

By: Senator(s) Jackson (15th)

To: Business and Financial
InstitutionsSENATE BILL NO. 2897
(As Sent to Governor)

1 AN ACT TO REENACT SECTIONS 81-18-1 THROUGH 81-18-63,
2 MISSISSIPPI CODE OF 1972, WHICH CREATE THE MISSISSIPPI S.A.F.E.
3 MORTGAGE ACT; TO AMEND REENACTED SECTION 81-18-3, MISSISSIPPI CODE
4 OF 1972, TO DEFINE THE TERM "HOUSING FINANCE AGENCY" AS USED IN
5 THE MISSISSIPPI S.A.F.E. MORTGAGE ACT; TO AMEND REENACTED SECTION
6 81-18-5, MISSISSIPPI CODE OF 1972, TO REVISE THE EXEMPTIONS FROM
7 THE ACT; TO AMEND REENACTED SECTION 81-18-9, MISSISSIPPI CODE OF
8 1972, TO REVISE THE APPLICATION REQUIREMENTS FOR LICENSURE; TO
9 AMEND REENACTED SECTION 81-18-11, MISSISSIPPI CODE OF 1972, TO
10 CLARIFY THE SURETY BOND REQUIREMENT FOR MORTGAGE LOAN ORIGINATORS;
11 TO AMEND REENACTED SECTION 81-18-13, MISSISSIPPI CODE OF 1972, TO
12 CLARIFY THE DEPARTMENT'S AUTHORITY TO ISSUE A LICENSE WHEN AN
13 APPLICANT OR PERSON CONVICTED OF A CRIME HAS RECEIVED AN
14 EXPUNGEMENT OF THE CRIME; TO AMEND REENACTED SECTIONS 81-18-17 AND
15 81-18-25, MISSISSIPPI CODE OF 1972, TO REVISE THE SIGNAGE
16 REQUIREMENTS FOR EACH PRINCIPAL PLACE OF BUSINESS AND BRANCH
17 OFFICE; TO AMEND REENACTED SECTION 81-18-19, MISSISSIPPI CODE OF
18 1972, TO CORRECT A TYPOGRAPHICAL ERROR; TO AMEND REENACTED SECTION
19 81-18-35, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT EACH LICENSEE
20 SHALL INCLUDE THE DATE OF LOAN CLOSING IN HIS JOURNAL OF MORTGAGE
21 TRANSACTIONS; TO AMEND REENACTED SECTION 81-18-39, MISSISSIPPI
22 CODE OF 1972, IN CONFORMITY THERETO; TO AMEND REENACTED SECTION
23 81-18-51, MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE OF REPEAL
24 ON THE ACT; TO AMEND REENACTED SECTION 81-18-53, MISSISSIPPI CODE
25 OF 1972, TO REMOVE THE CLARIFYING LANGUAGE REGARDING THE
26 APPLICABILITY OF THE CHAPTER TO ACTIVITIES OF OWNER FINANCING; TO
27 CREATE A NEW SECTION TO PROVIDE SERVICING REQUIREMENTS FOR
28 MORTGAGE LENDERS; AND FOR RELATED PURPOSES.

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

30 **SECTION 1.** Section 81-18-1, Mississippi Code of 1972, is
31 reenacted as follows:

32 81-18-1. This chapter shall be known and cited as the
33 "Mississippi S.A.F.E. Mortgage Act."

34 **SECTION 2.** Section 81-18-3, Mississippi Code of 1972, is
35 reenacted and amended as follows:

36 81-18-3. For purposes of this chapter, the following terms
37 shall have the following meanings:



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

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

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

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

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

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

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

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

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

68 (g) "Control" means the direct or indirect possession
69 of the power to direct or cause the direction of the management
70 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."



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

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

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

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

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

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

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

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

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



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

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

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

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

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



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

169 (i) * * * Takes a residential mortgage loan

170 application; and

171 (ii) Offers or negotiates terms of a residential

172 mortgage loan for compensation or gain. The term "mortgage loan

173 originator" does not include:

174 (i) An individual engaged solely as a loan

175 processor or underwriter except as otherwise provided in this

176 chapter;

177 (ii) A person or entity that only performs real

178 estate brokerage activities and is licensed or registered in

179 accordance with Mississippi law, unless the person or entity is

180 compensated by a lender, a mortgage broker, or other mortgage loan

181 originator or by any agent of such lender, mortgage broker, or

182 other mortgage loan originator; and

183 (iii) A person or entity solely involved in

184 extensions of credit relating to time-share plans, as that term is

185 defined in Title 11 USCS, Section 101(53D).

186 (z) "Nationwide Mortgage Licensing System and Registry"

187 means a mortgage licensing system developed and maintained by the

188 Conference of State Bank Supervisors and the American Association

189 of Residential Mortgage Regulators for the licensing and

190 registration of licensed mortgage loan originators.

191 (aa) "Natural person" means a human being, as

192 distinguished from an artificial person created by law.

193 (bb) "Nontraditional mortgage product" means any

194 mortgage product other than a thirty-year fixed rate mortgage.

195 (cc) "Offering or negotiating a residential mortgage

196 loan" means:

197 (i) Presenting particular mortgage loan terms for

198 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 lending, who is licensed as a loan originator as defined in this chapter, and who resides within one hundred twenty-five (125) miles of the licensed principal place of business of the company. 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 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 3. Section 81-18-5, Mississippi Code of 1972, is reenacted and amended as follows:

81-18-5. The following are exempt from the provisions of this chapter:



(a) Registered mortgage loan originators, when acting for an entity described in Section 81-18-3(ii).

(b) Any person who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.

(c) Any person, estate or trust who owner finances in one (1) calendar year no more than ten (10) residential mortgage loans or no more than twenty percent (20%) of his total residential units sold, whichever is greater.

(d) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of the lender, mortgage broker, or other mortgage loan originator.

(e) A depository institution, or a subsidiary that is owned and controlled by a depository institution, or an institution regulated by the Farm Credit Administration.

(f) Any mortgage lender who holds a valid license under the provisions of the Small Loan Regulatory Law, Section 75-67-101 et seq., and the Small Loan Privilege Tax Law, Section 75-67-201 et seq., and whose mortgage lending activities are limited solely to the servicing of mortgage loans that were in such mortgage lender's own loan portfolio as of December 31, 2009. For the purposes of the exemption in this paragraph (f), "servicing of mortgage loans" shall mean and include the collection of payments of principal and interest, insurance premiums, taxes and other payments required under such mortgage loans, and shall also include activities related to the collection of such payments such as collection calls whether by phone, mail, electronic means or in person, and enforcement remedies permitted by law or at equity. In no event shall the term "servicing of mortgage loans" include the renewal or reworking of the mortgage. If a mortgage loan is



renewed or reworked, the lender shall be required to obtain a mortgage license in order to continue any mortgage activity described in this chapter.

(g) Any bona fide nonprofit organization and its employees who demonstrate to the satisfaction of the commissioner through the periodic examination of the books and activities of the organization as required in Section 81-18-21, Mississippi Code of 1972, that they continually meet the following requirements, at a minimum:

(i) Maintains tax-exempt status under Section 501(c) (3) of the Internal Revenue Code of 1986;

(ii) Promotes affordable housing or provides homeownership education, or similar services;

(iii) Conducts its activities in a manner that serves public or charitable purposes;

(iv) Receives funding and revenue and charges fees in a manner that does not incentivize the organization or its employees to act other than in the best interests of its clients;

(v) Compensates employees in a manner that does not incentivize employees to act other than in the best interests of its client; and

(vi) Provides to or identifies for the borrower residential mortgage loans with terms that are favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs.

(h) Any person who is an employee of a government agency or housing finance agency who acts as a mortgage loan originator in accordance with his duties as an employee of such agency.

(i) Any person who performs clerical or support duties at the direction of and subject to the supervision and instruction of a state-licensed loan originator or a registered loan



originator. For purposes of this paragraph (i), the term "clerical or support duties" may include:

(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 such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

SECTION 4. Section 81-18-7, Mississippi Code of 1972, is reenacted as follows:

81-18-7. (1) No person shall transact business in this state, directly or indirectly, as a mortgage broker or mortgage lender unless he or she is licensed by the department or is a person exempted from the licensing requirements under Section 81-18-5.

(2) A violation of this section does not affect the obligation of the borrower under the terms of the mortgage loan. The department shall publish and provide for distribution of information regarding approved or revoked licenses.

(3) Every person who directly or indirectly controls a person who violates this section, including a general partner, executive officer, joint venturer, contractor, or director of the person, violates this section to the same extent as the person, unless the person whose violation arises under this subsection shows by a preponderance of evidence the burden of proof that he or she did not know and, in the exercise of reasonable care, could not have known of the existence of the facts by reason of which the original violation is alleged to exist.

(4) An individual, unless specifically exempted from this chapter under Section 81-18-5, shall not engage in the business of a mortgage loan originator with respect to any dwelling located in



this state without first obtaining and maintaining annually a license under this chapter. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(5) In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the effective date of subsection (4) of this section shall be as follows:

(a) For all individuals other than individuals described in paragraph (b), the effective date shall be July 31, 2010, or such later date approved by the Secretary of the United States Department of Housing and Urban Development, under the authority granted under Public Law 110-289, Section 1508(a).

(b) For all individuals licensed as mortgage loan originators as of July 31, 2009, the effective date shall be January 1, 2011, or such later date approved by the Secretary of the United States Department of Housing and Urban Development, under the authority granted under Public Law 110-289, Section 1508(a).

(6) For the purposes of implementing an orderly and efficient licensing process, the commissioner may establish licensing rules or regulations and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals, the commissioner may establish expedited review and licensing procedures.

SECTION 5. Section 81-18-9, Mississippi Code of 1972, is reenacted and 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.

(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 in mortgage lending by a person named as the qualifying individual of the company. This experience shall have been within the previous four (4) years from the date of application. * * * The qualifying individual shall also be licensed as a loan originator with the department, shall be employed at the main office address of the applicant and shall reside within one hundred twenty-five (125) miles of the main office address of the applicant. Evidence of experience shall include, where applicable:

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

(ii) Written letters of 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) A listing of wholesale lenders with whom the applicant has done business with in the past two (2) years either directly as a mortgage broker or loan originator.

(iv) 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 application 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;



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

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

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

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

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

505 (iv) All executive officers of the applicant;

506 (v) All loan originators; and

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

511 (4) Applicants for a mortgage loan originator license shall
512 apply in a form as prescribed by the commissioner. Each such form
513 shall contain content as set forth by rules, regulations,
514 instructions or procedures of the commissioner and may be changed
515 or updated as necessary by the commissioner in order to carry out
516 the purposes of this chapter. The initial license of a mortgage
517 loan originator shall be accompanied by a fee of One Hundred
518 Dollars (\$100.00) to be paid to the Nationwide Mortgage Licensing
519 System and Registry and any additional fees as required by the
520 Nationwide Mortgage Licensing System and Registry. The
521 commissioner shall not issue a mortgage loan originator license
522 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 and registration; or (ii) a crime that, if committed within this state, would constitute a felony under the laws of this state; or (iii) a misdemeanor of fraud, theft, forgery, bribery, embezzlement or making a fraudulent or false statement in any jurisdiction. All of this is provided that 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.

(5) The loan originator shall display the current, original license issued by the department in the licensed office in which he or she is assigned.

(6) 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.

(7) 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.



(8) 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 (7)(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.

(9) 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 (7)(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 6. Section 81-18-11, Mississippi Code of 1972, is reenacted and amended as follows:

81-18-11. (1) Each mortgage loan originator shall be covered by a surety bond in accordance with this section. If the mortgage loan originator is an employee or exclusive agent of a person subject to this chapter, the surety bond of the person who is subject to this chapter may be used in lieu of the mortgage loan originator's surety bond requirement.

(2) The surety bond shall be in a form as prescribed by the commissioner, and shall provide coverage for each mortgage loan originator in an amount as prescribed in subsection (3) of this section.

(3) The penal sum of the surety bond shall be maintained in an amount * * * as determined by the commissioner by rule or regulation and shall be based upon loan activity during the previous year, but shall not exceed Twenty-five Thousand Dollars (\$25,000.00) for a mortgage broker or One Hundred Fifty Thousand Dollars (\$150,000.00) for a mortgage lender. For an initial applicant, the bond amount shall be set at Twenty-five Thousand



622 Dollars (\$25,000.00) for a mortgage broker and One Hundred Fifty
623 Thousand Dollars (\$150,000.00) for a mortgage lender.

624 (4) When an action is commenced on a licensee's bond, the
625 commissioner may require the filing of a new bond. Immediately
626 upon recovery upon any action on the bond, the licensee shall file
627 a new bond.

628 (5) All surety bonds shall be in favor, first, of the State
629 of Mississippi for the use, benefit and indemnity of any person
630 who suffers any damage or loss as a result of the company's breach
631 of contract or of any obligation arising from the contract or any
632 violation of law, and, second, for the payment of any civil
633 penalties, criminal fines, or costs of investigation and/or
634 prosecution incurred by the State of Mississippi, including local
635 law enforcement agencies.

636 (6) The commissioner may promulgate rules or regulations
637 with respect to the requirements for the surety bonds as are
638 necessary to accomplish the purposes of this chapter.

639 **SECTION 7.** Section 81-18-13, Mississippi Code of 1972, is
640 reenacted and amended as follows:

641 81-18-13. (1) In order to fulfill the purposes of this
642 chapter, the commissioner is authorized to establish relationships
643 or contracts with the Nationwide Mortgage Licensing System and
644 Registry or other entities designated by the Nationwide Mortgage
645 Licensing System and Registry to collect and maintain records and
646 process transaction fees or other fees related to licensees or
647 other persons subject to this chapter.

648 (2) In connection with an application for licensing as a
649 mortgage broker or lender under this chapter, the required
650 stockholders, owners, directors and executive officers of the
651 applicant shall, at a minimum, furnish to the Nationwide Mortgage
652 Licensing System and Registry information concerning the
653 individual'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.

(3) 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 (2)(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.

(4) 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 (2)(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.

(5) Upon receipt of an application for licensure, which shall include the required set of fingerprints from any local law enforcement agency, the department or designated third party shall conduct such an investigation as it deems necessary to determine that the applicant and its officers, directors and principals are



687 of good character and ethical reputation; that the applicant
688 demonstrates reasonable financial responsibility; and that the
689 applicant has reasonable policies and procedures to receive and
690 process customer grievances and inquiries promptly and fairly.

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

695 (7) The department shall not license any mortgage broker or
696 mortgage lender unless the applicant meets the requirements of
697 Section 81-18-11.

698 (8) The department shall not issue a license if it finds
699 that the applicant, or any person who is a director, executive
700 officer, partner or qualifying individual of the applicant, has
701 been convicted of: (a) a felony in any jurisdiction; or (b) a
702 crime that, if committed within this state, would constitute a
703 felony under the laws of this state; or (c) a misdemeanor of
704 fraud, theft, forgery, bribery, embezzlement or making a
705 fraudulent or false statement in any jurisdiction. For the
706 purposes of this chapter, a person shall be deemed to have been
707 convicted of a crime if the person has pleaded guilty to a crime
708 before a court or federal magistrate, or plea of nolo contendere,
709 or has been found guilty of a crime by the decision or judgment of
710 a court or federal magistrate or by the verdict of a jury,
711 irrespective of the pronouncement of sentence or the suspension of
712 a sentence, unless the person convicted of the crime has received
713 a pardon from the President of the United States or the Governor
714 or other pardoning authority in the jurisdiction where the
715 conviction was obtained or has received an expungement of the
716 conviction.

717 (9) The department shall deny a license if it finds that the
718 applicant has had a mortgage loan originator license revoked in



any governmental jurisdiction, except that a subsequent formal vacation of that revocation shall not be deemed a revocation.

(10) 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.

(11) 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 8. Section 81-18-14, Mississippi Code of 1972, is reenacted as follows:

81-18-14. (1) In order to meet the prelicensing education requirement referred to in Section 81-18-9(4)(d), a person shall complete at least twenty (20) 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) Three (3) 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) Four (4) hours of education related to the Mississippi S.A.F.E. Mortgage Act.

(2) For the purposes of subsection (1) of this section, prelicensing education courses shall be reviewed, and approved by



the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a prelicensing education course shall include review and approval of the course provider.

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

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

(5) The prelicensing education requirements approved by the Nationwide Mortgage Licensing System and Registry in subsection (1) of this section for any state shall be accepted as credit towards completion of prelicensing education requirements in Mississippi.

(6) A person previously licensed under this chapter who applies to be licensed again on or after July 1, 2009, must prove that they have completed all of the continuing education requirements for the year in which the license was last held.

(7) In order to meet the written test requirement for mortgage loan originators referred to in Section 81-18-9(4)(e), an individual shall pass, in accordance with the standards established under this subsection, a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards.

(8) A written test shall not be treated as a qualified written test for purposes of subsection (7) of this section unless



the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:

- (a) Ethics;
- (b) Federal law and regulation pertaining to mortgage origination;
- (c) State law and regulation pertaining to mortgage origination; and
- (d) Federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace and fair lending issues.

(9) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(10) (a) An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than seventy-five percent (75%) correct answers to questions.

(b) An individual may retake a test three (3) consecutive times with each consecutive taking occurring at least thirty (30) days after the preceding test.

(c) After failing three (3) consecutive tests, an individual shall wait at least six (6) months before taking the test again.

(d) A licensed mortgage loan originator who fails to maintain a valid license for a period of five (5) years or longer shall retake the test, not taking into account any time during which such individual is a registered mortgage loan originator.

SECTION 9. Section 81-18-15, Mississippi Code of 1972, is reenacted 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 Seven Hundred Fifty Dollars (\$750.00); 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 Four Hundred Seventy-five Dollars (\$475.00) 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 any person engages in business as provided for in this chapter without paying the license fee provided for in this subsection before commencing business or before the expiration of the person's current license, as the case may be, then the person shall be liable for the initial license fee, which is Seven Hundred Fifty Dollars (\$750.00), plus a penalty in an amount not to exceed Twenty-five Dollars (\$25.00) for each day that the person has engaged in such business without a license or after the expiration of a 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).



848 (b) The mortgage loan originator has satisfied the
849 annual continuing education requirements described in Section
850 81-18-15(5).

851 (c) The mortgage loan originator has paid all required
852 fees for renewal of the license. Annual renewals of this license
853 shall require a fee of Fifty Dollars (\$50.00).

854 (3) The license of a mortgage loan originator failing to
855 satisfy the minimum standards for license renewal shall expire.
856 The commissioner may adopt procedures for the reinstatement of
857 expired licenses consistent with the standards established by the
858 Nationwide Mortgage Licensing System and Registry. If the renewal
859 fee remains unpaid, the license shall expire, but not before
860 December 31 of any year for which the annual renewal fee has been
861 paid. However, if the initial loan originator license is issued
862 between November 1 and December 31, the license will expire
863 December 31 of the following licensing year. If the renewal fee
864 is not paid before the expiration date of the license, the
865 mortgage loan originator shall be liable for the initial license
866 fee, which is One Hundred Dollars (\$100.00), in order to renew.

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

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

880 (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, with the exception of the course concerning the Mississippi S.A.F.E. Mortgage Act.

(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



913 continuing education requirement at the rate of two (2) hours
914 credit for every one (1) hour taught.

915 (11) A person having successfully completed the education
916 requirements approved by the Nationwide Mortgage Licensing System
917 and Registry in subsection (5) of this section for any state shall
918 be accepted as credit towards completion of continuing education
919 requirements in Mississippi.

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

924 (13) A person meeting the requirements of Section
925 81-18-15(2)(a) and (c) may make up any deficiency in continuing
926 education as established by rule or regulation of the
927 commissioner.

928 **SECTION 10.** Section 81-18-17, Mississippi Code of 1972, is
929 reenacted and amended as follows:

930 81-18-17. * * *

931 (1) A license may not be transferred or assigned.

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

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

939 (4) No licensee shall open a branch office in this state or
940 a branch office outside this state from which the licensee has
941 direct contact with consumers regarding origination or brokering
942 Mississippi residential property, without prior approval of the
943 department. An application for any branch office shall be made
944 through the Nationwide Mortgage Licensing System and Registry on a
945 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 One Hundred Dollars (\$100.00) 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 Twenty-five Dollars (\$25.00). 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 One Hundred Dollars (\$100.00), 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 11. Section 81-18-19, Mississippi Code of 1972, is reenacted and amended as follows:

81-18-19. (1) Except as provided in this section, no person shall acquire directly or indirectly ten percent (10%) or more of the voting shares of a corporation or ten percent (10%) or more of



the ownership of any other entity licensed to conduct business under this chapter unless it first files an application in accordance with the requirements prescribed in Section 81-18-9.

(2) Upon the filing and investigation of an application, the department shall permit the applicant to acquire the interest in the licensee if it is satisfied and finds that the applicant and its members, if applicable, its directors and officers, if a corporation, and any proposed new directors and officers have provided its surety bond and have the character, reputation and experience to warrant belief that the business will be operated fairly and in accordance with the law. If the application is denied, the department shall notify the applicant of the denial and the reasons for the denial.

(3) A decision of the department denying a license, original or renewal, shall be conclusive, except that the applicant may seek judicial review in the Chancery Court of the First Judicial District of Hinds County, Mississippi.

(4) The provisions of this section do not apply to the following, subject to notification as required in this section:

(a) The acquisition of an interest in a licensee directly or indirectly including an acquisition by merger or consolidation by or with a person licensed under this chapter or exempt from this chapter under Section 81-18-5.

(b) The acquisition of an interest in a licensee directly or indirectly including an acquisition by merger or consolidation by or with a person affiliated through common ownership with the licensee.

(c) The acquisition of an interest in a licensee by a person by bequest, devise, gift or survivorship or by operation of law.

(5) A person acquiring an interest in a licensee in a transaction that is requesting exemption from filing an application for approval of the application shall send a written



request to the department for an exemption within thirty (30) days before the closing of the transaction.

SECTION 12. Section 81-18-21, Mississippi Code of 1972, is reenacted 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) for each office or location within 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.



1045 (3) The department, its designated officers and employees,
1046 or its duly authorized representatives, for the purposes of
1047 discovering violations of this chapter and for the purpose of
1048 determining whether any person or individual reasonably suspected
1049 by the commissioner of conducting business that requires a license
1050 under this chapter, may investigate those persons and individuals
1051 and examine all relevant books, records and papers employed by
1052 those persons or individuals in the transaction of business, and
1053 may summon witnesses and examine them under oath concerning
1054 matters as to the business of those persons, or other such matters
1055 as may be relevant to the discovery of violations of this chapter
1056 including, without limitation, the conduct of business without a
1057 license as required under this chapter.

1058 (4) Each licensee, individual or person subject to this
1059 chapter shall make available to the commissioner upon request the
1060 books and records relating to the operations of the licensee,
1061 individual or person subject to this chapter. The commissioner
1062 shall have access to those books and records and interview the
1063 officers, principals, mortgage loan originators, employees,
1064 independent contractors, agents, and customers of the licensee,
1065 individual or person subject to this chapter concerning their
1066 business.

1067 (5) Each licensee, individual or person subject to this
1068 chapter shall make or compile reports or prepare other information
1069 as directed by the commissioner in order to carry out the purposes
1070 of this section including, but not limited to:

- 1071 (a) Accounting compilations;
- 1072 (b) Information lists and data concerning loan
1073 transactions in a format prescribed by the commissioner; or
- 1074 (c) Such other information deemed necessary to carry
1075 out the purposes of this section.

1076 (6) In making any examination or investigation authorized by
1077 this chapter, the commissioner may control access to any documents



1078 and records of the licensee or person under examination or
1079 investigation. The commissioner may take possession of the
1080 documents and records or place a person in exclusive charge of the
1081 documents and records in the place where they are usually kept.
1082 During the period of control, no individual or person shall remove
1083 or attempt to remove any of the documents and records except under
1084 a court order or with the consent of the commissioner. Unless the
1085 commissioner has reasonable grounds to believe the documents or
1086 records of the licensee have been or are at risk of being altered
1087 or destroyed for purposes of concealing a violation of this
1088 chapter, the licensee or owner of the documents and records shall
1089 have access to the documents or records as necessary to conduct
1090 its ordinary business affairs.

1091 (7) The commissioner shall report regularly violations of
1092 this chapter, as well as enforcement actions and other relevant
1093 information, to the Nationwide Mortgage Licensing System and
1094 Registry subject to the provisions contained in Section 81-18-63.

1095 (8) Examinations and investigations conducted under this
1096 chapter and information obtained by the department, except as
1097 provided in subsection (7) of this section, in the course of its
1098 duties under this chapter are confidential.

1099 (9) In the absence of malice, fraud or bad faith a person is
1100 not subject to civil liability arising from the filing of a
1101 complaint with the department, furnishing other information
1102 required by this chapter, information required by the department
1103 under the authority granted in this chapter, or information
1104 voluntarily given to the department related to allegations that a
1105 licensee or prospective licensee has violated this chapter.

1106 (10) In order to carry out the purposes of this section, the
1107 commissioner may:

1108 (a) Accept and rely on examination or investigation
1109 reports made by other government officials, within or without this
1110 state; or



1111 (b) Accept audit reports made by an independent
1112 certified public accountant for the licensee, individual or person
1113 subject to this chapter in the course of that part of the
1114 examination covering the same general subject matter as the audit
1115 and may incorporate the audit report in the report of the
1116 examination, report of investigation or other writing of the
1117 commissioner.

1118 (11) The authority of this section shall remain in effect,
1119 whether such a licensee, individual or person subject to this
1120 chapter acts or claims to act under any licensing or registration
1121 law of this state, or claims to act without that authority.

1122 (12) No licensee, individual or person subject to
1123 investigation or examination under this section may knowingly
1124 withhold, abstract, remove, mutilate, destroy or secrete any
1125 books, records, computer records or other information.

1126 **SECTION 13.** Section 81-18-23, Mississippi Code of 1972, is
1127 reenacted as follows:

1128 81-18-23. (1) Each mortgage licensee shall submit to the
1129 Nationwide Mortgage Licensing System and Registry reports of
1130 condition, which shall be in such form and shall contain such
1131 information as the Nationwide Mortgage Licensing System and
1132 Registry may require.

1133 (2) The department, in its discretion, may relieve any
1134 company from the payment of any penalty, in whole or in part, for
1135 good cause.

1136 (3) If a company fails to pay a penalty from which it has
1137 not been relieved, the department may maintain an action at law to
1138 recover the penalty.

1139 (4) Within fifteen (15) days of the occurrence of any of the
1140 following events, a company shall file with the Nationwide
1141 Mortgage Licensing System and Registry the applicable change in
1142 the disclosure questions and shall file a written report with the



1143 commissioner describing the event and its expected impact on the
1144 activities of the company in this state:

1145 (a) The filing for bankruptcy or reorganization by the
1146 company;

1147 (b) The institution of revocation or suspension
1148 proceedings against the company by any state or governmental
1149 authority;

1150 (c) Any felony indictment of the company or any of its
1151 directors, executive officers, qualifying individual or loan
1152 originators;

1153 (d) Any felony conviction of the company or any of its
1154 directors, executive officers, qualifying individual or loan
1155 originators; or

1156 (e) Any misdemeanor conviction, in which fraud is an
1157 essential element, of any of the company's directors, executive
1158 officers, qualifying individual or loan originators.

1159 (5) If the company, owner, qualifying individual of a
1160 company or licensed loan originator is involved in a civil action
1161 concerning the company, then the person shall notify the
1162 commissioner in writing within sixty (60) days after the initial
1163 filing of the civil action.

1164 **SECTION 14.** Section 81-18-25, Mississippi Code of 1972, is
1165 reenacted and amended as follows:

1166 81-18-25. (1) Each principal place of business and branch
1167 office in the state shall meet all of the following requirements:

1168 (a) Be in compliance with local zoning ordinances and
1169 have posted any licenses required by local government agencies.
1170 It is the responsibility of the licensee to meet local zoning
1171 ordinances and obtain the required occupational licenses; however,
1172 zoning cannot be residential. If there is no zoning in the area,
1173 then the person shall submit to the department a letter from the
1174 city or county stating that there is no zoning.



(b) Consist of at least one (1) secure enclosed room or secure building of stationary construction in which negotiations of mortgage loan transactions may be conducted in privacy. Stationary construction does not include the use of portable buildings. If there is no zoning in the requested location and the property is used for residential purposes, then the person shall utilize an enclosed room with a dedicated outside door.

(c) Display a permanent sign outside the place of business readily visible to the general public, unless the display of sign violates local zoning ordinances or restrictive covenants. The sign must contain the name of the licensee and the words "Mississippi Licensed Mortgage Company" or, if the initial license is obtained after July 1, 2007, the words "Licensed by the Mississippi Department of Banking and Consumer Finance." The signage shall also contain the Nationwide Mortgage Licensing System and Registry Unique Identifier issued to that particular licensed location.

* * *

(2) If one (1) of the following is correct, then that location shall be licensed as a mortgage broker or mortgage lender under this chapter and not as a branch:

(a) It is a separate entity operating as an independent business or mortgage operation which is not under the direct control, management supervision and responsibility of the licensee;

(b) The licensee is not the lessee or owner of the branch and the branch is not under the direct and daily ownership, control, management and supervision of the licensee;

(c) All assets and liabilities of the branch are not assets and liabilities of the licensee, and all income and expenses of the branch are income and expenses of the licensee and properly accounted for in the financial records and tax returns of the licensee; or



(d) All practices, policies and procedures, including, but not limited to, those relating to employment and operations, are not originated and established by the licensee or registered company and are not applied consistently to the principal place of business and all branches.

Nothing in this subsection (2) shall affect or change, or be construed as affecting or changing, the existing statutory law and common law on agency, principal and agent, independent contractors, and parent and subsidiary companies.

SECTION 15. Section 81-18-27, Mississippi Code of 1972, is reenacted as follows:

81-18-27. (1) No person required to be licensed under this chapter shall:

(a) Directly or indirectly employ any scheme, device or artifice to defraud or mislead borrowers or lenders or to defraud any person.

(b) Misrepresent to or conceal from an applicant for a mortgage loan or mortgagor, material facts, terms or conditions of a transaction to which the licensee is a party.

(c) Fail to disburse funds in accordance with a written commitment or agreement to make a mortgage loan.

(d) Fail to truthfully account for monies belonging to a party to a residential mortgage loan transaction.

(e) Improperly refuse to issue a satisfaction of a mortgage loan.

(f) Fail to account for or deliver to any person any personal property obtained in connection with a mortgage loan, such as money, funds, deposits, checks, drafts, mortgages or other documents or things of value that have come into the possession of the licensee and that are not the property of the licensee, or that the licensee is not by law or at equity entitled to retain.

(g) Engage in any transaction, practice, or course of business that is not in good faith, or that operates a fraud upon



any person in connection with the making of or purchase or sale of any mortgage loan, including the use of correction fluid on any document associated with the mortgage loan.

(h) Engage in any fraudulent residential mortgage underwriting practices, which include, but are not limited to, making in any manner, any false or deceptive statement or representation including, with regard to the rates, points or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising.

(i) Solicit or enter into a contract with a borrower that provides in substance that the person or individual subject to this chapter may earn a fee or commission through "best efforts" to obtain a loan even though no loan is actually obtained for the borrower.

(j) Induce, require, or otherwise permit the applicant for a mortgage loan or mortgagor to sign a security deed, note, or other pertinent financial disclosure documents with any blank spaces to be filled in after it has been signed, except blank spaces relating to recording or other incidental information not available at the time of signing.

(k) Make, directly or indirectly, any residential mortgage loan with the intent to foreclose on the borrower's property. For purposes of this paragraph, there is a presumption that a person has made a residential mortgage loan with the intent to foreclose on the borrower's property if any of the following circumstances are proven:

(i) Lack of substantial benefit to the borrower;
(ii) The probability that full payment of the loan cannot be made by the borrower;

(iii) That the person has made a significant proportion of loans foreclosed under similar circumstances;

(iv) That the person has provided an extension of credit or collected a mortgage debt by extortion;



1274 (v) That the person does business under a trade
1275 name that misrepresents or tends to misrepresent that the person
1276 is a bank, trust company, savings bank, savings and loan
1277 association, credit union, or insurance company.

1278 (1) Charge or collect any direct payment, compensation
1279 or advance fee from a borrower unless and until a loan is actually
1280 found, obtained and closed for that borrower, and in no event
1281 shall that direct payment, compensation or advance fee exceed
1282 seven and ninety-five one-hundredths percent (7.95%) of the
1283 original principal amount of the loan, and any such direct
1284 payments, compensation or advance fees shall be included in all
1285 annual percentage rate (APR) calculations if required under
1286 Regulation Z of the federal Truth in Lending Act (TILA). A direct
1287 payment, compensation or advance fee as defined in this section
1288 shall not include:

1289 (i) Any direct payment, compensation or advance
1290 fee collected by a licensed mortgage broker or mortgage lender to
1291 be paid to a nonrelated third party;

1292 (ii) Any indirect payment to a licensed mortgage
1293 broker or mortgage lender by a lender if those fees are not
1294 required to be disclosed under the Real Estate Settlement
1295 Procedures Act (RESPA);

1296 (iii) Any indirect payment or compensation by a
1297 lender to a licensee required to be disclosed by the licensee
1298 under RESPA, provided that the payment or compensation is
1299 disclosed to the borrower by the licensee on a good faith estimate
1300 of costs, is included in the APR if required under Regulation Z of
1301 TILA, and is made pursuant to a written agreement between the
1302 licensee and the borrower as may be required by Section 81-18-33;

1303 (iv) A fee not to exceed one percent (1%) of the
1304 principal amount of a loan for construction, provided that a
1305 binding commitment for the loan has been obtained for the
1306 prospective borrower; or



1307 (v) An advance fee, known as a lock-in fee,
1308 collected by a licensee to be paid to a lender to lock in an
1309 interest rate and/or a certain number of points on a mortgage loan
1310 from the lender as provided in Section 81-18-28.

1311 (m) Pay to any person not licensed under the provisions
1312 of this chapter any commission, bonus or fee in connection with
1313 arranging for or originating a mortgage loan for a borrower,
1314 except that a licensed loan originator may be paid a bonus,
1315 commission, or fee by his or her licensed employer.

1316 (n) Refuse to provide the loan payoff within three (3)
1317 business days of an oral or written request from a borrower or
1318 third party. Proof of authorization of the borrower shall be
1319 submitted for a third-party request.

1320 (o) Knowingly withhold, extract, remove, mutilate,
1321 destroy or conceal any books, records, computer records or other
1322 information which are required by law to be disclosed.

1323 (p) Negligently make any false statement or knowingly
1324 and willfully make any omission of material fact in connection
1325 with any information or reports filed with a governmental agency
1326 or the Nationwide Mortgage Licensing System and Registry or in
1327 connection with any investigation conducted by the commissioner or
1328 another governmental agency.

1329 (q) Fail to comply with this chapter or rules or
1330 regulations promulgated under this chapter, or fail to comply with
1331 any other state or federal law, including the rules and
1332 regulations under that law, applicable to any business authorized
1333 or conducted under this chapter.

1334 (r) Conduct any business covered by this chapter
1335 without holding a valid license as required under this chapter, or
1336 assist or aid and abet any person in the conduct of business under
1337 this chapter without a valid license as required under this
1338 chapter.



1339 (s) Make any payment, threat or promise, directly or
1340 indirectly, to any person for the purposes of influencing the
1341 independent judgment of the person in connection with a
1342 residential mortgage loan, or make any payment threat or promise,
1343 directly or indirectly, to any appraiser of a property, for the
1344 purposes of influencing the independent judgment of the appraiser
1345 with respect to the value of the property.

1346 (t) Solicit, advertise or enter into a contract for
1347 specific interest rates, points or other financing terms unless
1348 the terms are actually available at the time of soliciting,
1349 advertising or contracting.

1350 (u) Fail to make disclosures as required by this
1351 chapter and any other applicable state or federal law including
1352 regulations under that law.

1353 (v) Cause or require a borrower to obtain property
1354 insurance coverage in an amount that exceeds the replacement cost
1355 of the improvements as established by the property insurer.

1356 (2) A licensed mortgage broker or mortgage lender shall only
1357 broker a residential mortgage loan to a mortgage broker or
1358 mortgage lender licensed under this chapter or to a person exempt
1359 from licensure under the provisions of this chapter.

1360 (3) No nonbanking entity may use any sign or handwritten or
1361 printed paper indicating that it is a bank, savings bank, trust
1362 company or place of banking. No entity may use the word "bank,"
1363 "savings bank," "banking," "banker" or "trust company," or the
1364 equivalent or plural of any of these words, in connection with any
1365 business other than that of banking. This subsection does not
1366 prohibit a person from acting in a trust capacity.

1367 (4) No person shall use the name or logo of any banking
1368 entity in connection with the sale, offering for sale, or
1369 advertising of any financial product or service without the
1370 express written consent of the banking entity.



(5) No unlicensed Mississippi location of a Mississippi licensed mortgage broker or mortgage lender may advertise mortgage services if the unlicensed location is more than fifty (50) miles from a licensed Mississippi location.

SECTION 16. Section 81-18-28, Mississippi Code of 1972, is reenacted as follows:

81-18-28. (1) A licensed mortgage broker or mortgage lender may enter into lock-in agreements and collect a lock-in fee from a borrower on the lender's behalf. The lock-in fee shall not exceed the following:

(a) No fee may be collected to lock in for sixty (60) days or less;

(b) One percent (1%) of the principal amount of the loan to lock in for more than sixty (60) days, but not to exceed one hundred eighty (180) days;

(c) One and one-half percent (1-1/2%) of the principal amount of the loan to lock in for more than one hundred eighty (180) days, but not to exceed two hundred seventy (270) days; or

(d) Two percent (2%) of the principal amount of the loan to lock in for more than two hundred seventy (270) days.

(2) Before the collection of a lock-in fee, the applicant must be provided a copy of the lock-in fee agreement. This agreement shall contain at least the following:

(a) Identification of the property that is being purchased with the loan;

(b) The principal amount and term of the loan;

(c) The initial interest rate and/or points, whether the interest rate is fixed or variable, and if variable, the index and margin, or the method by which an interest rate change for the mortgage loan will be calculated;

(d) The amount of the lock-in fee, whether the fee is refundable or nonrefundable, the time by which the lock-in fee



1403 must be paid to the lender, and if the fee is refundable, the
1404 terms and conditions necessary to obtain the refund; and
1405 (e) The length of the lock-in period that the agreement
1406 covers.

1407 **SECTION 17.** Section 81-18-29, Mississippi Code of 1972, is
1408 reenacted as follows:

1409 81-18-29. The commissioner shall promulgate those rules and
1410 regulations, not inconsistent with law, necessary for the
1411 enforcement of this chapter.

1412 **SECTION 18.** Section 81-18-31, Mississippi Code of 1972, is
1413 reenacted as follows:

1414 81-18-31. The department shall promulgate regulations
1415 governing the advertising of mortgage loans, including, but not
1416 limited to, the following requirements:

1417 (a) That all advertisements for loans regulated under
1418 this chapter may not be false, misleading or deceptive. No person
1419 whose activities are regulated under this chapter may advertise in
1420 any manner so as to indicate or imply that its interest rates or
1421 charges for loans are "recommended," "approved," "set" or
1422 "established" by the State of Mississippi;

1423 (b) That all licensees shall maintain a copy of all
1424 advertisements citing interest rates or payment amounts primarily
1425 disseminated in this state and shall attach to each advertisement
1426 documentation that provides corroboration of the availability of
1427 the interest rate and terms of loans and names the specific media
1428 sources by which the advertisements were distributed;

1429 (c) That all published advertisements disseminated
1430 primarily in this state by a licensee shall contain the name and an
1431 office address of the licensee, which shall be the same as the
1432 name and address of the licensee on record with the department;

1433 (d) That an advertisement containing either a quoted
1434 interest rate or monthly payment amount must include:



1435 (i) The interest rate of the mortgage, a statement
1436 as to whether the rate is fixed or adjustable, and the adjustment
1437 index and frequency of adjustments;

1438 (ii) The term in years or months to fully repay
1439 the mortgage;

1440 (iii) The APR as computed under federal
1441 guidelines; and

1442 (e) That no licensee shall advertise its services in
1443 Mississippi in any media disseminated primarily in this state,
1444 whether print or electronic, without the words "Mississippi
1445 Licensed Mortgage Company" or, if the initial license is obtained
1446 after July 1, 2007, the words "Licensed by the Mississippi
1447 Department of Banking and Consumer Finance."

1448 (f) That the unique identifier of any person
1449 originating a residential mortgage loan shall be clearly shown on
1450 all residential mortgage loan application forms, solicitations or
1451 advertisements, including business cards or Web sites, and any
1452 other documents as established by rule, regulation or order of the
1453 commissioner.

1454 **SECTION 19.** Section 81-18-33, Mississippi Code of 1972, is
1455 reenacted as follows:

1456 81-18-33. The individual borrower files of a licensee shall
1457 contain at least the following:

1458 (a) A mortgage origination agreement provided to the
1459 borrower containing at least the following statements:

1460 (i) "As required by Mississippi Law, (licensed
1461 company name) has secured a bond issued by (name of insurance
1462 company), a surety company authorized to do business in this
1463 state. A certified copy of this bond is filed with the
1464 Mississippi Commissioner of Banking and Consumer Finance."

1465 (ii) "As a borrower you are protected under the
1466 Mississippi S.A.F.E. Mortgage Act."



1467 (iii) "Complaints against a licensee may be made
1468 by contacting the:
1469 Mississippi Department of Banking and
1470 Consumer Finance
1471 P.O. Drawer 23729
1472 Jackson, MS 39225-3729";
1473 (b) A copy of the original loan application signed and
1474 dated by the licensee;
1475 (c) A copy of the signed closing statement as required
1476 by HUD or documentation of denial or cancellation of the loan
1477 application;
1478 (d) A copy of the good-faith estimate of costs provided
1479 to the borrower;
1480 (e) A copy of the appraisal or statement of value if
1481 procured as a part of the loan application process;
1482 (f) A copy of a loan lock-in agreement, if any,
1483 provided by the licensee;
1484 (g) A copy of the disclosures required under Regulation
1485 Z of the federal Truth In Lending Act and other disclosures as
1486 required under federal regulations and evidence that those
1487 disclosures have been properly and timely made to the borrower;
1488 and
1489 (h) A copy of the final signed Uniform Residential Loan
1490 Application. However, any mortgage licensee who holds a license
1491 under the provisions of the Small Loan Regulatory Law, Section
1492 75-67-101 et seq., and the Small Loan Privilege Tax Law, Section
1493 75-67-201 et seq., may substitute an application that is otherwise
1494 compliant with federal and state law.

1495 **SECTION 20.** Section 81-18-35, Mississippi Code of 1972, is
1496 reenacted and amended as follows:

1497 81-18-35. Each licensee shall maintain a journal of mortgage
1498 transactions at the principal place of business as stated on its
1499 license, which shall include at least the following information:



1500 (a) Name of applicant and co-applicant, if applicable;
1501 (b) Date of application; and
1502 (c) Disposition of loan application, indicating date of
1503 loan closing, loan denial, withdrawal and name of lender if
1504 applicable.

1505 **SECTION 21.** Section 81-18-36, Mississippi Code of 1972, is
1506 reenacted as follows:

1507 81-18-36. (1) (a) All monies paid to a licensee for
1508 payment of taxes, loan commitment deposits, work completion
1509 deposits, appraisals, credit reports or insurance premiums on
1510 property that secures any loan made or serviced by the licensee
1511 shall be deposited in an account that is insured by the Federal
1512 Deposit Insurance Corporation or the National Credit Union
1513 Administration and shall be kept separate, distinct, and apart
1514 from funds belonging to the licensee.

1515 (b) The funds, when deposited, are to be designated as
1516 an "escrow account," or under some other appropriate name,
1517 indicating that the funds are not the funds of the licensee.

1518 (2) The licensee shall, upon reasonable notice, account to
1519 any debtor whose property secures a loan made by the licensee for
1520 any funds which that person has paid to the licensee for the
1521 payment of taxes or insurance premiums on the property in
1522 question.

1523 (3) The licensee shall, upon reasonable notice, account to
1524 the commissioner for all funds in the company's escrow account.

1525 (4) Escrow accounts are not subject to execution or
1526 attachment on any claim against the licensee.

1527 (5) It is unlawful for any licensee knowingly to keep or
1528 cause to be kept any funds or money in any bank or other financial
1529 institution under the heading of "escrow account" or any other
1530 name designating the funds or monies belonging to the debtors of
1531 the licensee, except actual funds paid to the licensee for the



1532 payment of taxes and insurance premiums on property securing loans
1533 made or serviced by the company.

1534 **SECTION 22.** Section 81-18-37, Mississippi Code of 1972, is
1535 reenacted as follows:

1536 81-18-37. (1) The department may suspend or revoke any
1537 license for any reason that would have been grounds for refusal to
1538 issue an original license or for:

1539 (a) A violation of any provision of this chapter or any
1540 rule or regulation adopted under this chapter;

1541 (b) Failure of the licensee to pay, within thirty (30)
1542 days after it becomes final and nonappealable, a judgment
1543 recovered in any court within this state by a claimant or creditor
1544 in an action arising out of the licensee's business in this state
1545 as a mortgage broker or mortgage lender.

1546 (2) Notice of the department's intention to enter an order
1547 denying an application for a license under this chapter or of an
1548 order suspending or revoking a license under this chapter shall be
1549 given to the applicant, licensee in writing, sent by registered or
1550 certified mail addressed to the principal place of business of the
1551 applicant or licensee. Within thirty (30) days of the date of the
1552 notice of intention to enter an order of denial, suspension or
1553 revocation under this chapter, the applicant, licensee may request
1554 in writing a hearing to contest the order. If a hearing is not
1555 requested in writing within thirty (30) days of the date of the
1556 notice of intention, the department shall enter a final order
1557 regarding the denial, suspension or revocation. Any final order
1558 of the department denying, suspending or revoking a license shall
1559 state the grounds upon which it is based and shall be effective on
1560 the date of issuance. A copy of the final order shall be
1561 forwarded promptly by registered or certified mail addressed to
1562 the principal place of business of the applicant or licensee.

1563 **SECTION 23.** Section 81-18-39, Mississippi Code of 1972, is
1564 reenacted and amended as follows:



81-18-39. (1) For purposes of this section, the term "person" shall be construed to include any officer, director, employee, affiliate or other person participating in the conduct of the affairs of the person subject to the orders issued under this section.

(2) If the department reasonably determines that a person required to be licensed * * * under this chapter has violated any law of this state or any order or regulation of the department, the department may issue a written order requiring the person to cease and desist from unlawful or unauthorized practices. In the case of an unlawful purchase of mortgage loans, the cease and desist order to a purchaser shall constitute the knowledge required under this section for any subsequent violations.

(3) Any person required to be licensed * * * under this chapter who has been deemed by the commissioner, after notice and hearing, to have violated the terms of any order properly issued by the department under this section shall be liable for a civil penalty not to exceed Three Thousand Dollars (\$3,000.00). The department, in determining the amount of the penalty, shall take into account the appropriateness of the penalty relative to the size of the financial resources of the person, the good-faith efforts of the person to comply with the order, the gravity of the violation, the history of previous violations by the person, and other factors or circumstances that contributed to the violation. The department may compromise, modify or refund any penalty that has been imposed under this section. Any person assessed a penalty as provided in this subsection shall have the right to request a hearing on the amount of the penalty within ten (10) days after receiving notification of the assessment. If no hearing is requested within ten (10) days of the receipt of the notice, the penalty shall be final except as to judicial review in the Chancery Court of the First Judicial District of Hinds County. Upon the filing of a petition for judicial review, the court shall



1598 issue an order to the licensee requiring the licensee to show
1599 cause why it should not be entered. If the court determines,
1600 after a hearing upon the merits or after failure of the person to
1601 appear when so ordered, that the order of the department was
1602 properly issued, it shall grant the penalty sought by the
1603 department.

1604 **SECTION 24.** Section 81-18-40, Mississippi Code of 1972, is
1605 reenacted as follows:

1606 81-18-40. (1) For the purpose of conducting investigations,
1607 examinations or other proceedings under this chapter, the
1608 commissioner or his designee may issue subpoenas to any
1609 individual, person or other entity for the production of all
1610 books, papers, records, files, documents or other things, and may
1611 subpoena and compel the attendance of witnesses to give testimony,
1612 and may administer oaths. Subpoenas as herein provided may be
1613 served either by personal process or by registered mail, and upon
1614 service shall command attendance of such witnesses, and/or
1615 production of such papers and documents, at the time and place so
1616 specified.

1617 (2) Any person or entity who fails or refuses to comply with
1618 a subpoena issued hereunder may be assessed by the commissioner a
1619 civil penalty of not more than Five Hundred Dollars (\$500.00) for
1620 each day of noncompliance, and any privileges or licenses issued
1621 by the commissioner to the person or entity may be suspended for
1622 not more than six (6) months. In addition to the civil penalty,
1623 the commissioner shall be entitled to the assistance of the
1624 chancery court or the chancellor in vacation, which, on petition
1625 by the commissioner or his designee, shall issue ancillary
1626 subpoenas and petitions and may punish as for contempt of court in
1627 the event of noncompliance therewith, and assess attorney's fees
1628 and costs, if deemed appropriate.

1629 **SECTION 25.** Section 81-18-41, Mississippi Code of 1972, is
1630 reenacted as follows:



81-18-41. Nothing in this chapter shall preclude a person whose license has been suspended or revoked from continuing to service mortgage loans pursuant to servicing contracts in existence at the time of the suspension or revocation for a reasonable transition period, as determined by the commissioner, after the date of the entry of the final decision in the case suspending or revoking the license.

SECTION 26. Section 81-18-43, Mississippi Code of 1972, is reenacted as follows:

81-18-43. (1) In order to ensure the effective supervision and enforcement of this chapter, the commissioner may:

(a) Deny, suspend, revoke, condition or decline to renew a license for a violation of this chapter, rules or regulations issued under this chapter or order or directive entered under this chapter.

(b) Deny, suspend, revoke, condition or decline to renew a license if an applicant or licensee fails at any time to meet the requirements of Section 81-18-9(4) or 81-18-15(2), or withholds information or makes a material misstatement in an application for a license or renewal of a license.

(c) Order restitution against persons subject to this chapter for violations of this chapter.

(d) Impose civil penalties on persons subject to this chapter under subsections (2) and (3) of this section.

(e) Issue orders or directives under this chapter as follows:

(i) Order or direct persons subject to this chapter to cease and desist from conducting business, including immediate temporary orders to cease and desist.

(ii) Order or direct persons subject to this chapter to cease any harmful activities or violations of this chapter, including immediate temporary orders to cease and desist.



1663 (iii) Enter immediate temporary orders to cease
1664 business under a license issued under the authority granted under
1665 Section 81-18-7(6) if the commissioner determines that the license
1666 was erroneously granted or the licensee is currently in violation
1667 of this chapter.

1668 (iv) Order or direct such other affirmative action
1669 as the commissioner deems necessary.

1670 (2) The commissioner may impose a civil penalty on a
1671 mortgage loan originator or person subject to this chapter, if the
1672 commissioner finds, on the record after notice and opportunity for
1673 hearing, that the mortgage loan originator or person subject to
1674 this chapter has violated or failed to comply with any requirement
1675 of this chapter or any regulation prescribed by the commissioner
1676 under this chapter or order issued under authority of this
1677 chapter. The maximum amount of penalty for each act or omission
1678 described in this subsection shall be Twenty-five Thousand Dollars
1679 (\$25,000.00).

1680 (3) Each violation or failure to comply with any directive
1681 or order of the commissioner is a separate and distinct violation
1682 or failure.

1683 (4) For a first offense, the licensee, person required to be
1684 licensed, or employee may be found guilty of a misdemeanor and,
1685 upon conviction thereof, shall be punishable by imprisonment in
1686 the county jail for not more than one (1) year.

1687 (5) For a second or subsequent offense, the licensee, person
1688 required to be licensed, or employee shall be guilty of a felony
1689 and, upon conviction thereof, may be punished by imprisonment in
1690 the custody of the State Department of Corrections for a term not
1691 less than one (1) year nor more than five (5) years.

1692 (6) Compliance with the criminal provisions of this section
1693 shall be enforced by the appropriate law enforcement agency, which
1694 may exercise for that purpose any authority conferred upon the
1695 agency by law.



(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) The state may enforce its rights under the surety bond as required in Section 81-18-11 as an available remedy for the collection of any civil penalties, criminal fines or costs of investigation and/or prosecution incurred.

(9) Any person assessed a penalty as provided in this section shall have the right to request a hearing on the amount of the penalty within ten (10) days after receiving notification of the assessment. If no hearing is requested within ten (10) days of the receipt of the notice, the penalty shall be final except as to judicial review in the Chancery Court of the First Judicial District of Hinds County. Upon the filing of a petition for judicial review, the court shall issue an order to the licensee requiring the licensee to show cause why it should not be entered. If the court determines, after a hearing upon the merits or after failure of the person to appear when so ordered, that the order of the department was properly issued, it shall grant the penalty sought by the department.

SECTION 27. Section 81-18-51, Mississippi Code of 1972, is amended as follows:

81-18-51. Sections 81-18-1 through 81-18-63 shall stand repealed on July 1, 2016.

SECTION 28. Section 81-18-53, Mississippi Code of 1972, is reenacted and amended as follows:

81-18-53. * * * The provisions of this chapter shall apply to the activities of retail sellers of manufactured homes to the extent as determined by the United States Department of Housing and Urban Development through guidelines, rules, regulations or interpretive letters or the United States Consumer Financial Protection Bureau.



1729 * * *

1730 **SECTION 29.** Section 81-18-61, Mississippi Code of 1972, is
1731 reenacted as follows:

1732 81-18-61. (1) In addition to any other duties imposed upon
1733 the commissioner by law, the commissioner shall require mortgage
1734 loan originators to be licensed and registered through the
1735 Nationwide Mortgage Licensing System and Registry. In order to
1736 carry out this requirement, the commissioner is authorized to
1737 participate in the Nationwide Mortgage Licensing System and
1738 Registry. For this purpose, the commissioner may establish, by
1739 rule, regulation or order, requirements as necessary, including,
1740 but not limited to:

1741 (a) Background checks for:

1742 (i) Criminal history through fingerprint or other
1743 databases;

1744 (ii) Civil or administrative records;

1745 (iii) Credit history; or

1746 (iv) Any other information as deemed necessary by
1747 the Nationwide Mortgage Licensing System and Registry;

1748 (b) The payment of fees to apply for or renew licenses
1749 through the Nationwide Mortgage Licensing System and Registry;

1750 (c) The setting or resetting as necessary of renewal or
1751 reporting dates; and

1752 (d) Requirements for amending or surrendering a license
1753 or any other such activities as the commissioner deems necessary
1754 for participation in the Nationwide Mortgage Licensing System and
1755 Registry.

1756 (2) The commissioner shall establish a process by which
1757 mortgage loan originators may challenge information entered into
1758 the Nationwide Mortgage Licensing System and Registry by the
1759 commissioner.

1760 (3) In order to fulfill the purposes of this chapter, the
1761 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.

(4) A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless the independent contractor loan processor or underwriter obtains and maintains a license under Section 81-18-7(4). Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

SECTION 30. Section 81-18-63, Mississippi Code of 1972, is reenacted as follows:

81-18-63. (1) Except as otherwise provided in Public Law 110-289, Section 1512, the requirements under any federal law or applicable state law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising under federal or state law (including the rules of any federal or state court) with respect to that information or material, shall continue to apply to the information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. The information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or applicable state law.

(2) In order to promote more effective regulation and reduce regulatory burden through supervisory information sharing, the commissioner is authorized to enter agreements or sharing arrangements with other governmental agencies, the Conference of



1795 State Bank Supervisors, the American Association of Residential
1796 Mortgage Regulators or other associations representing
1797 governmental agencies as established by rule, regulation or order
1798 of the commissioner.

1799 (3) Information or material that is subject to a privilege
1800 or confidentiality under subsection (1) of this section shall not
1801 be subject to:

1802 (a) Disclosure under any federal or state law governing
1803 the disclosure to the public of information held by an officer or
1804 an agency of the federal government or the respective state; or

1805 (b) Subpoena or discovery, or admission into evidence,
1806 in any private civil action or administrative process, unless with
1807 respect to any privilege held by the Nationwide Mortgage Licensing
1808 System and Registry with respect to that information or material,
1809 the person to whom the information or material pertains waives, in
1810 whole or in part, in the discretion of the person, that privilege.

1811 (4) Any applicable state law relating to the disclosure of
1812 confidential supervisory information or any information or
1813 material described in subsection (1) of this section that is
1814 inconsistent with subsection (1) shall be superseded by the
1815 requirements of this section.

1816 (5) This section shall not apply with respect to the
1817 information or material relating to the employment history of, and
1818 publicly adjudicated disciplinary and enforcement actions against,
1819 mortgage loan originators that is included in the Nationwide
1820 Mortgage Licensing System and Registry for access by the public.

1821 **SECTION 31.** (1) In addition to the activities prohibited
1822 under other provisions of this chapter, it shall be unlawful in
1823 the course of any residential mortgage loan transaction:

1824 (a) For any person to fail to comply with the mortgage
1825 loan servicing transfer, escrow account administration, or
1826 borrower inquiry response requirements imposed by Sections 6 and



1827 10 of the Real Estate Settlement Procedures Act (RESPA) and
1828 regulations adopted thereunder;

1829 (b) For a mortgage lender to fail to provide written
1830 notice to a borrower upon taking action to place hazard,
1831 homeowners, or flood insurance on the mortgaged property or to
1832 place such insurance when the mortgage lender knows or has reason
1833 to know that the insurance is in effect;

1834 (c) For a mortgage lender to place hazard, homeowners
1835 or flood insurance on a mortgaged property for an amount that
1836 exceeds either the value of the insurable improvements or the
1837 last-known coverage amount of insurance;

1838 (d) For a mortgage lender to fail to provide to the
1839 borrower a refund or earned premiums paid by a borrower or charged
1840 to the borrower for hazard, homeowners, or flood insurance placed
1841 by a mortgage lender if the borrower provides reasonable proof
1842 that the borrower has obtained coverage such that the forced
1843 placement is no longer necessary and the property is insured. If
1844 the borrower provides reasonable proof within twelve (12) months
1845 of the placement that no lapse in coverage occurred such that the
1846 forced placement was not necessary, the mortgage lender shall
1847 refund the entire premium;

1848 (e) For a mortgage lender to refuse to reinstate a
1849 delinquent loan upon a tender of payment made timely under the
1850 contract which is sufficient in amount, based upon the last
1851 written statement received by the borrower, to pay all past-due
1852 amounts, outstanding or overdue charges, and restore the loan to a
1853 nondelinquent status, but his reinstatement shall be available to
1854 a borrower no more than twice in any twenty-four-month period;

1855 (f) For a mortgage lender to fail to mail, at least
1856 forty-five (45) days before foreclosure is initiated, a notice
1857 addressed to the borrower at the borrower's last-known address
1858 with the following information:



1859 (i) An itemization of all past-due amounts causing
1860 the loan to be in default;

1861 (ii) An itemization of any other charges that must
1862 be paid in order to bring the loan current;

1863 (iii) A statement that the borrower may have
1864 options available other than foreclosure and that the borrower may
1865 discuss the options with the mortgage lender, or a counselor
1866 approved by the U.S. Department of Housing and Urban Development
1867 (HUD);

1868 (iv) The address, telephone number, and other
1869 contact information for the mortgage lender or the agent for the
1870 mortgage lender who is authorized to attempt to work with the
1871 borrower to avoid foreclosure;

1872 (v) The name, address, telephone number, and other
1873 contact information for one or more HUD-approved counseling
1874 agencies operating to assist borrowers in Mississippi to avoid
1875 foreclosure; and

1876 (vi) The address, telephone number, and other
1877 contact information for the consumer complaint section of the
1878 Mississippi Department of Banking and Consumer Finance;

1879 (g) For a mortgage lender to fail to make all payments
1880 from any escrow account held for the borrower for insurance, taxes
1881 and other charges with respect to the property in a timely manner
1882 so as to ensure that no late penalties are assessed or other
1883 negative consequences result regardless of whether the loan is
1884 delinquent, unless there are not sufficient funds in the account
1885 to cover the payments and the mortgage lender has a reasonable
1886 basis to believe that recovery of the funds will not be possible.

1887 (2) The mortgage lender shall make reasonable attempts to
1888 comply with a borrower's request for information about the home
1889 loan account and to respond to any dispute initiated by the
1890 borrower about the loan account, as provided in this section. The
1891 mortgage lender shall maintain, until the home loan is paid in



full, otherwise satisfied, or sold, written or electronic records of each written request for information regarding a dispute or error involving the borrower's account. Specifically, the mortgage lender is required to do all of the following:

(a) Provide a written statement to the borrower within ten (10) business days of receipt of a written request from the borrower that includes or otherwise enables the mortgage lender to identify the name and account of the borrower and includes a statement that the account is or may be in error or otherwise provides sufficient detail to the mortgage lender regarding information sought by the borrower. The borrower is entitled to one such statement in any six-month period free of charge, and additional statements shall be provided if the borrower pays the mortgage lender a reasonable charge for preparing and furnishing the statement not to exceed Twenty-five Dollars (\$25.00). The statement shall include the following information if requested:

(i) Whether the account is current or, if the account is not current, an explanation of the default and the date the account went into default;

(ii) The current balance due on the loan, including the principal due, the amount of funds (if any) held in a suspense account, the amount of the escrow balance (if any) known to the mortgage lender, and whether there are any escrow deficiencies or shortages known to the mortgage lender;

(iii) The identity, address and other relevant information about the current holder, owner or assignee of the loan; and

(iv) The telephone number and mailing address of a mortgage lender representative with the information and authority to answer questions and resolve disputes;

(b) Provide the following information and/or documents within twenty-five (25) business days of receipt of a written request from the borrower that includes or otherwise enables the



1925 mortgage lender to identify the name and account of the borrower
1926 and includes a statement that the account is or may be in error or
1927 otherwise provides sufficient detail to the mortgage lender
1928 regarding information sought by the borrower:

1929 (i) A copy of the original note, or if
1930 unavailable, an affidavit of the lost note;

1931 (ii) A statement that identifies and itemizes all
1932 fees and charges assessed under the loan transaction and provides
1933 a full payment history identifying in a clear and conspicuous
1934 manner all of the debits, credits, application of and disbursement
1935 of all payments received from or for the benefit of the borrower,
1936 and other activity on the home loan including escrow account
1937 activity and suspense account activity, if any. The period of the
1938 account history shall cover at a minimum the two-year period prior
1939 to the date of the receipt of the request for information. If the
1940 mortgage lender has not serviced the home loan for the entire
1941 two-year time period the mortgage lender shall provide the
1942 information going back to the date on which the mortgage lender
1943 began servicing the home loan. For purposes of this subsection,
1944 the date of the request for the information shall be presumed to
1945 be no later than thirty (30) days from the date of the receipt of
1946 the request. If the mortgage lender claims that any delinquent or
1947 outstanding sums are owed on the home loan prior to the two-year
1948 period or the period during which the mortgage lender has serviced
1949 the loan, the mortgage lender shall provide an account history
1950 beginning with the month that the mortgage lender claims any
1951 outstanding sums are owed on the loan up to the date of the
1952 request for the information. The borrower is entitled to one (1)
1953 such statement in any six-month period free of charge. Additional
1954 statements shall be provided if the borrower pays the mortgage
1955 lender a reasonable charge for preparing and furnishing the
1956 statement not to exceed Fifty Dollars (\$50.00); and



1957 (c) Promptly correct errors relating to the allocation
1958 of payments, the statement of account, or the payoff balance
1959 identified in any notice from the borrower provided in accordance
1960 with paragraph (b) of this subsection, or discovered through the
1961 due diligence of the mortgage lender or other means.

1962 (3) A mortgage lender must comply as to every residential
1963 mortgage loan, regardless of whether the loan is considered in
1964 default or the borrower is in bankruptcy or the borrower has been
1965 in bankruptcy, with the following requirements:

1966 (a) Any fee that is incurred by a mortgage lender shall
1967 be both:

1968 (i) Assessed within forty-five (45) days of the
1969 date on which the fee was incurred. Provided, however, that
1970 attorney or trustee fees and costs incurred as a result of a
1971 foreclosure action shall be assessed within forty-five (45) days
1972 of the date they are charged by either the attorney or trustee to
1973 the mortgage lender; and

1974 (ii) Explained clearly and conspicuously in a
1975 statement mailed to the borrower at the borrower's last-known
1976 address within thirty (30) days after assessing the fee, provided
1977 the mortgage lender shall not be required to take any action in
1978 violation of the provisions of the federal bankruptcy code. The
1979 mortgage lender shall not be required to send such a statement for
1980 a fee that: results from a service that is affirmatively
1981 requested by the borrower, is paid for by the borrower at the time
1982 the service is provided, and is not charged to the borrower's loan
1983 account.

1984 (b) All amounts received by a mortgage lender on a home
1985 loan at the address where the borrower has been instructed to make
1986 payments shall be accepted and credited, or treated as credited,
1987 within one (1) business day of the date received, provided that
1988 the borrower has made the full contractual payment and has
1989 provided sufficient information to credit the account. If a



mortgage lender uses the scheduled method of accounting, any regularly scheduled payment made prior to the scheduled due date shall be credited no later than the due date. Provided, however, that if any payment is received and not credited, or treated as credited, the borrower shall be notified within ten (10) business days by mail at the borrower's last-known address of the disposition of the payment, the reason the payment was not credited, or treated as credited to the account, and any actions necessary by the borrower to make the loan current.

(c) The notification required by paragraph (b) of this subsection is not necessary if the mortgage lender complies with the terms of any agreement or plan made with the borrower and has applied and credited payments received in the manner required, and the mortgage lender is applying and crediting payments to the borrower's account in compliance with all applicable state and federal laws, including bankruptcy laws, and if at least one (1) of the following occurs:

(i) The borrower has entered into written loss mitigation, loan modification, or forbearance agreement with the mortgage lender that itemizes all amounts due and specifies how payments will be applied and credited;

(ii) The borrower has elected to participate in an alternative payment plan, such as a biweekly payment plan, that specifies as part of a written agreement how payments will be applied and credited; or

(iii) The borrower is making payments pursuant to a bankruptcy plan.

(d) Failure to charge the fee or provide the information within the allowable time and in the manner required under subsection (3)(a)(i) of this section constitutes a waiver of such fee.

(e) All fees charged by a mortgage lender must be otherwise permitted under applicable law and the contracts between



2023 the parties. Nothing herein is intended to permit the application
2024 of payments or method of charging interest which is less
2025 protective of the borrower than the contracts between the parties
2026 and other applicable law.

2027 (f) A mortgage lender shall charge a sum or prepayment
2028 penalty for the prepayment of any residential mortgage loan only
2029 as authorized by Section 75-17-31.

2030 (g) A mortgage lender shall charge a late payment
2031 charge only as authorized by Section 75-17-27.

2032 (h) The costs of collection and reasonable attorney
2033 fees may not be in excess of twenty-five percent (25%) of the
2034 unpaid debt after default, when the debt has been referred to an
2035 attorney for collection.

2036 (i) Charges or premiums for credit life insurance
2037 actually written on the life of the borrower or endorser in an
2038 amount not to exceed the total sum payable under the residential
2039 mortgage loan, including all interest, fees, costs and charges.

2040 **SECTION 32.** This act shall take effect and be in force from
2041 and after July 1, 2012.

