

(ii) Bringing together parties interested in the sale, purchase, lease, rental or exchange of real property;

(iii) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental or exchange of real property (other than in connection with providing financing with respect to any such transaction);

(iv) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(v) Offering to engage in any activity, or act in any capacity, described in subparagraph (i), (ii), (iii) or (iv) of this paragraph (gg).

(hh) "Records" or "documents" means any item in hard copy or produced in a format of storage commonly described as electronic, imaged, magnetic, microphotographic or otherwise, and any reproduction so made shall have the same force and effect as the original thereof and be admitted in evidence equally with the original.

(ii) "Registered mortgage loan originator" means any individual who:

(i) Meets the definition of mortgage loan originator and is an employee of a depository institution, a

subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency or an institution regulated by the Farm Credit Administration; and

(ii) Is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(jj) "Residential mortgage loan" means any loan primarily for personal, family or household use that is secured by a mortgage, deed of trust or other equivalent consensual security interest on a dwelling (as defined in Section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).

(kk) "Residential real estate" means any real property located in Mississippi upon which is constructed or intended to be constructed a dwelling.

(ll) "Service a mortgage loan" means the collection or remittance for another, the right to collect or remit for another, or the collection of the company's own loan portfolio, whether or not the company originated, funded or purchased the loan in the secondary market, of payments of principal and interest, trust items such as insurance and taxes, and any other payments pursuant to a mortgage loan.

(mm) "Taking an application for a residential mortgage loan" means * * * a receipt of an application for the purpose of

deciding whether or not to extend the requested offer of a loan to the borrower whether the application is received directly or indirectly from the borrower. However, an individual whose only role with respect to the application is physically handling a completed application form or transmitting a completed form to a lender on behalf of a prospective borrower does not take an application.

(nn) "Unique identifier" means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

SECTION 2. Section 81-18-9, Mississippi Code of 1972, is amended as follows:

81-18-9. (1) Applicants for a license shall apply in a form as prescribed by the commissioner. Each such form shall contain content as set forth by rule, regulation, instruction or procedure of the commissioner and may be changed or updated as necessary by the commissioner in order to carry out the purposes of this chapter.

(2) The mortgage broker and mortgage lender application through the Nationwide Mortgage Licensing System and Registry shall include, but is not limited to, the following:

(a) The legal name, residence and business address of the applicant and, if applicable, the legal name, residence and business address of every principal and executive officer, together with the résumé of the applicant and of every principal

and executive officer of the applicant. In addition, an independent credit report obtained from a consumer-reporting agency described in Section 603(p) of the Fair Credit Reporting Act and information related to any administrative, civil or criminal findings by any governmental jurisdiction of every principal and executive officer.

(b) The legal name of the mortgage broker or mortgage lender in addition to the name under which the applicant will conduct business in the state, neither of which may be already assigned to a licensed mortgage broker or mortgage lender.

(c) The complete address of the applicant's principal place of business, branch office(s) and any other locations at which the applicant will engage in any business activity covered by this chapter. All locations shall be within the United States of America or a territory of the United States of America, including Puerto Rico and the U.S. Virgin Islands.

(d) A copy of the certificate of incorporation, if a Mississippi corporation.

(e) Documentation satisfactory to the department as to a certificate of existence of authority to transact business lawfully in Mississippi from the Mississippi Secretary of State's office, if a limited liability company, partnership, trust or any other group of persons, however organized. This paragraph does not pertain to applicants organized as an individual or as a sole proprietorship.

(f) If a foreign entity, a copy of a certificate of authority to conduct business in Mississippi and the address of the principal place of business of the foreign entity.

(g) Documentation of a minimum of two (2) years' experience directly * * * related to mortgage * * * activities by a person named as the qualifying individual of the company. * * * The qualifying individual shall be primarily responsible for the operations of the licensed mortgage broker or mortgage lender. Only one (1) qualifying individual shall be named for Mississippi and this person shall be the qualifying individual for only one (1) licensee. * * * Evidence of experience shall include, where applicable:

(i) Copies of business licenses issued by governmental agencies.

(ii) * * * Employment history of the person filing the application for at least two (2) years before the date of the filing of an application, including, but not limited to, job descriptions, length of employment, names, addresses and phone numbers for past employers.

* * *

(* * * iii) Any other data and pertinent information as the department may require with respect to the applicant, its directors, principals, trustees, officers, members, contractors or agents. A résumé alone shall not be sufficient proof of employment history.

(3) The * * * mortgage broker and mortgage lender applications shall be filed on the Nationwide Mortgage Licensing System and Registry together with the following:

(a) The license fee specified in Section 81-18-15;

(b) An original or certified copy of a surety bond in favor of the State of Mississippi for the use, benefit and indemnity of any person who suffers any damage or loss as a result of the company's breach of contract or of any obligation arising therefrom or any violation of law; and

(c) A set of fingerprints from any local law enforcement agency from the following applicants:

(i) All persons operating as a sole proprietorship that plan to conduct a mortgage-brokering or lending business in the State of Mississippi;

(ii) Partners in a partnership or principal owners of a limited liability company that own at least ten percent (10%) of the voting shares of the company;

(iii) Any shareholders owning ten percent (10%) or more of the outstanding shares of the corporation;

(iv) All executive officers of the applicant;

(v) All loan originators; and

(vi) The named qualifying individual of the company as required in Section 81-18-9(2)(g). The applicant shall name only one (1) individual as the qualifying individual for the State of Mississippi.

(d) At least one (1) employee shall be licensed as a loan originator at a licensed location.

(4) In connection with an application for licensing as a mortgage broker or lender under this chapter, the required stockholders, owners, directors and executive officers of the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the individual's identity, including:

(a) Fingerprints from any local law enforcement agency for submission to the Federal Bureau of Investigation and any governmental entity authorized to receive that information for a state, national and international criminal history background check; and

(b) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the commissioner to obtain:

(i) An independent credit report obtained from a consumer-reporting agency described in Section 603(p) of the Fair Credit Reporting Act; and

(ii) Information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(5) Upon receipt of an application for licensure, the department or designated third party shall conduct an

investigation as it deems necessary to determine that the applicant and its officers, directors and principals are of good character and ethical reputation; that the applicant demonstrates reasonable financial responsibility; and that the applicant has reasonable policies and procedures to receive and process customer grievances and inquiries promptly and fairly.

(6) The commissioner shall not license an applicant unless he is satisfied that the applicant will operate its mortgage activities in compliance with the laws, rules and regulations of this state and the United States.

(7) If an applicant satisfies the requirements of this chapter for a mortgage broker or mortgage lender license, the commissioner shall issue the license unless the commissioner finds any of the following:

(a) The applicant has had a mortgage lender, mortgage broker or mortgage servicer license revoked in any governmental jurisdiction, except that a subsequent formal vacation of the revocation shall not be deemed a revocation; or

(b) The applicant or its controlling persons has been convicted of, or pled guilty or nolo contendere to, (i) a felony in a domestic, foreign or military court during the seven-year period preceding the date of application for licensing; or (ii) a crime at any time preceding the date of application involving an act of fraud, dishonesty, a breach of trust, or money laundering, or (iii) a misdemeanor of fraud, theft, forgery, bribery,

embezzlement or making a fraudulent or false statement in any jurisdiction. However, any pardon or expungement of a conviction shall not be a conviction for purposes of this subsection.

(* * *8) Applicants for a mortgage loan originator license shall apply in a form as prescribed by the commissioner and shall be filed on the Nationwide Mortgage Licensing System and Registry. Each such form shall contain content as set forth by rules, regulations, instructions or procedures of the commissioner and may be changed or updated as necessary by the commissioner in order to carry out the purposes of this chapter. The initial license of a mortgage loan originator shall be accompanied by a fee of * * * Two Hundred Dollars (\$200.00), to be paid to the Nationwide Mortgage Licensing System and Registry, and any additional fees as required by the Nationwide Mortgage Licensing System and Registry. The commissioner shall not issue a mortgage loan originator license unless the commissioner makes at a minimum the following findings:

(a) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a later formal vacation of that revocation shall not be deemed a revocation.

(b) The applicant has not been convicted of, or pled guilty or nolo contendere to, (i) a felony in a domestic, foreign or military court during the seven-year period preceding the date of application for licensing * * *; or (ii) a crime * * * at any

time preceding the date of application involving an act of fraud, dishonesty, a breach of trust or money laundering; or (iii) a misdemeanor of fraud, theft, forgery, bribery, embezzlement or making a fraudulent or false statement in any jurisdiction. * * * However, any pardon or expungement of a conviction shall not be a conviction for purposes of this subsection.

(c) The applicant has demonstrated financial responsibility, character and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly and efficiently within the purposes of this chapter.

(d) The applicant has completed the prelicensing education requirement described in Section 81-18-14(1).

(e) The applicant has passed a written test that meets the test requirement described in Section 81-18-14(7).

(f) The applicant has met the surety bond requirement as provided in Section 81-18-11.

(g) This individual must work for a Mississippi licensed company and work from the location licensed with the department. The licensed location that he or she is assigned to must be within one hundred twenty-five (125) miles of his or her residency. If the licensed loan originator resides and works in Mississippi, then he or she may work from any licensed location of the licensed company within the State of Mississippi. However, an owner of a minimum of ten percent (10%) of a licensed company or

the named qualifying individual on file with the department, who is a licensed loan originator with the department, may work from any licensed location of the licensed company within the State of Mississippi in the capacity of a loan originator as described in this chapter.

* * *

(* * *9) In order to fulfill the purposes of this chapter, the commissioner is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter.

(* * *10) In connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including:

(a) Fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive that information for a state, national and international criminal history background check; and

(b) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authorization for the

Nationwide Mortgage Licensing System and Registry and the commissioner to obtain:

(i) An independent credit report obtained from a consumer-reporting agency described in Section 603(p) of the Fair Credit Reporting Act; and

(ii) Information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(* * *11) For the purposes of this section and in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of subsection (* * *10) (a) and (b) (ii) of this section, the commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency.

(* * *12) For the purposes of this section and in order to reduce the points of contact which the commissioner may have to maintain for purposes of subsection (* * *10) (b) (i) and (ii) of this section, the commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the commissioner.

SECTION 3. Section 81-18-13, Mississippi Code of 1972, is amended as follows:

81-18-13. (1) In order to fulfill the purposes of this chapter, the commissioner is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter.

* * *

(* * *2) Within thirty (30) days after receipt of a completed application, final verification from the Department of Public Safety and/or FBI, and payment of licensing fees prescribed by this chapter, the department shall either grant or deny the request for license. However, if the Federal Financial Institutions Examination Council (FFIEC) prescribes a lesser period of time within which the department shall either grant or deny the request for license, then that time limitation shall supersede this subsection.

(* * *3) A person shall not be indemnified for any act covered by this chapter or for any fine or penalty incurred under this chapter as a result of any violation of this chapter or regulations adopted under this chapter, due to the legal form, corporate structure, or choice of organization of the person, including, but not limited to, a limited liability corporation.

SECTION 4. Section 81-18-15, Mississippi Code of 1972, is amended as follows:

81-18-15. (1) Each mortgage broker and mortgage lender license shall remain in full force and effect until relinquished, suspended, revoked or expired. With each initial application for a license to operate as a mortgage broker or mortgage lender, the applicant shall pay through the Nationwide Mortgage Licensing System and Registry to the commissioner a license fee of * * * One Thousand Five Hundred Dollars (\$1,500.00); however, if the initial mortgage broker or mortgage lender license is issued between November 1 and December 31, the license will expire December 31 of the following licensing year. Upon the expiration of the initial license, the licensee shall pay an annual renewal fee of * * * One Thousand Dollars (\$1,000.00) on or before December 31 of each year. If the annual renewal fee remains unpaid, the license shall expire, but not before December 31 of any year for which the annual renewal fee has been paid. If * * * the renewal fee is not paid before the expiration date of the license, then the * * * licensee shall be liable for the initial license fee, which is * * * One Thousand Five Hundred Dollars (\$1,500.00), plus a penalty in an amount not to exceed Twenty-five Dollars (\$25.00) for each day * * * after the expiration of * * * the license. All licensing fees and penalties shall be paid into the Consumer Finance Fund of the department. If the application is withdrawn or denied, the application fee along with any other applicable fee are not refundable.

(2) The minimum standards for license renewal for mortgage loan originators shall include the following:

(a) The mortgage loan originator continues to meet the minimum standards for license issuance under Section 81-18-9(4).

(b) The mortgage loan originator has satisfied the annual continuing education requirements described in Section 81-18-15(5).

(c) The mortgage loan originator has paid all required fees for renewal of the license. Annual renewals of this license shall require a fee of * * * One Hundred Dollars (\$100.00).

(3) The license of a mortgage loan originator failing to satisfy the minimum standards for license renewal shall expire. The commissioner may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the Nationwide Mortgage Licensing System and Registry. If the renewal fee remains unpaid, the license shall expire, but not before December 31 of any year for which the annual renewal fee has been paid. However, if the initial loan originator license is issued between November 1 and December 31, the license will expire December 31 of the following licensing year. If the renewal fee is not paid before the expiration date of the license, the mortgage loan originator shall be liable for the initial license fee, which is * * * Two Hundred Dollars (\$200.00), in order to renew.

(4) Any licensee making timely and proper application for a license renewal shall be permitted to continue to operate under its existing license until its application is approved or rejected, but shall not be released from or otherwise indemnified for any act covered by this chapter or for any penalty incurred under this chapter as a result of any violation of this chapter or regulations adopted under this chapter, pending final approval or disapproval of the application for the license renewal.

(5) In order to meet the annual continuing education requirements referred to in Section 81-18-15(2)(b), a licensed mortgage loan originator shall complete at least twelve (12) hours of education approved in accordance with subsection (2) of this section, which shall include at least:

- (a) Three (3) hours of federal law and regulations;
- (b) Two (2) hours of ethics, which shall include instruction on fraud, consumer protection and fair lending issues;
- (c) Two (2) hours of training related to lending standards for the nontraditional mortgage product marketplace; and
- (d) Two (2) hours of education related to the Mississippi S.A.F.E. Mortgage Act.

(6) For the purposes of subsection (5) of this section, continuing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a continuing

education course shall include review and approval of the course provider.

(7) Nothing in this section shall preclude any education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the mortgage loan originator or an entity that is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or entity.

(8) Continuing education may be offered either in a classroom, online or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(9) A licensed mortgage loan originator:

(a) Except for Section 81-18-15(3) and subsection (13) of this section, may only receive credit for a continuing education course in the year in which the course is taken; and

(b) May not take the same approved course in the same or successive years to meet the annual requirements for continuing education * * *.

(10) A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two (2) hours credit for every one (1) hour taught.

(11) A person having successfully completed the education requirements approved by the Nationwide Mortgage Licensing System

and Registry in subsection (5) of this section for any state shall be accepted as credit towards completion of continuing education requirements in Mississippi.

(12) A licensed mortgage loan originator who later becomes unlicensed must complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

(13) A person meeting the requirements of Section 81-18-15(2)(a) and (c) may make up any deficiency in continuing education as established by rule or regulation of the commissioner.

SECTION 5. Section 81-18-17, Mississippi Code of 1972, is amended as follows:

81-18-17. (1) A license may not be transferred or assigned.

(2) No licensee shall transact business under any name other than that designated in the license.

(3) A licensed mortgage broker or mortgage lender shall notify the department through the Nationwide Mortgage Licensing System and Registry of any change in the address of its principal place of business or of any change in the address of an additional licensed branch location within thirty (30) days of the change.

(4) No licensee shall open a branch office in this state or a branch office outside this state from which the licensee has direct contact with consumers regarding origination or brokering Mississippi residential property, without prior approval of the

department. An application for any branch office shall be made through the Nationwide Mortgage Licensing System and Registry on a form prescribed by the department, which shall include at least evidence of compliance with subsection (1) of Section 81-18-25 as to that branch and shall be accompanied by payment of a nonrefundable application fee of * * * Three Hundred Dollars (\$300.00) and at least one (1) loan originator application licensed at that branch office. The application shall be approved unless the department finds that the applicant has not conducted business under this chapter in accordance with law. Each branch office that currently holds a branch license shall renew that branch license before the expiration date of the main company license, on or before December 31; however, if the initial branch license is issued between November 1 and December 31, the license will expire December 31 of the following licensing year. The license renewal shall be on a form prescribed by the department with a nonrefundable renewal application fee of * * * One Hundred Dollars (\$100.00). If the annual renewal fee remains unpaid, the license shall expire, but not before December 31 of any year for which the annual renewal fee has been paid. If the renewal fee is not paid before the expiration date of the license, the branch shall be liable for the initial license fee, which is * * * Three Hundred Dollars (\$300.00), in order to renew.

(5) A licensed mortgage broker or mortgage lender shall notify the department within thirty (30) days by submitting a

sponsorship removal in the Nationwide Mortgage Licensing System and Registry when a loan originator is released from its employment. In addition, the licensed mortgage broker or mortgage lender shall notify the department within thirty (30) days through the Nationwide Mortgage Licensing System and Registry when there is a change of the qualifying individual of the licensee.

SECTION 6. Section 81-18-21, Mississippi Code of 1972, is amended as follows:

81-18-21. (1) Any person required to be licensed under this chapter shall maintain in its offices, or such other location as the department shall permit, the books, accounts and records necessary for the department to determine whether or not the person is complying with the provisions of this chapter and the rules and regulations adopted by the department under this chapter. These books, accounts and records shall be maintained apart and separate from any other business in which the person is involved and may represent historical data for three (3) years preceding the date of the last license application date forward. The books, accounts and records shall be kept in a secure location under conditions that will not lead to their damage or destruction. If the licensee wishes to keep the files in a location other than the location listed on the license, then the licensee first must submit a written request on a form designated by the department and gain written approval from the commissioner before storing the files at an off-site secure location.

(2) To assure compliance with the provisions of this chapter, the department may examine the books and records of any licensee without notice during normal business hours. The commissioner shall charge the licensee an examination fee in an amount not less than Three Hundred Dollars (\$300.00) nor more than Six Hundred Dollars (\$600.00) * * * per day with a maximum examination fee of Two Thousand Four Hundred Dollars (\$2,400.00) for each office or location within the State of Mississippi, and an examination fee in an amount not less than Three Hundred Dollars (\$300.00) nor more than Eight Hundred Dollars (\$800.00) per day for each office or location outside the State of Mississippi, plus any actual expenses incurred while examining the licensee's records or books that are located outside the State of Mississippi. However, in no event shall a licensee be examined more than once in a two-year period unless for cause shown based upon consumer complaint and/or other exigent reasons as determined by the commissioner.

(3) The department, its designated officers and employees, or its duly authorized representatives, for the purposes of discovering violations of this chapter and for the purpose of determining whether any person or individual reasonably suspected by the commissioner of conducting business that requires a license under this chapter, may investigate those persons and individuals and examine all relevant books, records and papers employed by those persons or individuals in the transaction of business, and

may summon witnesses and examine them under oath concerning matters as to the business of those persons, or other such matters as may be relevant to the discovery of violations of this chapter, including, without limitation, the conduct of business without a license as required under this chapter.

(4) Each licensee, individual or person subject to this chapter shall make available to the commissioner upon request the books and records relating to the operations of the licensee, individual or person subject to this chapter. The commissioner shall have access to those books and records and interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual or person subject to this chapter concerning their business.

(5) Each licensee, individual or person subject to this chapter shall make or compile reports or prepare other information as directed by the commissioner in order to carry out the purposes of this section, including, but not limited to:

- (a) Accounting compilations;
- (b) Information lists and data concerning loan transactions in a format prescribed by the commissioner; or
- (c) Such other information deemed necessary to carry out the purposes of this section.

(6) In making any examination or investigation authorized by this chapter, the commissioner may control access to any documents

and records of the licensee or person under examination or investigation. The commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except under a court order or with the consent of the commissioner. Unless the commissioner has reasonable grounds to believe the documents or records of the licensee have been or are at risk of being altered or destroyed for purposes of concealing a violation of this chapter, the licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

(7) The commissioner shall report regularly violations of this chapter, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry subject to the provisions contained in Section 81-18-63.

(8) Examinations and investigations conducted under this chapter and information obtained by the department, except as provided in subsection (7) of this section, in the course of its duties under this chapter are confidential.

(9) In the absence of malice, fraud or bad faith a person is not subject to civil liability arising from the filing of a complaint with the department, furnishing other information required by this chapter, information required by the department

under the authority granted in this chapter, or information voluntarily given to the department related to allegations that a licensee or prospective licensee has violated this chapter.

(10) In order to carry out the purposes of this section, the commissioner may:

(a) Accept and rely on examination or investigation reports made by other government officials, within or without this state; or

(b) Accept audit reports made by an independent certified public accountant for the licensee, individual or person subject to this chapter in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation or other writing of the commissioner.

(11) The authority of this section shall remain in effect, whether such a licensee, individual or person subject to this chapter acts or claims to act under any licensing or registration law of this state, or claims to act without that authority.

(12) No licensee, individual or person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy or secrete any books, records, computer records or other information.

SECTION 7. Section 81-18-23, Mississippi Code of 1972, is amended as follows:

81-18-23. (1) Each mortgage licensee shall submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require.

(2) The department, in its discretion, may relieve any company from the payment of any penalty, in whole or in part, for good cause.

(3) If a company fails to pay a penalty from which it has not been relieved, the department may maintain an action at law to recover the penalty.

(4) Within fifteen (15) days of the occurrence of any of the following events, a company shall file with the Nationwide Mortgage Licensing System and Registry the applicable change in the disclosure questions and shall submit the information through the Nationwide Mortgage Licensing System and Registry or file a written report with the commissioner describing the event and its expected impact on the activities of the company in this state:

(a) The filing for bankruptcy or reorganization by the company;

(b) The institution of revocation or suspension proceedings against the company by any state or governmental authority;

(c) Any felony indictment of the company or any of its directors, executive officers, qualifying individual or loan originators;

(d) Any felony conviction of the company or any of its directors, executive officers, qualifying individual or loan originators; or

(e) Any misdemeanor conviction, in which fraud is an essential element, of any of the company's directors, executive officers, qualifying individual or loan originators.

(5) * * * Licensees who are involved in civil actions shall notify the Nationwide Mortgage Licensing System and Registry within sixty (60) days of the occurrence. An explanation and supporting documentation for each civil action concerning the company shall be submitted through the Nationwide Mortgage Licensing System and Registry. The department may require additional information as necessary.

SECTION 8. Section 81-18-35, Mississippi Code of 1972, is amended as follows:

81-18-35. (1) Each licensee shall maintain a journal of mortgage transactions at the principal place of business as stated on its license * * * for all Mississippi residential loans that the licensee originated and/or funded. This journal shall be separate from non-Mississippi loans. The journal shall include at least the following information:

(a) Name of applicant and co-applicant, if applicable;

(b) Date of application; and

(c) Disposition of loan application, indicating date of loan closing, loan denial, withdrawal and name of lender if applicable.

(2) Each licensee shall maintain a journal of serviced loans at the principal place of business as stated on its license, for all Mississippi residential loans that the licensee owns and/or services. This journal shall be kept separate from non-Mississippi loans. The journal shall include at least the following information:

(a) The number of mortgage loans the licensee is servicing;

(b) The type and characteristics of the loans;

(c) The number of serviced loans in default, along with a breakdown of thirty-, sixty- and ninety-day delinquencies;

(d) Information on loss mitigation activities, including details on workout arrangements undertaken; and

(e) Information on foreclosures commenced.

SECTION 9. This act shall take effect and be in force from and after July 1, 2013.

PASSED BY THE SENATE
February 6, 2013



PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 5, 2013



SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR



GOVERNOR

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