

By: Senator(s) Parks

To: Business and Financial
Institutions

SENATE BILL NO. 2427

1 AN ACT TO REENACT SECTIONS 81-18-1 THROUGH 81-18-63,
 2 MISSISSIPPI CODE OF 1972, KNOWN AS THE MISSISSIPPI S.A.F.E.
 3 MORTGAGE ACT; TO AMEND REENACTED SECTION 81-18-21, MISSISSIPPI
 4 CODE OF 1972, TO EXTEND AND CLARIFY THE TIME PERIOD DURING WHICH
 5 MORTGAGE BROKERS ARE REQUIRED TO MAINTAIN THEIR BOOKS, ACCOUNTS
 6 AND RECORDS; TO AMEND REENACTED SECTION 81-18-33, MISSISSIPPI CODE
 7 OF 1972, TO CLARIFY THE TYPE OF ESTIMATE OF COSTS PROVIDED TO THE
 8 BORROWER; TO REPEAL SECTION 81-18-51, MISSISSIPPI CODE OF 1972,
 9 WHICH PROVIDES THE DATE OF REPEAL ON THE PROVISIONS OF LAW KNOWN
 10 AS THE MISSISSIPPI S.A.F.E. MORTGAGE ACT; AND FOR RELATED
 11 PURPOSES.

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

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

15 81-18-1. This chapter shall be known and cited as the
 16 "Mississippi S.A.F.E. Mortgage Act."

17 **SECTION 2.** Section 81-18-3, Mississippi Code of 1972, is
 18 reenacted as follows:

19 81-18-3. For purposes of this chapter, the following terms
 20 shall have the following meanings:

21 (a) "Application" means the submission of a borrower's
 22 financial information in anticipation of a credit decision,



23 whether written or computer-generated. If the submission does not
24 state or identify a specific property, the submission is an
25 application for a prequalification and not an application for a
26 federally related mortgage loan. The subsequent addition of an
27 identified property to the submission converts the submission to
28 an application for a federally related mortgage loan.

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

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

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

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

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

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

45 (e) "Commitment" means a statement by a lender required
46 to be licensed under this chapter that sets forth the terms and



47 conditions upon which the lender is willing to make a particular
48 mortgage loan to a particular borrower.

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

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

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

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

61 (j) "Executive officer" means the chief executive
62 officer, the president, the principal financial officer, the
63 principal operating officer, each vice president with
64 responsibility involving policy-making functions for a significant
65 aspect of a person's business, the secretary, the treasurer, or
66 any other person performing similar managerial or supervisory
67 functions with respect to any organization whether incorporated or
68 unincorporated.

69 (k) "Federal banking agencies" means the Board of
70 Governors of the Federal Reserve System, the Comptroller of the
71 Currency, the Director of the Office of Thrift Supervision, the



72 National Credit Union Administration, and the Federal Deposit
73 Insurance Corporation.

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

139 (x) "Mortgage-lending process" means the process
140 through which a person seeks or obtains a mortgage loan,
141 including, but not limited to, solicitation, application,
142 origination, negotiation of terms, third-party provider services,
143 underwriting, signing and closing, and funding of the loan.
144 Documents involved in the mortgage-lending process include, but
145 are not limited to, uniform residential loan applications or other



146 loan applications, appraisal reports, HUD-1 Settlement Statements,
147 supporting personal documentation for loan applications such as
148 W-2 forms, verifications of income and employment, bank
149 statements, tax returns, payroll stubs and any required
150 disclosures.

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

152 (i) Takes a residential mortgage loan application;
153 and

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

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

160 2. A person or entity that only performs real
161 estate brokerage activities and is licensed or registered in
162 accordance with Mississippi law, unless the person or entity is
163 compensated by a lender, a mortgage broker, or other mortgage loan
164 originator or by any agent of such lender, mortgage broker, or
165 other mortgage loan originator; and

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

169 (z) "Nationwide Mortgage Licensing System and Registry"
170 means a mortgage licensing system developed and maintained by the



171 Conference of State Bank Supervisors and the American Association
172 of Residential Mortgage Regulators for the licensing and
173 registration of licensed mortgage loan originators.

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

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

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

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

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

185 "Offering or negotiating" does not include the following:
186 the mere sharing of general information about a financing source;
187 discussing hypothetical financing options, i.e., options not
188 related to specific financing source; giving the homebuyer a list
189 of available financing sources; discussing a buyer's ability to
190 afford a home; presenting or discussing generic facts or generic
191 rate sheets; closing personal property transactions.

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



195 (ee) "Principal" means a person who, directly or
196 indirectly, owns or controls an ownership interest of ten percent
197 (10%) or more in a corporation or any other form of business
198 organization, regardless of whether the person owns or controls
199 the ownership interest through one or more persons or one or more
200 proxies, powers of attorney, nominees, corporations, associations,
201 limited liability companies, partnerships, trusts, joint-stock
202 companies, other entities or devises, or any combination thereof.

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

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

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

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

218 (iii) Negotiating, on behalf of any party, any
219 portion of a contract relating to the sale, purchase, lease,



220 rental or exchange of real property (other than in connection with
221 providing financing with respect to any such transaction);

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

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

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

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

237 (i) Meets the definition of mortgage loan
238 originator and is an employee of a depository institution, a
239 subsidiary that is owned and controlled by a depository
240 institution and regulated by a federal banking agency or an
241 institution regulated by the Farm Credit Administration; and

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



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

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

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

262 (mm) "Taking an application for a residential mortgage
263 loan" means a receipt of an application for the purpose of
264 deciding whether or not to extend the requested offer of a loan to
265 the borrower whether the application is received directly or
266 indirectly from the borrower. However, an individual whose only
267 role with respect to the application is physically handling a
268 completed application form or transmitting a completed form to a



269 lender on behalf of a prospective borrower does not take an
270 application.

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

274 **SECTION 3.** Section 81-18-5, Mississippi Code of 1972, is
275 reenacted as follows:

276 81-18-5. The following are exempt from the provisions of
277 this chapter:

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

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

283 (c) Any person, estate or trust who owner finances in
284 one (1) calendar year no more than ten (10) residential mortgage
285 loans or no more than twenty percent (20%) of his total
286 residential units sold, whichever is greater. A violation of this
287 paragraph (c) shall not affect the title of the purchaser/borrower
288 or the obligation of the purchaser/borrower under the terms of the
289 mortgage loan.

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



294 mortgage loan originator or by any agent of the lender, mortgage
295 broker, or other mortgage loan originator.

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

299 (f) Any mortgage lender who holds a valid license under
300 the provisions of the Small Loan Regulatory Law, Section 75-67-101
301 et seq., and the Small Loan Privilege Tax Law, Section 75-67-201
302 et seq., and whose mortgage lending activities are limited solely
303 to the servicing of mortgage loans that were in such mortgage
304 lender's own loan portfolio as of December 31, 2009. For the
305 purposes of the exemption in this paragraph (f), "servicing of
306 mortgage loans" shall mean and include the collection of payments
307 of principal and interest, insurance premiums, taxes and other
308 payments required under such mortgage loans, and shall also
309 include activities related to the collection of such payments such
310 as collection calls whether by phone, mail, electronic means or in
311 person, and enforcement remedies permitted by law or at equity.
312 In no event shall the term "servicing of mortgage loans" include
313 the renewal or reworking of the mortgage. If a mortgage loan is
314 renewed or reworked, the lender shall be required to obtain a
315 mortgage license in order to continue any mortgage activity
316 described in this chapter.

317 (g) Any bona fide nonprofit organization and its
318 employees who demonstrate to the satisfaction of the commissioner



319 through the periodic examination of the books and activities of
320 the organization as required in Section 81-18-21, Mississippi Code
321 of 1972, that they continually meet the following requirements, at
322 a minimum:

323 (i) Maintains tax-exempt status under Section
324 501(c) (3) of the Internal Revenue Code of 1986;

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

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

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

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

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

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



343 (i) Any person who performs clerical or support duties
344 at the direction of and subject to the supervision and instruction
345 of a state-licensed loan originator or a registered loan
346 originator. For purposes of this paragraph (i), the term
347 "clerical or support duties" may include:

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

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

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

358 81-18-7. (1) No person shall transact business in this
359 state, directly or indirectly, as a mortgage broker or mortgage
360 lender unless he or she is licensed by the department or is a
361 person exempted from the licensing requirements under Section
362 81-18-5.

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



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

376 (4) An individual, unless specifically exempted from this
377 chapter under Section 81-18-5, shall not engage in the business of
378 a mortgage loan originator with respect to any dwelling located in
379 this state without first obtaining and maintaining annually a
380 license under this chapter. Each licensed mortgage loan
381 originator must register with and maintain a valid unique
382 identifier issued by the Nationwide Mortgage Licensing System and
383 Registry.

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

388 (a) For all individuals other than individuals
389 described in paragraph (b), the effective date shall be July 31,
390 2010, or such later date approved by the Secretary of the United



391 States Department of Housing and Urban Development, under the
392 authority granted under Public Law 110-289, Section 1508(a).

393 (b) For all individuals licensed as mortgage loan
394 originators as of July 31, 2009, the effective date shall be
395 January 1, 2011, or such later date approved by the Secretary of
396 the United States Department of Housing and Urban Development,
397 under the authority granted under Public Law 110-289, Section
398 1508(a).

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

405 **SECTION 5.** Section 81-18-8, Mississippi Code of 1972, is
406 reenacted as follows:

407 81-18-8. Municipalities and counties in this state may enact
408 ordinances that are in compliance with, but not more restrictive
409 than, the provisions of this chapter. Any order, ordinance or
410 regulation existing on July 1, 2002, or enacted on or after July
411 1, 2002, that conflicts with this provision shall be null and
412 void.

413 **SECTION 6.** Section 81-18-9, Mississippi Code of 1972, is
414 reenacted as follows:



415 81-18-9. (1) Applicants for a license shall apply in a form
416 as prescribed by the commissioner. Each such form shall contain
417 content as set forth by rule, regulation, instruction or procedure
418 of the commissioner and may be changed or updated as necessary by
419 the commissioner in order to carry out the purposes of this
420 chapter.

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

424 (a) The legal name, residence and business address of
425 the applicant and, if applicable, the legal name, residence and
426 business address of every principal and executive officer,
427 together with the résumé of the applicant and of every principal
428 and executive officer of the applicant. In addition, an
429 independent credit report obtained from a consumer-reporting
430 agency described in Section 603(p) of the Fair Credit Reporting
431 Act and information related to any administrative, civil or
432 criminal findings by any governmental jurisdiction of every
433 principal and executive officer.

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

438 (c) The complete address of the applicant's principal
439 place of business, branch office(s) and any other locations at



440 which the applicant will engage in any business activity covered
441 by this chapter. All locations shall be within the United States
442 of America or a territory of the United States of America,
443 including Puerto Rico and the U.S. Virgin Islands.

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

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

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

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



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

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

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

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

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

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

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



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

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

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

495 (iv) All executive officers of the applicant;

496 (v) All loan originators; and

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

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

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

509 (a) Fingerprints from any local law enforcement agency
510 for submission to the Federal Bureau of Investigation and any
511 governmental entity authorized to receive that information for a



512 state, national and/or international criminal history background
513 check; and

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

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

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

524 (5) Upon receipt of an application for licensure, the
525 department or designated third party shall conduct an
526 investigation as it deems necessary to determine that the
527 applicant and its officers, directors and principals are of good
528 character and ethical reputation; that the applicant demonstrates
529 reasonable financial responsibility; and that the applicant has
530 reasonable policies and procedures to receive and process customer
531 grievances and inquiries promptly and fairly.

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



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

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

544 (b) The applicant or its controlling persons has been
545 convicted of, or pled guilty or nolo contendere to, (i) a felony
546 in a domestic, foreign or military court during the seven-year
547 period preceding the date of application for licensing; or (ii) at
548 any time preceding the date of application if such felony involved
549 an act of fraud, dishonesty, a breach of trust, or money
550 laundering. However, any pardon or expungement of a conviction
551 shall not be a conviction for purposes of this subsection.

552 (8) Applicants for a mortgage loan originator license shall
553 apply in a form as prescribed by the commissioner and shall be
554 filed on the Nationwide Mortgage Licensing System and Registry.
555 Each such form shall contain content as set forth by rules,
556 regulations, instructions or procedures of the commissioner and
557 may be changed or updated as necessary by the commissioner in
558 order to carry out the purposes of this chapter. The initial
559 license of a mortgage loan originator shall be accompanied by a
560 fee of Two Hundred Dollars (\$200.00), to be paid to the Nationwide



561 Mortgage Licensing System and Registry, and any additional fees as
562 required by the Nationwide Mortgage Licensing System and Registry.
563 The commissioner shall not issue a mortgage loan originator
564 license unless the commissioner makes at a minimum the following
565 findings:

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

570 (b) The applicant has not been convicted of, or pled
571 guilty or nolo contendere to, (i) a felony in a domestic, foreign
572 or military court during the seven-year period preceding the date
573 of application for licensing; or (ii) at any time preceding the
574 date of application if such felony involved an act of fraud,
575 dishonesty, a breach of trust or money laundering. However, any
576 pardon or expungement of a conviction shall not be a conviction
577 for purposes of this subsection.

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

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



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

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

589 (g) This individual must work for a Mississippi
590 licensed company and work from the location licensed with the
591 department. The licensed location that he or she is assigned to
592 must be within one hundred twenty-five (125) miles of his or her
593 residency. If the licensed loan originator resides and works in
594 Mississippi, then he or she may work from any licensed location of
595 the licensed company within the State of Mississippi. However, an
596 owner of a minimum of ten percent (10%) of a licensed company or
597 the named qualifying individual on file with the department, who
598 is a licensed loan originator with the department, may work from
599 any licensed location of the licensed company within the State of
600 Mississippi in the capacity of a loan originator as described in
601 this chapter.

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



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

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

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

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

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

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



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

641 **SECTION 7.** Section 81-18-11, Mississippi Code of 1972, is
642 reenacted as follows:

643 81-18-11. (1) Each mortgage loan originator shall be
644 covered by a surety bond in accordance with this section. If the
645 mortgage loan originator is an employee or exclusive agent of a
646 person subject to this chapter, the surety bond of the person who
647 is subject to this chapter may be used in lieu of the mortgage
648 loan originator's surety bond requirement.

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

653 (3) The penal sum of the surety bond shall be maintained in
654 an amount as determined by the commissioner by rule or regulation
655 and shall be based upon loan activity during the previous year,
656 but shall not exceed Twenty-five Thousand Dollars (\$25,000.00) for
657 a mortgage broker or One Hundred Fifty Thousand Dollars
658 (\$150,000.00) for a mortgage lender. For an initial applicant,



659 the bond amount shall be set at Twenty-five Thousand Dollars
660 (\$25,000.00) for a mortgage broker and One Hundred Fifty Thousand
661 Dollars (\$150,000.00) for a mortgage lender.

662 (4) When an action is commenced on a licensee's bond, the
663 commissioner may require the filing of a new bond. Immediately
664 upon recovery upon any action on the bond, the licensee shall file
665 a new bond.

666 (5) All surety bonds shall be in favor, first, of the State
667 of Mississippi for the use, benefit and indemnity of any person
668 who suffers any damage or loss as a result of the company's breach
669 of contract or of any obligation arising from the contract or any
670 violation of law, and, second, for the payment of any civil
671 penalties, criminal fines, or costs of investigation and/or
672 prosecution incurred by the State of Mississippi, including local
673 law enforcement agencies.

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

677 **SECTION 8.** Section 81-18-13, Mississippi Code of 1972, is
678 reenacted as follows:

679 81-18-13. (1) In order to fulfill the purposes of this
680 chapter, the commissioner is authorized to establish relationships
681 or contracts with the Nationwide Mortgage Licensing System and
682 Registry or other entities designated by the Nationwide Mortgage
683 Licensing System and Registry to collect and maintain records and



684 process transaction fees or other fees related to licensees or
685 other persons subject to this chapter.

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

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

701 **SECTION 9.** Section 81-18-14, Mississippi Code of 1972, is
702 reenacted as follows:

703 81-18-14. (1) In order to meet the prelicensing education
704 requirement referred to in Section 81-18-9(4)(d), a person shall
705 complete at least twenty (20) hours of education approved in
706 accordance with subsection (2) of this section, which shall
707 include at least:

708 (a) Three (3) hours of federal law and regulations;



709 (b) Three (3) hours of ethics, which shall include
710 instruction on fraud, consumer protection and fair lending issues;

711 (c) Two (2) hours of training related to lending
712 standards for the nontraditional mortgage product marketplace; and

713 (d) Four (4) hours of education related to the
714 Mississippi S.A.F.E. Mortgage Act.

715 (2) For the purposes of subsection (1) of this section,
716 prelicensing education courses shall be reviewed, and approved by
717 the Nationwide Mortgage Licensing System and Registry based upon
718 reasonable standards. Review and approval of a prelicensing
719 education course shall include review and approval of the course
720 provider.

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

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

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



733 towards completion of prelicensing education requirements in
734 Mississippi.

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

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

747 (8) A written test shall not be treated as a qualified
748 written test for purposes of subsection (7) of this section unless
749 the test adequately measures the applicant's knowledge and
750 comprehension in appropriate subject areas, including:

751 (a) Ethics;

752 (b) Federal law and regulation pertaining to mortgage
753 origination;

754 (c) State law and regulation pertaining to mortgage
755 origination; and



756 (d) Federal and state law and regulation, including
757 instruction on fraud, consumer protection, the nontraditional
758 mortgage marketplace and fair lending issues.

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

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

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

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

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



780 **SECTION 10.** Section 81-18-15, Mississippi Code of 1972, is
781 reenacted as follows:

782 81-18-15. (1) Each mortgage broker and mortgage lender
783 license shall remain in full force and effect until relinquished,
784 suspended, revoked or expired. With each initial application for
785 a license to operate as a mortgage broker or mortgage lender, the
786 applicant shall pay through the Nationwide Mortgage Licensing
787 System and Registry to the commissioner a license fee of One
788 Thousand Five Hundred Dollars (\$1,500.00); however, if the initial
789 mortgage broker or mortgage lender license is issued between
790 November 1 and December 31, the license will expire December 31 of
791 the following licensing year. Upon the expiration of the initial
792 license, the licensee shall pay an annual renewal fee of One
793 Thousand Dollars (\$1,000.00) on or before December 31 of each
794 year. If the annual renewal fee remains unpaid, the license shall
795 expire, but not before December 31 of any year for which the
796 annual renewal fee has been paid. If the renewal fee is not paid
797 before the expiration date of the license, then the licensee shall
798 be liable for the initial license fee, which is One Thousand Five
799 Hundred Dollars (\$1,500.00), plus a penalty in an amount not to
800 exceed Twenty-five Dollars (\$25.00) for each day after the
801 expiration of the license. All licensing fees and penalties shall
802 be paid into the Consumer Finance Fund of the department. If the
803 application is withdrawn or denied, the application fee along with
804 any other applicable fee are not refundable.



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

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

809 (b) The mortgage loan originator has satisfied the
810 annual continuing education requirements described in Section
811 81-18-15(5).

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

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

828 (4) Any licensee making timely and proper application for a
829 license renewal shall be permitted to continue to operate under



830 its existing license until its application is approved or
831 rejected, but shall not be released from or otherwise indemnified
832 for any act covered by this chapter or for any penalty incurred
833 under this chapter as a result of any violation of this chapter or
834 regulations adopted under this chapter, pending final approval or
835 disapproval of the application for the license renewal.

836 (5) In order to meet the annual continuing education
837 requirements referred to in Section 81-18-15(2)(b), a licensed
838 mortgage loan originator shall complete at least eight (8) hours
839 of education approved in accordance with subsection (2) of this
840 section, which shall include at least:

841 (a) Three (3) hours of federal law and regulations;

842 (b) Two (2) hours of ethics, which shall include
843 instruction on fraud, consumer protection and fair lending issues;
844 and

845 (c) Two (2) hours of training related to lending
846 standards for the nontraditional mortgage product marketplace.

847 (6) For the purposes of subsection (5) of this section,
848 continuing education courses shall be reviewed, and approved by
849 the Nationwide Mortgage Licensing System and Registry based upon
850 reasonable standards. Review and approval of a continuing
851 education course shall include review and approval of the course
852 provider.

853 (7) Nothing in this section shall preclude any education
854 course, as approved by the Nationwide Mortgage Licensing System



855 and Registry, that is provided by the employer of the mortgage
856 loan originator or an entity that is affiliated with the mortgage
857 loan originator by an agency contract, or any subsidiary or
858 affiliate of such employer or entity.

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

862 (9) A licensed mortgage loan originator:

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

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

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

874 (11) A person having successfully completed the education
875 requirements approved by the Nationwide Mortgage Licensing System
876 and Registry in subsection (5) of this section for any state shall
877 be accepted as credit towards completion of continuing education
878 requirements in Mississippi.



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

883 (13) A person meeting the requirements of subsection (2)(a)
884 and (c) of this section may make up any deficiency in continuing
885 education as established by rule or regulation of the
886 commissioner.

887 **SECTION 11.** Section 81-18-17, Mississippi Code of 1972, is
888 reenacted as follows:

889 81-18-17. (1) A license may not be transferred or assigned.

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

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

897 (4) No licensee shall open a branch office in this state or
898 a branch office outside this state from which the licensee has
899 direct contact with consumers regarding origination or brokering
900 Mississippi residential property, without prior approval of the
901 department. An application for any branch office shall be made
902 through the Nationwide Mortgage Licensing System and Registry on a
903 form prescribed by the department, which shall include at least



904 evidence of compliance with subsection (1) of Section 81-18-25 as
905 to that branch and shall be accompanied by payment of a
906 nonrefundable application fee of Three Hundred Dollars (\$300.00)
907 and at least one (1) loan originator application licensed at that
908 branch office. The application shall be approved unless the
909 department finds that the applicant has not conducted business
910 under this chapter in accordance with law. Each branch office
911 that currently holds a branch license shall renew that branch
912 license before the expiration date of the main company license, on
913 or before December 31; however, if the initial branch license is
914 issued between November 1 and December 31, the license will expire
915 December 31 of the following licensing year. The license renewal
916 shall be on a form prescribed by the department with a
917 nonrefundable renewal application fee of One Hundred Dollars
918 (\$100.00). If the annual renewal fee remains unpaid, the license
919 shall expire, but not before December 31 of any year for which the
920 annual renewal fee has been paid. If the renewal fee is not paid
921 before the expiration date of the license, the branch shall be
922 liable for the initial license fee, which is Three Hundred Dollars
923 (\$300.00), in order to renew.

924 (5) A licensed mortgage broker or mortgage lender shall
925 notify the department within thirty (30) days by submitting a
926 sponsorship removal in the Nationwide Mortgage Licensing System
927 and Registry when a loan originator is released from its
928 employment. In addition, the licensed mortgage broker or mortgage



929 lender shall notify the department within thirty (30) days through
930 the Nationwide Mortgage Licensing System and Registry when there
931 is a change of the qualifying individual of the licensee.

932 **SECTION 12.** Section 81-18-19, Mississippi Code of 1972, is
933 reenacted as follows:

934 81-18-19. (1) Except as provided in this section, no person
935 shall acquire directly or indirectly ten percent (10%) or more of
936 the voting shares of a corporation or ten percent (10%) or more of
937 the ownership of any other entity licensed to conduct business
938 under this chapter unless it first files an application in
939 accordance with the requirements prescribed in Section 81-18-9.

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

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



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

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

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

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

967 (5) A person acquiring an interest in a licensee in a
968 transaction that is requesting exemption from filing an
969 application for approval of the application shall send a written
970 request to the department for an exemption within thirty (30) days
971 before the closing of the transaction.

972 **SECTION 13.** Section 81-18-21, Mississippi Code of 1972, is
973 reenacted and amended as follows:

974 81-18-21. (1) Any person required to be licensed under this
975 chapter shall maintain in its offices, or such other location as
976 the department shall permit, the books, accounts and records
977 necessary for the department to determine whether or not the
978 person is complying with the provisions of this chapter and the



979 rules and regulations adopted by the department under this
980 chapter. These books, accounts and records shall be maintained
981 apart and separate from any other business in which the person is
982 involved and may represent historical data for * * * five (5)
983 years * * * from the final disposition of the loan application to
984 which the records relate. The books, accounts and records for
985 individual consumer mortgage files shall be maintained apart and
986 separate from any other personal loan files made by the same
987 consumer. The books, accounts and records shall be kept in a
988 secure location under conditions that will not lead to their
989 damage or destruction. If the licensee wishes to keep the files
990 in a location other than the location listed on the license, then
991 the licensee first must submit a written request on a form
992 designated by the department and gain written approval from the
993 commissioner before storing the files at an off-site secure
994 location.

995 (2) To assure compliance with the provisions of this
996 chapter, the department may examine the books and records of any
997 licensee without notice during normal business hours. The
998 commissioner shall charge the licensee an examination fee in an
999 amount not less than Three Hundred Dollars (\$300.00) nor more than
1000 Six Hundred Dollars (\$600.00) per day with a maximum examination
1001 fee of Two Thousand Four Hundred Dollars (\$2,400.00) for each
1002 office or location within the State of Mississippi, and an
1003 examination fee in an amount not less than Three Hundred Dollars



1004 (\$300.00) nor more than Eight Hundred Dollars (\$800.00) per day
1005 for each office or location outside the State of Mississippi, plus
1006 any actual expenses incurred while examining the licensee's
1007 records or books that are located outside the State of
1008 Mississippi. However, in no event shall a licensee be examined
1009 more than once in a two-year period unless for cause shown based
1010 upon consumer complaint and/or other exigent reasons as determined
1011 by the commissioner.

1012 (3) The department, its designated officers and employees,
1013 or its duly authorized representatives, for the purposes of
1014 discovering violations of this chapter and for the purpose of
1015 determining whether any person or individual reasonably suspected
1016 by the commissioner of conducting business that requires a license
1017 under this chapter, may investigate those persons and individuals
1018 and examine all relevant books, records and papers employed by
1019 those persons or individuals in the transaction of business, and
1020 may summon witnesses and examine them under oath concerning
1021 matters as to the business of those persons, or other such matters
1022 as may be relevant to the discovery of violations of this chapter,
1023 including, without limitation, the conduct of business without a
1024 license as required under this chapter.

1025 (4) Each licensee, individual or person subject to this
1026 chapter shall make available to the commissioner upon request the
1027 books and records relating to the operations of the licensee,
1028 individual or person subject to this chapter. The commissioner



1029 shall have access to those books and records and interview the
1030 officers, principals, mortgage loan originators, employees,
1031 independent contractors, agents, and customers of the licensee,
1032 individual or person subject to this chapter concerning their
1033 business. Failure to produce the books and records within sixty
1034 (60) days from the date of request may result in a violation of
1035 this chapter, resulting in a civil penalty.

1036 (5) Each licensee, individual or person subject to this
1037 chapter shall make or compile reports or prepare other information
1038 as directed by the commissioner in order to carry out the purposes
1039 of this section, including, but not limited to:

1040 (a) Accounting compilations;

1041 (b) Information lists and data concerning loan
1042 transactions in a format prescribed by the commissioner; or

1043 (c) Such other information deemed necessary to carry
1044 out the purposes of this section.

1045 (6) In making any examination or investigation authorized by
1046 this chapter, the commissioner may control access to any documents
1047 and records of the licensee or person under examination or
1048 investigation. The commissioner may take possession of the
1049 documents and records or place a person in exclusive charge of the
1050 documents and records in the place where they are usually kept.
1051 During the period of control, no individual or person shall remove
1052 or attempt to remove any of the documents and records except under
1053 a court order or with the consent of the commissioner. Unless the



1054 commissioner has reasonable grounds to believe the documents or
1055 records of the licensee have been or are at risk of being altered
1056 or destroyed for purposes of concealing a violation of this
1057 chapter, the licensee or owner of the documents and records shall
1058 have access to the documents or records as necessary to conduct
1059 its ordinary business affairs.

1060 (7) The commissioner shall report regularly violations of
1061 this chapter, as well as enforcement actions and other relevant
1062 information, to the Nationwide Mortgage Licensing System and
1063 Registry subject to the provisions contained in Section 81-18-63.

1064 (8) Examinations and investigations conducted under this
1065 chapter and information obtained by the department, except as
1066 provided in subsection (7) of this section, in the course of its
1067 duties under this chapter are confidential.

1068 (9) In the absence of malice, fraud or bad faith a person is
1069 not subject to civil liability arising from the filing of a
1070 complaint with the department, furnishing other information
1071 required by this chapter, information required by the department
1072 under the authority granted in this chapter, or information
1073 voluntarily given to the department related to allegations that a
1074 licensee or prospective licensee has violated this chapter.
1075 Failure of a person to respond to a formal complaint made with the
1076 department by a consumer may result in a violation of this
1077 chapter, resulting in a civil penalty.



1078 (10) In order to carry out the purposes of this section, the
1079 commissioner may:

1080 (a) Accept and rely on examination or investigation
1081 reports made by other government officials, within or without this
1082 state; or

1083 (b) Accept audit reports made by an independent
1084 certified public accountant for the licensee, individual or person
1085 subject to this chapter in the course of that part of the
1086 examination covering the same general subject matter as the audit
1087 and may incorporate the audit report in the report of the
1088 examination, report of investigation or other writing of the
1089 commissioner; or

1090 (c) Rely upon attorneys, accountants, or other
1091 professionals and specialists as examiners, auditors or
1092 investigators to conduct or assist in the conduct of examinations
1093 or investigations; or

1094 (d) Enter into agreements or relationships with other
1095 government officials or regulatory associations, including, but
1096 not limited to, joint enforcement action, by sharing resources,
1097 standardized or uniform methods or procedures, and documents,
1098 records, information or evidence obtained under this section.

1099 (11) The authority of this section shall remain in effect,
1100 whether such a licensee, individual or person subject to this
1101 chapter acts or claims to act under any licensing or registration
1102 law of this state, or claims to act without that authority.



1103 (12) No licensee, individual or person subject to
1104 investigation or examination under this section may knowingly
1105 withhold, abstract, remove, mutilate, destroy, falsify, abandon or
1106 secret any books, records, computer records or other information.

1107 **SECTION 14.** Section 81-18-23, Mississippi Code of 1972, is
1108 reenacted as follows:

1109 81-18-23. (1) Each mortgage licensee shall submit to the
1110 Nationwide Mortgage Licensing System and Registry reports of
1111 condition, which shall be in such form and shall contain such
1112 information as the Nationwide Mortgage Licensing System and
1113 Registry may require. Failure to file accurate, timely and
1114 complete reports on the Nationwide Mortgage Licensing System and
1115 Registry may result in a violation of this chapter, resulting in a
1116 civil penalty.

1117 (2) The department, in its discretion, may relieve any
1118 company from the payment of any penalty, in whole or in part, for
1119 good cause.

1120 (3) If a company fails to pay a penalty from which it has
1121 not been relieved, the department may maintain an action at law to
1122 recover the penalty.

1123 (4) Within fifteen (15) days of the occurrence of any of the
1124 following events, a company shall file with the Nationwide
1125 Mortgage Licensing System and Registry the applicable change in
1126 the disclosure questions and shall submit the information through
1127 the Nationwide Mortgage Licensing System and Registry or file a



1128 written report with the commissioner describing the event and its
1129 expected impact on the activities of the company in this state:

1130 (a) The filing for bankruptcy or reorganization by the
1131 company;

1132 (b) The institution of revocation or suspension
1133 proceedings against the company by any state or governmental
1134 authority;

1135 (c) Any felony indictment of the company or any of its
1136 directors, executive officers, qualifying individual or loan
1137 originators;

1138 (d) Any felony conviction of the company or any of its
1139 directors, executive officers, qualifying individual or loan
1140 originators;

1141 (e) Expiration, termination or default, technical or
1142 otherwise, of any existing line of credit or warehouse credit
1143 agreement;

1144 (f) Suspension or termination of the licensee's status
1145 as an approved seller or seller/servicer by the Federal National
1146 Mortgage Association, Federal Home Loan Mortgage Corporation or
1147 Government National Mortgage Association;

1148 (g) Exercise of recourse rights by investors or
1149 subsequent assignees of mortgage loans if such loans, in the
1150 aggregate, exceed the licensee's net worth exclusive of real
1151 property and fixed assets; or



1152 (h) Existence of negative balances, exceeding One
1153 Hundred Dollars (\$100.00) in any operation account at any time or
1154 the return of checks, exceeding One Hundred Dollars (\$100.00) for
1155 insufficient funds.

1156 (5) Licensees who are involved in civil actions shall notify
1157 the Nationwide Mortgage Licensing System and Registry within sixty
1158 (60) days of the occurrence. An explanation and supporting
1159 documentation for each civil action concerning the company shall
1160 be submitted through the Nationwide Mortgage Licensing System and
1161 Registry. The department may require additional information as
1162 necessary.

1163 **SECTION 15.** Section 81-18-25, Mississippi Code of 1972, is
1164 reenacted as follows:

1165 81-18-25. (1) Each principal place of business and branch
1166 office in the state shall meet all of the following requirements:

1167 (a) Be in compliance with local zoning ordinances and
1168 have posted any licenses required by local government agencies.
1169 It is the responsibility of the licensee to meet local zoning
1170 ordinances and obtain the required occupational licenses; however,
1171 zoning cannot be residential. If there is no zoning in the area,
1172 then the person shall submit to the department a letter from the
1173 city or county stating that there is no zoning.

1174 (b) Consist of at least one (1) secure enclosed room or
1175 secure building of stationary construction in which negotiations
1176 of mortgage loan transactions may be conducted in privacy.



1177 Stationary construction does not include the use of portable
1178 buildings. If there is no zoning in the requested location and
1179 the property is used for residential purposes, then the person
1180 shall utilize an enclosed room with a dedicated outside door.

1181 (c) Display a permanent sign outside the place of
1182 business readily visible to the general public, unless the display
1183 of sign violates local zoning ordinances or restrictive covenants.
1184 The sign must contain the name of the licensee and shall also
1185 contain the Nationwide Mortgage Licensing System and Registry
1186 Unique Identifier issued to that particular licensed location.

1187 (2) If one (1) of the following is correct, then that
1188 location shall be licensed as a mortgage broker or mortgage lender
1189 under this chapter and not as a branch:

1190 (a) It is a separate entity operating as an independent
1191 business or mortgage operation which is not under the direct
1192 control, management supervision and responsibility of the
1193 licensee;

1194 (b) The licensee is not the lessee or owner of the
1195 branch and the branch is not under the direct and daily ownership,
1196 control, management and supervision of the licensee;

1197 (c) All assets and liabilities of the branch are not
1198 assets and liabilities of the licensee, and all income and
1199 expenses of the branch are income and expenses of the licensee and
1200 properly accounted for in the financial records and tax returns of
1201 the licensee; or



1202 (d) All practices, policies and procedures, including,
1203 but not limited to, those relating to employment and operations,
1204 are not originated and established by the licensee or registered
1205 company and are not applied consistently to the principal place of
1206 business and all branches.

1207 Nothing in this subsection (2) shall affect or change, or be
1208 construed as affecting or changing, the existing statutory law and
1209 common law on agency, principal and agent, independent
1210 contractors, and parent and subsidiary companies.

1211 **SECTION 16.** Section 81-18-27, Mississippi Code of 1972, is
1212 reenacted as follows:

1213 81-18-27. (1) No person required to be licensed under this
1214 chapter shall:

1215 (a) Directly or indirectly employ any scheme, device or
1216 artifice to defraud or mislead borrowers or lenders or to defraud
1217 any person.

1218 (b) Misrepresent to or conceal from an applicant for a
1219 mortgage loan or mortgagor, material facts, terms or conditions of
1220 a transaction to which the licensee is a party.

1221 (c) Fail to disburse funds in accordance with a written
1222 commitment or agreement to make a mortgage loan.

1223 (d) Fail to truthfully account for monies belonging to
1224 a party to a residential mortgage loan transaction.

1225 (e) Improperly refuse to issue a satisfaction of a
1226 mortgage loan.



1227 (f) Fail to account for or deliver to any person any
1228 personal property obtained in connection with a mortgage loan,
1229 such as money, funds, deposits, checks, drafts, mortgages or other
1230 documents or things of value that have come into the possession of
1231 the licensee and that are not the property of the licensee, or
1232 that the licensee is not by law or at equity entitled to retain.

1233 (g) Engage in any transaction, practice, or course of
1234 business that is not in good faith, or that operates a fraud upon
1235 any person in connection with the making of or purchase or sale of
1236 any mortgage loan, including the use of correction fluid on any
1237 document associated with the mortgage loan.

1238 (h) Engage in any fraudulent residential mortgage
1239 underwriting practices, which include, but are not limited to,
1240 making in any manner, any false or deceptive statement or
1241 representation including, with regard to the rates, points or
1242 other financing terms or conditions for a residential mortgage
1243 loan, or engage in bait and switch advertising.

1244 (i) Solicit or enter into a contract with a borrower
1245 that provides in substance that the person or individual subject
1246 to this chapter may earn a fee or commission through "best
1247 efforts" to obtain a loan even though no loan is actually obtained
1248 for the borrower.

1249 (j) Induce, require, or otherwise permit the applicant
1250 for a mortgage loan or mortgagor to sign a security deed, note, or
1251 other pertinent financial disclosure documents with any blank



1252 spaces to be filled in after it has been signed, except blank
1253 spaces relating to recording or other incidental information not
1254 available at the time of signing.

1255 (k) Make, directly or indirectly, any residential
1256 mortgage loan with the intent to foreclose on the borrower's
1257 property. For purposes of this paragraph, there is a presumption
1258 that a person has made a residential mortgage loan with the intent
1259 to foreclose on the borrower's property if any of the following
1260 circumstances are proven:

1261 (i) Lack of substantial benefit to the borrower;

1262 (ii) The probability that full payment of the loan
1263 cannot be made by the borrower;

1264 (iii) That the person has made a significant
1265 proportion of loans foreclosed under similar circumstances;

1266 (iv) That the person has provided an extension of
1267 credit or collected a mortgage debt by extortion;

1268 (v) That the person does business under a trade
1269 name that misrepresents or tends to misrepresent that the person
1270 is a bank, trust company, savings bank, savings and loan
1271 association, credit union, or insurance company.

1272 (l) Charge or collect any direct payment, compensation
1273 or advance fee from a borrower unless and until a loan is actually
1274 found, obtained and closed for that borrower, and in no event
1275 shall that direct payment, compensation or advance fee exceed
1276 seven and ninety-five one-hundredths percent (7.95%) of the



1277 original principal amount of the loan, and any such direct
1278 payments, compensation or advance fees shall be included in all
1279 annual percentage rate (APR) calculations if required under
1280 Regulation Z of the federal Truth in Lending Act (TILA). A direct
1281 payment, compensation or advance fee as defined in this section
1282 shall not include:

1283 (i) Any direct payment, compensation or advance
1284 fee collected by a licensed mortgage broker or mortgage lender to
1285 be paid to a nonrelated third party;

1286 (ii) Any indirect payment to a licensed mortgage
1287 broker or mortgage lender by a lender if those fees are not
1288 required to be disclosed under the Real Estate Settlement
1289 Procedures Act (RESPA);

1290 (iii) Any indirect payment or compensation by a
1291 lender to a licensee required to be disclosed by the licensee
1292 under RESPA, provided that the payment or compensation is
1293 disclosed to the borrower by the licensee on a good faith estimate
1294 of costs, is included in the APR if required under Regulation Z of
1295 TILA, and is made pursuant to a written agreement between the
1296 licensee and the borrower as may be required by Section 81-18-33;

1297 (iv) A fee not to exceed one percent (1%) of the
1298 principal amount of a loan for construction, provided that a
1299 binding commitment for the loan has been obtained for the
1300 prospective borrower; or



1301 (v) An advance fee, known as a lock-in fee,
1302 collected by a licensee to be paid to a lender to lock in an
1303 interest rate and/or a certain number of points on a mortgage loan
1304 from the lender as provided in Section 81-18-28.

1305 (m) Pay to any person not licensed under the provisions
1306 of this chapter any commission, bonus or fee in connection with
1307 arranging for or originating a mortgage loan for a borrower,
1308 except that a licensed loan originator may be paid a bonus,
1309 commission, or fee by his or her licensed employer.

1310 (n) Refuse to provide the loan payoff within three (3)
1311 business days of an oral or written request from a borrower or
1312 third party. Proof of authorization of the borrower shall be
1313 submitted for a third-party request. The payoff statement must be
1314 an understandable and accurate statement of the total amount that
1315 is required to pay off the mortgage loan as of a specified date.
1316 No borrower shall be charged a fee for being informed or receiving
1317 a payoff statement or for being provided with a release upon full
1318 payment, provided that the licensed mortgage lender may charge a
1319 reasonable fee for providing a payoff statement after five (5) or
1320 more requests in any calendar year.

1321 (o) Knowingly withhold, extract, remove, mutilate,
1322 destroy or conceal any books, records, computer records or other
1323 information which are required by law to be disclosed.

1324 (p) Negligently make any false statement or knowingly
1325 and willfully make any omission of material fact in connection



1326 with any information or reports filed with a governmental agency
1327 or the Nationwide Mortgage Licensing System and Registry or in
1328 connection with any investigation conducted by the commissioner or
1329 another governmental agency.

1330 (q) Fail to comply with this chapter or rules or
1331 regulations promulgated under this chapter, or fail to comply with
1332 any other state or federal law, including the rules and
1333 regulations under that law, applicable to any business authorized
1334 or conducted under this chapter.

1335 (r) Conduct any business covered by this chapter
1336 without holding a valid license as required under this chapter, or
1337 assist or aid and abet any person in the conduct of business under
1338 this chapter without a valid license as required under this
1339 chapter.

1340 (s) Make any payment, threat or promise, directly or
1341 indirectly, to any person for the purposes of influencing the
1342 independent judgment of the person in connection with a
1343 residential mortgage loan, or make any payment threat or promise,
1344 directly or indirectly, to any appraiser of a property, for the
1345 purposes of influencing the independent judgment of the appraiser
1346 with respect to the value of the property.

1347 (t) Solicit, advertise or enter into a contract for
1348 specific interest rates, points or other financing terms unless
1349 the terms are actually available at the time of soliciting,
1350 advertising or contracting.



1351 (u) Fail to make disclosures as required by this
1352 chapter and any other applicable state or federal law including
1353 regulations under that law.

1354 (v) Cause or require a borrower to obtain property
1355 insurance coverage in an amount that exceeds the replacement cost
1356 of the improvements as established by the property insurer.

1357 (w) Sign a consumer's name to a mortgage loan
1358 application or mortgage loan documents on behalf of a consumer.

1359 (x) Knowingly falsify income or asset information on a
1360 mortgage loan application or mortgage loan documents.

1361 (y) Discourage a consumer in a mortgage loan
1362 transaction from seeking or obtaining independent legal counsel or
1363 legal advice.

1364 (2) A licensed mortgage broker or mortgage lender shall only
1365 broker a residential mortgage loan to a mortgage broker or
1366 mortgage lender licensed under this chapter or to a person exempt
1367 from licensure under the provisions of this chapter.

1368 (3) No nonbanking entity may use any sign or handwritten or
1369 printed paper indicating that it is a bank, savings bank, trust
1370 company or place of banking. No entity may use the word "bank,"
1371 "savings bank," "banking," "banker" or "trust company," or the
1372 equivalent or plural of any of these words, in connection with any
1373 business other than that of banking. This subsection does not
1374 prohibit a person from acting in a trust capacity.



1375 (4) No person shall use the name or logo of any banking
1376 entity in connection with the sale, offering for sale, or
1377 advertising of any financial product or service without the
1378 express written consent of the banking entity.

1379 (5) No unlicensed Mississippi location of a Mississippi
1380 licensed mortgage broker or mortgage lender may advertise mortgage
1381 services if the unlicensed location is more than fifty (50) miles
1382 from a licensed Mississippi location.

1383 **SECTION 17.** Section 81-18-28, Mississippi Code of 1972, is
1384 reenacted as follows:

1385 81-18-28. (1) A licensed mortgage broker or mortgage lender
1386 may enter into lock-in agreements and collect a lock-in fee from a
1387 borrower on the lender's behalf. The lock-in fee shall not exceed
1388 the following:

1389 (a) No fee may be collected to lock in for sixty (60)
1390 days or less;

1391 (b) One percent (1%) of the principal amount of the
1392 loan to lock in for more than sixty (60) days, but not to exceed
1393 one hundred eighty (180) days;

1394 (c) One and one-half percent (1-1/2%) of the principal
1395 amount of the loan to lock in for more than one hundred eighty
1396 (180) days, but not to exceed two hundred seventy (270) days; or

1397 (d) Two percent (2%) of the principal amount of the
1398 loan to lock in for more than two hundred seventy (270) days.



1399 (2) Before the collection of a lock-in fee, the applicant
1400 must be provided a copy of the lock-in fee agreement. This
1401 agreement shall contain at least the following:

1402 (a) Identification of the property that is associated
1403 with the loan;

1404 (b) The principal amount and term of the loan;

1405 (c) The initial interest rate and/or points, whether
1406 the interest rate is fixed or variable, and if variable, the index
1407 and margin, or the method by which an interest rate change for the
1408 mortgage loan will be calculated;

1409 (d) The amount of the lock-in fee, whether the fee is
1410 refundable or nonrefundable, the time by which the lock-in fee
1411 must be paid to the lender, and if the fee is refundable, the
1412 terms and conditions necessary to obtain the refund; and

1413 (e) The length of the lock-in period that the agreement
1414 covers.

1415 **SECTION 18.** Section 81-18-29, Mississippi Code of 1972, is
1416 reenacted as follows:

1417 81-18-29. The commissioner shall promulgate those rules and
1418 regulations, not inconsistent with law, necessary for the
1419 enforcement of this chapter.

1420 **SECTION 19.** Section 81-18-31, Mississippi Code of 1972, is
1421 reenacted as follows:



1422 81-18-31. The department shall promulgate regulations
1423 governing the advertising of mortgage loans, including, but not
1424 limited to, the following requirements:

1425 (a) That all advertisements for loans regulated under
1426 this chapter may not be false, misleading or deceptive. No person
1427 whose activities are regulated under this chapter may advertise in
1428 any manner so as to indicate or imply that its interest rates or
1429 charges for loans are "recommended," "approved," "set" or
1430 "established" by the State of Mississippi;

1431 (b) That all licensees shall maintain a copy of all
1432 advertisements citing interest rates or payment amounts primarily
1433 disseminated in this state and shall attach to each advertisement
1434 documentation that provides corroboration of the availability of
1435 the interest rate and terms of loans and names the specific media
1436 sources by which the advertisements were distributed;

1437 (c) That all published advertisements disseminated
1438 primarily in this state by a licensee shall contain the name and an
1439 office address of the licensee, which shall be the same as the
1440 name and address of the licensee on record with the department;

1441 (d) That an advertisement containing either a quoted
1442 interest rate or monthly payment amount must include:

1443 (i) The interest rate of the mortgage, a statement
1444 as to whether the rate is fixed or adjustable, and the adjustment
1445 index and frequency of adjustments;



1446 (ii) The term in years or months to fully repay
1447 the mortgage;

1448 (iii) The APR as computed under federal
1449 guidelines; and

1450 (e) That the unique identifier of any person
1451 originating a residential mortgage loan shall be clearly shown on
1452 all residential mortgage loan application forms, solicitations or
1453 advertisements, including business cards or websites, and any
1454 other documents as established by rule, regulation or order of the
1455 commissioner.

1456 **SECTION 20.** Section 81-18-33, Mississippi Code of 1972, is
1457 reenacted and amended as follows:

1458 81-18-33. (1) The individual borrower files of a licensee
1459 shall contain at least the following:

1460 (a) A mortgage origination agreement provided to the
1461 borrower containing at least the following statements:

1462 (i) "As required by Mississippi Law, (licensed
1463 company name) has secured a bond issued by (name of insurance
1464 company), a surety company authorized to do business in this
1465 state. A certified copy of this bond is filed with the
1466 Mississippi Commissioner of Banking and Consumer Finance."

1467 (ii) "As a borrower you are protected under the
1468 Mississippi S.A.F.E. Mortgage Act."

1469 (iii) "Complaints against a licensee may be made
1470 by contacting the:



1471 Mississippi Department of Banking and
1472 Consumer Finance
1473 P.O. Drawer 12129
1474 Jackson, MS 39236-2129";

1475 (b) A copy of the original loan application signed and
1476 dated by the licensee;

1477 (c) A copy of the signed closing statement as required
1478 by HUD or documentation of denial or cancellation of the loan
1479 application;

1480 (d) A copy of the * * * loan estimate of costs provided
1481 to the borrower;

1482 (e) A copy of the appraisal or statement of value if
1483 procured as a part of the loan application process;

1484 (f) A copy of a loan lock-in agreement, if any,
1485 provided by the licensee;

1486 (g) A copy of the disclosures required under Regulation
1487 Z of the federal Truth In Lending Act and other disclosures as
1488 required under federal regulations and evidence that those
1489 disclosures have been properly and timely made to the
1490 borrower; * * *

1491 (h) A copy of the final signed Uniform Residential Loan
1492 Application. However, any mortgage licensee who holds a license
1493 under the provisions of the Small Loan Regulatory Law, Section
1494 75-67-101 et seq., and the Small Loan Privilege Tax Law, Section



1495 75-67-201 et seq., may substitute an application that is otherwise
1496 compliant with federal and state law * * *; and

1497 (i) Additional information as required per the rules
1498 and regulations adopted by the commissioner according to Section
1499 81-18-29.

1500 (2) The individual servicer files of a licensee shall
1501 contain at least the following:

1502 (a) A copy of the original initial loan application
1503 signed and dated by the licensee;

1504 (b) A copy of the final loan application signed and
1505 dated by the licensee;

1506 (c) A copy of the signed closing statement as required
1507 by HUD or documentation of denial or cancellation of the loan
1508 application;

1509 (d) Modification agreements;

1510 (e) Collection/default letters and related
1511 documentation;

1512 (f) Addendums, riders, assigned note, if applicable;

1513 (g) Complete pay history from the time the loan was
1514 transferred or boarded;

1515 (h) Complete comment/note history from the time the
1516 loan was transferred or boarded; and

1517 (i) Additional information as required per the rules
1518 and regulations of this chapter as deemed by the commissioner
1519 according to Section 81-18-29.



1520 **SECTION 21.** Section 81-18-35, Mississippi Code of 1972, is
1521 reenacted as follows:

1522 81-18-35. (1) Each licensee shall maintain a journal of
1523 mortgage transactions at the principal place of business as stated
1524 on its license for all Mississippi residential loans that the
1525 licensee originated and/or funded. This journal shall be separate
1526 from non-Mississippi loans. The journal shall include at least
1527 the following information:

- 1528 (a) Name of applicant and co-applicant, if applicable;
- 1529 (b) Date of application;
- 1530 (c) Disposition of loan application, indicating date of
1531 loan closing, loan denial, withdrawal and name of lender if
1532 applicable;
- 1533 (d) Property address;
- 1534 (e) Loan amount;
- 1535 (f) Terms;
- 1536 (g) Loan program; and
- 1537 (h) Loan originator.

1538 (2) Each licensee shall maintain a journal of serviced loans
1539 at the principal place of business as stated on its license, for
1540 all Mississippi residential loans that the licensee owns and/or
1541 services. This journal shall be kept separate from
1542 non-Mississippi loans. The journal shall include at least the
1543 following information:



- 1544 (a) The number of mortgage loans the licensee is
1545 servicing;
- 1546 (b) The type and characteristics of the loans;
- 1547 (c) The number of serviced loans in default, along with
1548 a breakdown of thirty-, sixty- and ninety-day delinquencies;
- 1549 (d) Information on loss mitigation activities,
1550 including details on workout arrangements undertaken and date loss
1551 mitigation application was submitted/approved/denied;
- 1552 (e) Information on foreclosures commenced and
1553 completed;
- 1554 (f) Name of applicant and co-applicant, if applicable;
1555 and
- 1556 (g) Date the loan was boarded/deboarded, if applicable.

1557 **SECTION 22.** Section 81-18-36, Mississippi Code of 1972, is
1558 reenacted as follows:

1559 81-18-36. (1) (a) All monies paid to a licensee for
1560 payment of taxes, loan commitment deposits, work completion
1561 deposits, appraisals, credit reports or insurance premiums on
1562 property that secures any loan made or serviced by the licensee
1563 shall be deposited in an account that is insured by the Federal
1564 Deposit Insurance Corporation or the National Credit Union
1565 Administration and shall be kept separate, distinct, and apart
1566 from funds belonging to the licensee.



1567 (b) The funds, when deposited, are to be designated as
1568 an "escrow account," or under some other appropriate name,
1569 indicating that the funds are not the funds of the licensee.

1570 (2) The licensee shall, upon reasonable notice, account to
1571 any debtor whose property secures a loan made by the licensee for
1572 any funds which that person has paid to the licensee for the
1573 payment of taxes or insurance premiums on the property in
1574 question.

1575 (3) The licensee shall, upon reasonable notice, account to
1576 the commissioner for all funds in the company's escrow account.

1577 (4) Escrow accounts are not subject to execution or
1578 attachment on any claim against the licensee.

1579 (5) It is unlawful for any licensee knowingly to keep or
1580 cause to be kept any funds or money in any bank or other financial
1581 institution under the heading of "escrow account" or any other
1582 name designating the funds or monies belonging to the debtors of
1583 the licensee, except actual funds paid to the licensee for the
1584 payment of taxes and insurance premiums on property securing loans
1585 made or serviced by the company.

1586 **SECTION 23.** Section 81-18-37, Mississippi Code of 1972, is
1587 reenacted as follows:

1588 81-18-37. (1) The department may suspend or revoke any
1589 license for any reason that would have been grounds for refusal to
1590 issue an original license or for:



1591 (a) A violation of any provision of this chapter or any
1592 rule or regulation adopted under this chapter;

1593 (b) Failure of the licensee to pay, within thirty (30)
1594 days after it becomes final and nonappealable, a judgment
1595 recovered in any court within this state by a claimant or creditor
1596 in an action arising out of the licensee's business in this state
1597 as a mortgage broker or mortgage lender.

1598 (2) Notice of the department's intention to enter an order
1599 denying an application for a license under this chapter or of an
1600 order suspending or revoking a license under this chapter shall be
1601 given to the applicant, licensee in writing, sent by registered or
1602 certified mail addressed to the principal place of business of the
1603 applicant or licensee. Within thirty (30) days of the date of the
1604 notice of intention to enter an order of denial, suspension or
1605 revocation under this chapter, the applicant or licensee may
1606 request in writing a hearing to contest the order. If a hearing
1607 is not requested in writing within thirty (30) days of the date of
1608 the notice of intention, the department shall enter a final order
1609 regarding the denial, suspension or revocation. Any final order
1610 of the department denying, suspending or revoking a license shall
1611 state the grounds upon which it is based and shall be effective on
1612 the date of issuance. A copy of the final order shall be
1613 forwarded promptly by registered or certified mail addressed to
1614 the principal place of business of the applicant or licensee.



1615 **SECTION 24.** Section 81-18-39, Mississippi Code of 1972, is
1616 reenacted as follows:

1617 81-18-39. (1) For purposes of this section, the term
1618 "person" shall be construed to include any officer, director,
1619 employee, affiliate or other person participating in the conduct
1620 of the affairs of the person subject to the orders issued under
1621 this section.

1622 (2) If the department reasonably determines that a person
1623 required to be licensed under this chapter has violated any law of
1624 this state or any order or regulation of the department, the
1625 department may issue a written order requiring the person to cease
1626 and desist from unlawful or unauthorized practices. In the case
1627 of an unlawful purchase of mortgage loans, the cease and desist
1628 order to a purchaser shall constitute the knowledge required under
1629 this section for any subsequent violations.

1630 (3) Any person required to be licensed under this chapter
1631 who has been deemed by the commissioner, after notice and hearing,
1632 to have violated the terms of any order properly issued by the
1633 department under this section shall be liable for a civil penalty
1634 not to exceed Three Thousand Dollars (\$3,000.00). The department,
1635 in determining the amount of the penalty, shall take into account
1636 the appropriateness of the penalty relative to the size of the
1637 financial resources of the person, the good-faith efforts of the
1638 person to comply with the order, the gravity of the violation, the
1639 history of previous violations by the person, and other factors or



1640 circumstances that contributed to the violation. The department
1641 may compromise, modify or refund any penalty that has been imposed
1642 under this section. Any person assessed a penalty as provided in
1643 this subsection shall have the right to request a hearing on the
1644 amount of the penalty within ten (10) days after receiving
1645 notification of the assessment. If no hearing is requested within
1646 ten (10) days of the receipt of the notice, the penalty shall be
1647 final except as to judicial review in the Chancery Court of the
1648 First Judicial District of Hinds County. Upon the filing of a
1649 petition for judicial review, the court shall issue an order to
1650 the licensee requiring the licensee to show cause why it should
1651 not be entered. If the court determines, after a hearing upon the
1652 merits or after failure of the person to appear when so ordered,
1653 that the order of the department was properly issued, it shall
1654 grant the penalty sought by the department.

1655 **SECTION 25.** Section 81-18-40, Mississippi Code of 1972, is
1656 reenacted as follows:

1657 81-18-40. (1) For the purpose of conducting investigations,
1658 examinations or other proceedings under this chapter, the
1659 commissioner or his designee may issue subpoenas to any
1660 individual, person or other entity for the production of all
1661 books, papers, records, files, documents or other things, and may
1662 subpoena and compel the attendance of witnesses to give testimony,
1663 and may administer oaths. Subpoenas as herein provided may be
1664 served either by personal process or by registered mail, and upon



1665 service shall command attendance of such witnesses, and/or
1666 production of such papers and documents, at the time and place so
1667 specified.

1668 (2) Any person or entity who fails or refuses to comply with
1669 a subpoena issued hereunder may be assessed by the commissioner a
1670 civil penalty of not more than Five Hundred Dollars (\$500.00) for
1671 each day of noncompliance, and any privileges or licenses issued
1672 by the commissioner to the person or entity may be suspended for
1673 not more than six (6) months. In addition to the civil penalty,
1674 the commissioner shall be entitled to the assistance of the
1675 chancery court or the chancellor in vacation, which, on petition
1676 by the commissioner or his designee, shall issue ancillary
1677 subpoenas and petitions and may punish as for contempt of court in
1678 the event of noncompliance therewith, and assess attorney's fees
1679 and costs, if deemed appropriate.

1680 **SECTION 26.** Section 81-18-41, Mississippi Code of 1972, is
1681 reenacted as follows:

1682 81-18-41. Nothing in this chapter shall preclude a person
1683 whose license has been suspended or revoked from continuing to
1684 service mortgage loans pursuant to servicing contracts in
1685 existence at the time of the suspension or revocation for a
1686 reasonable transition period, as determined by the commissioner,
1687 after the date of the entry of the final decision in the case
1688 suspending or revoking the license.



1689 **SECTION 27.** Section 81-18-43, Mississippi Code of 1972, is
1690 reenacted as follows:

1691 81-18-43. (1) In order to ensure the effective supervision
1692 and enforcement of this chapter, the commissioner may:

1693 (a) Deny, suspend, revoke, condition or decline to
1694 renew a license for a violation of this chapter, rules or
1695 regulations issued under this chapter or order or directive
1696 entered under this chapter.

1697 (b) Deny, suspend, revoke, condition or decline to
1698 renew a license if an applicant or licensee fails at any time to
1699 meet the requirements of Section 81-18-9(4) or 81-18-15(2), or
1700 withholds information or makes a material misstatement in an
1701 application for a license or renewal of a license.

1702 (c) Order restitution against persons subject to this
1703 chapter for violations of this chapter.

1704 (d) Impose civil penalties on persons subject to this
1705 chapter under subsections (2) and (3) of this section.

1706 (e) Issue orders or directives under this chapter as
1707 follows:

1708 (i) Order or direct persons subject to this
1709 chapter to cease and desist from conducting business, including
1710 immediate temporary orders to cease and desist.

1711 (ii) Order or direct persons subject to this
1712 chapter to cease any harmful activities or violations of this
1713 chapter, including immediate temporary orders to cease and desist.



1714 (iii) Enter immediate temporary orders to cease
1715 business under a license issued under the authority granted under
1716 Section 81-18-7(6) if the commissioner determines that the license
1717 was erroneously granted or the licensee is currently in violation
1718 of this chapter.

1719 (iv) Order or direct such other affirmative action
1720 as the commissioner deems necessary.

1721 (2) The commissioner may impose a civil penalty on a
1722 mortgage loan originator or person subject to this chapter, if the
1723 commissioner finds, on the record after notice and opportunity for
1724 hearing, that the mortgage loan originator or person subject to
1725 this chapter has violated or failed to comply with any requirement
1726 of this chapter or any regulation prescribed by the commissioner
1727 under this chapter or order issued under authority of this
1728 chapter. The maximum amount of penalty for each act or omission
1729 described in this subsection shall be Twenty-five Thousand Dollars
1730 (\$25,000.00).

1731 (3) Each violation or failure to comply with any directive
1732 or order of the commissioner is a separate and distinct violation
1733 or failure.

1734 (4) For a first offense, the licensee, person required to be
1735 licensed, or employee may be found guilty of a misdemeanor and,
1736 upon conviction thereof, shall be punishable by imprisonment in
1737 the county jail for not more than one (1) year.



1738 (5) For a second or subsequent offense, the licensee, person
1739 required to be licensed, or employee shall be guilty of a felony
1740 and, upon conviction thereof, may be punished by imprisonment in
1741 the custody of the State Department of Corrections for a term not
1742 less than one (1) year nor more than five (5) years.

1743 (6) Compliance with the criminal provisions of this section
1744 shall be enforced by the appropriate law enforcement agency, which
1745 may exercise for that purpose any authority conferred upon the
1746 agency by law.

1747 (7) The commissioner shall report regularly violations of
1748 this chapter, as well as enforcement actions and other relevant
1749 information, to the Nationwide Mortgage Licensing System and
1750 Registry subject to the provisions contained in Section 81-18-63.

1751 (8) The state may enforce its rights under the surety bond
1752 as required in Section 81-18-11 as an available remedy for the
1753 collection of any civil penalties, criminal fines or costs of
1754 investigation and/or prosecution incurred.

1755 (9) Any person assessed a penalty as provided in this
1756 section shall have the right to request a hearing on the amount of
1757 the penalty within ten (10) days after receiving notification of
1758 the assessment. If no hearing is requested within ten (10) days
1759 of the receipt of the notice, the penalty shall be final except as
1760 to judicial review in the Chancery Court of the First Judicial
1761 District of Hinds County. Upon the filing of a petition for
1762 judicial review, the court shall issue an order to the licensee



1763 requiring the licensee to show cause why it should not be entered.
1764 If the court determines, after a hearing upon the merits or after
1765 failure of the person to appear when so ordered, that the order of
1766 the department was properly issued, it shall grant the penalty
1767 sought by the department.

1768 **SECTION 28.** Section 81-18-45, Mississippi Code of 1972, is
1769 reenacted as follows:

1770 81-18-45. The commissioner may employ the necessary
1771 full-time employees above the number of permanent full-time
1772 employees authorized for the department for the fiscal year 2001,
1773 to carry out and enforce the provisions of this chapter. The
1774 commissioner also may expend the necessary funds and equip and
1775 provide necessary travel expenses for those employees.

1776 **SECTION 29.** Section 81-18-47, Mississippi Code of 1972, is
1777 reenacted as follows:

1778 81-18-47. (1) A licensee under this chapter shall have no
1779 liability for any act or practice done or omitted in conformity
1780 with (a) any rule or regulation of the commissioner, or (b) any
1781 rule, regulation, interpretation or approval of any other state or
1782 federal agency or any opinion of the Attorney General,
1783 notwithstanding that after such act or omission has occurred the
1784 rule, regulation, interpretation, approval or opinion is amended,
1785 rescinded, or determined by judicial or other authority to be
1786 invalid for any reason.



1787 (2) A licensee under this chapter, acting in conformity with
1788 a written interpretation or approval by an official or employee of
1789 any state or federal agency or department, shall be presumed to
1790 have acted in accordance with applicable law, notwithstanding that
1791 after such act has occurred, the interpretation or approval is
1792 amended, rescinded, or determined by judicial or other authority
1793 to be incorrect or invalid for any reason.

1794 **SECTION 30.** Section 81-18-49, Mississippi Code of 1972, is
1795 reenacted as follows:

1796 81-18-49. Notwithstanding any provisions of this chapter to
1797 the contrary, mortgage companies engaging in business on or before
1798 June 1, 2000, shall be duly licensed by the department after
1799 submitting not later than January 1, 2001, the required documents
1800 and fees provided in Sections 81-18-9 and 81-18-15. However, upon
1801 the expiration of the initial licenses for such mortgage
1802 companies, the department shall renew the licenses only if the
1803 mortgage companies satisfy all of the provisions of this chapter.

1804 **SECTION 31.** Section 81-18-53, Mississippi Code of 1972, is
1805 reenacted as follows:

1806 81-18-53. The provisions of this chapter shall apply to the
1807 activities of retail sellers of manufactured homes to the extent
1808 as determined by the United States Department of Housing and Urban
1809 Development through guidelines, rules, regulations or interpretive
1810 letters or the United States Consumer Financial Protection Bureau.



1811 **SECTION 32.** Section 81-18-55, Mississippi Code of 1972, is
1812 reenacted as follows:

1813 81-18-55. (1) In addition to the activities prohibited
1814 under other provisions of this chapter, it shall be unlawful in
1815 the course of any residential mortgage loan transaction:

1816 (a) For any person to fail to comply with the mortgage
1817 loan servicing transfer, escrow account administration, or
1818 borrower inquiry response requirements imposed by Sections 6 and
1819 10 of the Real Estate Settlement Procedures Act (RESPA) and
1820 regulations adopted thereunder;

1821 (b) For a mortgage lender to fail to provide written
1822 notice to a borrower upon taking action to place hazard,
1823 homeowners, or flood insurance on the mortgaged property or to
1824 place such insurance when the mortgage lender knows or has reason
1825 to know that the insurance is in effect;

1826 (c) For a mortgage lender to place hazard, homeowners
1827 or flood insurance on a mortgaged property for an amount that
1828 exceeds either the value of the insurable improvements or the
1829 last-known coverage amount of insurance;

1830 (d) For a mortgage lender to fail to provide to the
1831 borrower a refund or earned premiums paid by a borrower or charged
1832 to the borrower for hazard, homeowners, or flood insurance placed
1833 by a mortgage lender if the borrower provides reasonable proof
1834 that the borrower has obtained coverage such that the forced
1835 placement is no longer necessary and the property is insured. If



1836 the borrower provides reasonable proof within twelve (12) months
1837 of the placement that no lapse in coverage occurred such that the
1838 forced placement was not necessary, the mortgage lender shall
1839 refund the entire premium;

1840 (e) For a mortgage lender to refuse to reinstate a
1841 delinquent loan upon a tender of payment made timely under the
1842 contract which is sufficient in amount, based upon the last
1843 written statement received by the borrower, to pay all past-due
1844 amounts, outstanding or overdue charges, and restore the loan to a
1845 nondelinquent status, but his reinstatement shall be available to
1846 a borrower no more than twice in any twenty-four-month period;

1847 (f) For a mortgage lender to fail to mail, at least
1848 forty-five (45) days before the power-of-sale foreclosure auction
1849 is conducted, a notice addressed to the borrower at the borrower's
1850 last-known address with the following information:

1851 (i) An itemization of all past-due amounts causing
1852 the loan to be in default;

1853 (ii) An itemization of any other charges that must
1854 be paid in order to bring the loan current;

1855 (iii) A statement that the borrower may have
1856 options available other than foreclosure and that the borrower may
1857 discuss the options with the mortgage lender, or a counselor
1858 approved by the U.S. Department of Housing and Urban Development
1859 (HUD);



1860 (iv) The address, telephone number, and other
1861 contact information for the mortgage lender or the agent for the
1862 mortgage lender who is authorized to attempt to work with the
1863 borrower to avoid foreclosure;

1864 (v) The name, address, telephone number, and other
1865 contact information for one or more HUD-approved counseling
1866 agencies operating to assist borrowers in Mississippi to avoid
1867 foreclosure; and

1868 (vi) The address, telephone number, and other
1869 contact information for the consumer complaint section of the
1870 Mississippi Department of Banking and Consumer Finance;

1871 (g) For a mortgage lender to fail to make all payments
1872 from any escrow account held for the borrower for insurance, taxes
1873 and other charges with respect to the property in a timely manner
1874 so as to ensure that no late penalties are assessed or other
1875 negative consequences result regardless of whether the loan is
1876 delinquent, unless there are not sufficient funds in the account
1877 to cover the payments and the mortgage lender has a reasonable
1878 basis to believe that recovery of the funds will not be possible.

1879 (2) The mortgage lender shall make reasonable attempts to
1880 comply with a borrower's request for information about the home
1881 loan account and to respond to any dispute initiated by the
1882 borrower about the loan account, as provided in this section. The
1883 mortgage lender shall maintain, until the home loan is paid in
1884 full, otherwise satisfied, or sold, written or electronic records



1885 of each written request for information regarding a dispute or
1886 error involving the borrower's account. Specifically, the
1887 mortgage lender is required to do all of the following:

1888 (a) Provide a written statement to the borrower within
1889 ten (10) business days of receipt of a written request from the
1890 borrower that includes or otherwise enables the mortgage lender to
1891 identify the name and account of the borrower and includes a
1892 statement that the account is or may be in error or otherwise
1893 provides sufficient detail to the mortgage lender regarding
1894 information sought by the borrower. The borrower is entitled to
1895 one such statement in any six-month period free of charge, and
1896 additional statements shall be provided if the borrower pays the
1897 mortgage lender a reasonable charge for preparing and furnishing
1898 the statement not to exceed Twenty-five Dollars (\$25.00). The
1899 statement shall include the following information if requested:

1900 (i) Whether the account is current or, if the
1901 account is not current, an explanation of the default and the date
1902 the account went into default;

1903 (ii) The current balance due on the loan,
1904 including the principal due, the amount of funds (if any) held in
1905 a suspense account, the amount of the escrow balance (if any)
1906 known to the mortgage lender, and whether there are any escrow
1907 deficiencies or shortages known to the mortgage lender;



1908 (iii) The identity, address and other relevant
1909 information about the current holder, owner or assignee of the
1910 loan; and

1911 (iv) The telephone number and mailing address of a
1912 mortgage lender representative with the information and authority
1913 to answer questions and resolve disputes;

1914 (b) Provide the following information and/or documents
1915 within twenty-five (25) business days of receipt of a written
1916 request from the borrower that includes or otherwise enables the
1917 mortgage lender to identify the name and account of the borrower
1918 and includes a statement that the account is or may be in error or
1919 otherwise provides sufficient detail to the mortgage lender
1920 regarding information sought by the borrower:

1921 (i) A copy of the original note, or if
1922 unavailable, an affidavit of the lost note;

1923 (ii) A statement that identifies and itemizes all
1924 fees and charges assessed under the loan transaction and provides
1925 a full payment history identifying in a clear and conspicuous
1926 manner all of the debits, credits, application of and disbursement
1927 of all payments received from or for the benefit of the borrower,
1928 and other activity on the home loan including escrow account
1929 activity and suspense account activity, if any. The period of the
1930 account history shall cover at a minimum the two-year period prior
1931 to the date of the receipt of the request for information. If the
1932 mortgage lender has not serviced the home loan for the entire



1933 two-year time period the mortgage lender shall provide the
1934 information going back to the date on which the mortgage lender
1935 began servicing the home loan. For purposes of this subsection,
1936 the date of the request for the information shall be presumed to
1937 be no later than thirty (30) days from the date of the receipt of
1938 the request. If the mortgage lender claims that any delinquent or
1939 outstanding sums are owed on the home loan prior to the two-year
1940 period or the period during which the mortgage lender has serviced
1941 the loan, the mortgage lender shall provide an account history
1942 beginning with the month that the mortgage lender claims any
1943 outstanding sums are owed on the loan up to the date of the
1944 request for the information. The borrower is entitled to one (1)
1945 such statement in any six-month period free of charge. Additional
1946 statements shall be provided if the borrower pays the mortgage
1947 lender a reasonable charge for preparing and furnishing the
1948 statement not to exceed Fifty Dollars (\$50.00); and

1949 (c) Promptly correct errors relating to the allocation
1950 of payments, the statement of account, or the payoff balance
1951 identified in any notice from the borrower provided in accordance
1952 with paragraph (b) of this subsection, or discovered through the
1953 due diligence of the mortgage lender or other means.

1954 (3) A mortgage lender must comply as to every residential
1955 mortgage loan, regardless of whether the loan is considered in
1956 default or the borrower is in bankruptcy or the borrower has been
1957 in bankruptcy, with the following requirements:



1958 (a) Any fee that is incurred by a mortgage lender shall
1959 be both:

1960 (i) Assessed within forty-five (45) days of the
1961 date on which the fee was incurred. Provided, however, that
1962 attorney or trustee fees and costs incurred as a result of a
1963 foreclosure action shall be assessed within forty-five (45) days
1964 of the date they are charged by either the attorney or trustee to
1965 the mortgage lender; and

1966 (ii) Explained clearly and conspicuously in a
1967 statement mailed to the borrower at the borrower's last-known
1968 address within thirty (30) days after assessing the fee, provided
1969 the mortgage lender shall not be required to take any action in
1970 violation of the provisions of the federal bankruptcy code. The
1971 mortgage lender shall not be required to send such a statement for
1972 a fee that: results from a service that is affirmatively
1973 requested by the borrower, is paid for by the borrower at the time
1974 the service is provided, and is not charged to the borrower's loan
1975 account.

1976 (b) All amounts received by a mortgage lender on a home
1977 loan at the address where the borrower has been instructed to make
1978 payments shall be accepted and credited, or treated as credited,
1979 within one (1) business day of the date received, provided that
1980 the borrower has made the full contractual payment and has
1981 provided sufficient information to credit the account. If a
1982 mortgage lender uses the scheduled method of accounting, any



1983 regularly scheduled payment made prior to the scheduled due date
1984 shall be credited no later than the due date. Provided, however,
1985 that if any payment is received and not credited, or treated as
1986 credited, the borrower shall be notified within ten (10) business
1987 days by mail at the borrower's last-known address of the
1988 disposition of the payment, the reason the payment was not
1989 credited, or treated as credited to the account, and any actions
1990 necessary by the borrower to make the loan current.

1991 (c) The notification required by paragraph (b) of this
1992 subsection is not necessary if the mortgage lender complies with
1993 the terms of any agreement or plan made with the borrower and has
1994 applied and credited payments received in the manner required, and
1995 the mortgage lender is applying and crediting payments to the
1996 borrower's account in compliance with all applicable state and
1997 federal laws, including bankruptcy laws, and if at least one (1)
1998 of the following occurs:

1999 (i) The borrower has entered into written loss
2000 mitigation, loan modification, or forbearance agreement with the
2001 mortgage lender that itemizes all amounts due and specifies how
2002 payments will be applied and credited;

2003 (ii) The borrower has elected to participate in an
2004 alternative payment plan, such as a biweekly payment plan, that
2005 specifies as part of a written agreement how payments will be
2006 applied and credited; or



2007 (iii) The borrower is making payments pursuant to
2008 a bankruptcy plan.

2009 (d) Failure to charge the fee or provide the
2010 information within the allowable time and in the manner required
2011 under subsection (3)(a)(i) of this section constitutes a waiver of
2012 such fee.

2013 (e) All fees charged by a mortgage lender must be
2014 otherwise permitted under applicable law and the contracts between
2015 the parties. Nothing herein is intended to permit the application
2016 of payments or method of charging interest which is less
2017 protective of the borrower than the contracts between the parties
2018 and other applicable law.

2019 (f) A mortgage lender shall charge a sum or prepayment
2020 penalty for the prepayment of any residential mortgage loan only
2021 as authorized by Section 75-17-31.

2022 (g) A mortgage lender shall charge a late payment
2023 charge only as authorized by Section 75-17-27.

2024 (h) The costs of collection and reasonable attorney
2025 fees may not be in excess of twenty-five percent (25%) of the
2026 unpaid debt after default, when the debt has been referred to an
2027 attorney for collection.

2028 (i) Charges or premiums for credit life insurance
2029 actually written on the life of the borrower or endorser in an
2030 amount not to exceed the total sum payable under the residential
2031 mortgage loan, including all interest, fees, costs and charges.



2032 **SECTION 33.** Section 81-18-61, Mississippi Code of 1972, is
2033 reenacted as follows:

2034 81-18-61. (1) In addition to any other duties imposed upon
2035 the commissioner by law, the commissioner shall require mortgage
2036 loan originators to be licensed through the Nationwide Mortgage
2037 Licensing System and Registry. In order to carry out this
2038 requirement, the commissioner is authorized to participate in the
2039 Nationwide Mortgage Licensing System and Registry. For this
2040 purpose, the commissioner may establish, by rule, regulation or
2041 order, requirements as necessary, including, but not limited to:

2042 (a) Background checks for:

2043 (i) Criminal history through fingerprint or other
2044 databases;

2045 (ii) Civil or administrative records;

2046 (iii) Credit history; or

2047 (iv) Any other information as deemed necessary by
2048 the Nationwide Mortgage Licensing System and Registry;

2049 (b) The payment of fees to apply for or renew licenses
2050 through the Nationwide Mortgage Licensing System and Registry;

2051 (c) The setting or resetting as necessary of renewal or
2052 reporting dates; and

2053 (d) Requirements for amending or surrendering a license
2054 or any other such activities as the commissioner deems necessary
2055 for participation in the Nationwide Mortgage Licensing System and
2056 Registry.



2057 (2) The commissioner shall establish a process by which
2058 mortgage loan originators may challenge information entered into
2059 the Nationwide Mortgage Licensing System and Registry by the
2060 commissioner.

2061 (3) In order to fulfill the purposes of this chapter, the
2062 commissioner is authorized to establish relationships or contracts
2063 with the Nationwide Mortgage Licensing System and Registry or
2064 other entities designated by the Nationwide Mortgage Licensing
2065 System and Registry to collect and maintain records and process
2066 transaction fees or other fees related to licensees or other
2067 persons subject to this chapter.

2068 (4) A loan processor or underwriter who is an independent
2069 contractor may not engage in the activities of a loan processor or
2070 underwriter unless the independent contractor loan processor or
2071 underwriter obtains and maintains a license under Section
2072 81-18-7(4). Each independent contractor loan processor or
2073 underwriter licensed as a mortgage loan originator must have and
2074 maintain a valid unique identifier issued by the Nationwide
2075 Mortgage Licensing System and Registry.

2076 **SECTION 34.** Section 81-18-63, Mississippi Code of 1972, is
2077 reenacted as follows:

2078 81-18-63. (1) Except as otherwise provided in Public Law
2079 110-289, Section 1512, the requirements under any federal law or
2080 applicable state law regarding the privacy or confidentiality of
2081 any information or material provided to the Nationwide Mortgage



2082 Licensing System and Registry, and any privilege arising under
2083 federal or state law (including the rules of any federal or state
2084 court) with respect to that information or material, shall
2085 continue to apply to the information or material after the
2086 information or material has been disclosed to the Nationwide
2087 Mortgage Licensing System and Registry. The information and
2088 material may be shared with all state and federal regulatory
2089 officials with mortgage industry oversight authority without the
2090 loss of privilege or the loss of confidentiality protections
2091 provided by federal law or applicable state law.

2092 (2) In order to promote more effective regulation and reduce
2093 regulatory burden through supervisory information sharing, the
2094 commissioner is authorized to enter agreements or sharing
2095 arrangements with other governmental agencies, the Conference of
2096 State Bank Supervisors, the American Association of Residential
2097 Mortgage Regulators or other associations representing
2098 governmental agencies as established by rule, regulation or order
2099 of the commissioner.

2100 (3) Information or material that is subject to a privilege
2101 or confidentiality under subsection (1) of this section shall not
2102 be subject to:

2103 (a) Disclosure under any federal or state law governing
2104 the disclosure to the public of information held by an officer or
2105 an agency of the federal government or the respective state; or



2106 (b) Subpoena or discovery, or admission into evidence,
2107 in any private civil action or administrative process, unless with
2108 respect to any privilege held by the Nationwide Mortgage Licensing
2109 System and Registry with respect to that information or material,
2110 the person to whom the information or material pertains waives, in
2111 whole or in part, in the discretion of the person, that privilege.

2112 (4) Any applicable state law relating to the disclosure of
2113 confidential supervisory information or any information or
2114 material described in subsection (1) of this section that is
2115 inconsistent with subsection (1) shall be superseded by the
2116 requirements of this section.

2117 (5) This section shall not apply with respect to the
2118 information or material relating to the employment history of, and
2119 publicly adjudicated disciplinary and enforcement actions against,
2120 mortgage loan originators that is included in the Nationwide
2121 Mortgage Licensing System and Registry for access by the public.

2122 **SECTION 35.** Section 81-18-51, Mississippi Code of 1972,
2123 which provide for the repeal of provisions of law known as the
2124 "Mississippi S.A.F.E Mortgage Act," is hereby repealed.

2125 **SECTION 36.** This act shall take effect and be in force from
2126 and after July 1, 2020.

