

By: Representative Warren

To: Banking and Financial
ServicesHOUSE BILL NO. 223
(As Sent to Governor)

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 LICENSING ACT OF 2009"; TO AMEND REENACTED SECTION
4 81-18-1, MISSISSIPPI CODE OF 1972, TO REVISE THE SHORT TITLE OF
5 THE ACT; TO AMEND REENACTED SECTION 81-18-3, MISSISSIPPI CODE OF
6 1972, TO CLARIFY THE DEFINITION OF THE TERMS "BORROWER," "MORTGAGE
7 LOAN ORIGINATOR" AND "QUALIFYING INDIVIDUAL"; TO AMEND REENACTED
8 SECTION 81-18-5, MISSISSIPPI CODE OF 1972, TO EXEMPT CERTAIN SMALL
9 LOAN LICENSEES FROM THE PROVISIONS OF THE ACT; TO AMEND REENACTED
10 SECTION 81-18-9, MISSISSIPPI CODE OF 1972, TO REMOVE THE
11 COMMISSIONER'S DISCRETION TO ISSUE OR DENY A MORTGAGE LOAN
12 ORIGINATOR LICENSE WHEN A CONVICTION OCCURRED BEFORE THE
13 SEVEN-YEAR PERIOD PRECEDING THE DATE OF APPLICATION; TO AMEND
14 REENACTED SECTION 81-18-15, MISSISSIPPI CODE OF 1972, TO REVISE
15 THE EXPIRATION DATE OF CERTAIN LICENSES; TO AMEND REENACTED
16 SECTION 81-18-17, MISSISSIPPI CODE OF 1972, TO REVISE THE
17 NOTIFICATION REQUIREMENTS TO THE DEPARTMENT OF BANKING AND
18 CONSUMER FINANCE FOR A LICENSEE'S CHANGE IN ADDRESS, LOCATION OR
19 OFFICERS; TO AMEND REENACTED SECTION 81-18-23, MISSISSIPPI CODE OF
20 1972, TO REVISE REPORTING REQUIREMENTS BY MORTGAGE LICENSEES; TO
21 AMEND REENACTED SECTIONS 81-18-13, 81-18-14 AND 81-18-33,
22 MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO AMEND
23 REENACTED SECTION 81-18-51, MISSISSIPPI CODE OF 1972, TO EXTEND
24 THE DATE OF REPEAL OF THE ACT; AND FOR RELATED PURPOSES.

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

26 **SECTION 1.** Section 81-18-1, Mississippi Code of 1972, is
27 reenacted and amended as follows:

28 81-18-1. This chapter shall be known and cited as the
29 "Mississippi S.A.F.E. Mortgage * * * Act * * *."

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

32 81-18-3. For purposes of this chapter, the following terms
33 shall have the following meanings:

34 (a) "Application" means the submission of a borrower's
35 financial information in anticipation of a credit decision,
36 whether written or computer-generated. If the submission does not



37 state or identify a specific property, the submission is an
38 application for a prequalification and not an application for a
39 federally related mortgage loan. The subsequent addition of an
40 identified property to the submission converts the submission to
41 an application for a federally related mortgage loan.

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

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

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

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

54 (iii) If the activities of a mortgage loan
55 originator occurs at the location.

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

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

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

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



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

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

74 (j) "Executive officer" means the chief executive
75 officer, the president, the principal financial officer, the
76 principal operating officer, each vice president with
77 responsibility involving policy-making functions for a significant
78 aspect of a person's business, the secretary, the treasurer, or
79 any other person performing similar managerial or supervisory
80 functions with respect to any organization whether incorporated or
81 unincorporated.

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

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

91 (m) "Individual" means a "natural person."

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

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

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



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

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

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

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

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

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

124 (s) "Make a mortgage loan" means to advance funds,
125 offer to advance funds or make a commitment to advance funds to a
126 borrower.

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

131 (u) "Mortgage broker" means any person who directly or
132 indirectly or by electronic activity solicits, places or
133 negotiates residential mortgage loans for others, or offers to
134 solicit, place or negotiate residential mortgage loans for others



135 that does not close residential mortgage loans in the company
136 name, does not use its own funds, or who closes residential
137 mortgage loans in the name of the company, and sells, assigns or
138 transfers the loan to others within forty-eight (48) hours of the
139 closing.

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

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

157 (x) "Mortgage loan originator" means an individual who
158 for compensation or gain or in the expectation of compensation or
159 gain takes a residential mortgage loan application, or offers or
160 negotiates terms of a residential mortgage loan. The term
161 "mortgage loan originator" does not include:

162 (i) An individual engaged solely as a loan
163 processor or underwriter except as otherwise provided in this
164 chapter;

165 (ii) A person or entity that only performs real
166 estate brokerage activities and is licensed or registered in
167 accordance with Mississippi law, unless the person or entity is



168 compensated by a lender, a mortgage broker, or other mortgage loan
169 originator or by any agent of such lender, mortgage broker, or
170 other mortgage loan originator; and

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

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

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

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

183 (bb) "Offering or negotiating a residential mortgage
184 loan" means:

185 (i) Presenting mortgage loan terms to a borrower
186 for acceptance;

187 (ii) Communicating directly or indirectly with a
188 borrower for purposes of reaching an understanding about
189 prospective loan terms; or

190 (iii) Recommending, referring or steering a
191 borrower to a particular lender or set of loan terms, in
192 accordance with a duty to or incentive from any person other than
193 the borrower.

194 (cc) "Person" means a natural person, sole
195 proprietorship, corporation, company, limited liability company,
196 partnership or association.

197 (dd) "Principal" means a person who, directly or
198 indirectly, owns or controls an ownership interest of ten percent
199 (10%) or more in a corporation or any other form of business
200 organization, regardless of whether the person owns or controls



201 the ownership interest through one or more persons or one or more
202 proxies, powers of attorney, nominees, corporations, associations,
203 limited liability companies, partnerships, trusts, joint-stock
204 companies, other entities or devises, or any combination thereof.

205 (ee) "Qualifying individual" means an owner or employee
206 of a mortgage broker or mortgage lender who submits documentation
207 of two (2) years' experience directly related to mortgage lending,
208 who is licensed as a loan originator as defined in this chapter,
209 and who resides within one hundred twenty-five (125) miles of the
210 licensed principal place of business of the company. This
211 individual will also be designated as the qualifying individual in
212 the Nationwide Mortgage Licensing System and Registry.

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

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

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

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

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

228 (v) Offering to engage in any activity, or act in
229 any capacity, described in subparagraphs (i), (ii), (iii) or (iv)
230 of this paragraph (ff).

231 (gg) "Records" or "documents" means any item in hard
232 copy or produced in a format of storage commonly described as
233 electronic, imaged, magnetic, microphotographic or otherwise, and



234 any reproduction so made shall have the same force and effect as
235 the original thereof and be admitted in evidence equally with the
236 original.

237 (hh) "Registered mortgage loan originator" means any
238 individual who:

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

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

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

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

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

264 (ll) "Taking an application for a residential mortgage
265 loan" means receiving such application for the purpose of
266 deciding, or influencing or soliciting the decision of another,



267 whether to extend an offer of residential mortgage loan terms to a
268 borrower or prospective borrower, or to accept the terms offered
269 by a borrower or prospective borrower in response to a
270 solicitation, whether the application is received directly or
271 indirectly from the borrower or prospective borrower. However, an
272 individual whose only role with respect to the application is
273 physically handling a completed application form or transmitting a
274 completed form to a lender on behalf of a prospective borrower
275 does not take an application.

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

279 **SECTION 3.** Section 81-18-5, Mississippi Code of 1972, is
280 reenacted and amended as follows:

281 81-18-5. The following are exempt from the provisions of
282 this chapter:

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

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

288 (c) Any person who offers or negotiates terms of a
289 residential mortgage loan secured by a dwelling that served as the
290 individual's residence.

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

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



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

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

320 81-18-7. (1) No person shall transact business in this
321 state, directly or indirectly, as a mortgage broker or mortgage
322 lender unless he or she is licensed by the department or is a
323 person exempted from the licensing requirements under Section
324 81-18-5.

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

329 (3) Every person who directly or indirectly controls a
330 person who violates this section, including a general partner,
331 executive officer, joint venturer, contractor, or director of the
332 person, violates this section to the same extent as the person,



333 unless the person whose violation arises under this subsection
334 shows by a preponderance of evidence the burden of proof that he
335 or she did not know and, in the exercise of reasonable care, could
336 not have known of the existence of the facts by reason of which
337 the original violation is alleged to exist.

338 (4) An individual, unless specifically exempted from this
339 chapter under Section 81-18-5, shall not engage in the business of
340 a mortgage loan originator with respect to any dwelling located in
341 this state without first obtaining and maintaining annually a
342 license under this chapter. Each licensed mortgage loan
343 originator must register with and maintain a valid unique
344 identifier issued by the Nationwide Mortgage Licensing System and
345 Registry.

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

350 (a) For all individuals other than individuals
351 described in paragraph (b), the effective date shall be July 31,
352 2010, or such later date approved by the Secretary of the United
353 States Department of Housing and Urban Development, under the
354 authority granted under Public Law 110-289, Section 1508(a).

355 (b) For all individuals licensed as mortgage loan
356 originators as of July 31, 2009, the effective date shall be
357 January 1, 2011, or such later date approved by the Secretary of
358 the United States Department of Housing and Urban Development,
359 under the authority granted under Public Law 110-289, Section
360 1508(a).

361 (6) For the purposes of implementing an orderly and
362 efficient licensing process, the commissioner may establish
363 licensing rules or regulations and interim procedures for
364 licensing and acceptance of applications. For previously



365 registered or licensed individuals, the commissioner may establish
366 expedited review and licensing procedures.

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

369 81-18-8. Municipalities and counties in this state may enact
370 ordinances that are in compliance with, but not more restrictive
371 than, the provisions of this chapter. Any order, ordinance or
372 regulation existing on July 1, 2002, or enacted on or after July
373 1, 2002, that conflicts with this provision shall be null and
374 void.

375 **SECTION 6.** Section 81-18-9, Mississippi Code of 1972, is
376 reenacted and amended as follows:

377 81-18-9. (1) Applicants for a license shall apply in a form
378 as prescribed by the commissioner. Each such form shall contain
379 content as set forth by rule, regulation, instruction or procedure
380 of the commissioner and may be changed or updated as necessary by
381 the commissioner in order to carry out the purposes of this
382 chapter.

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

386 (a) The legal name, residence, and business address of
387 the applicant and, if applicable the legal name, residence and
388 business address of every principal, together with the résumé of
389 the applicant and of every principal of the applicant.

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

394 (c) The complete address of the applicant's principal
395 place of business, branch office(s) and any other locations at
396 which the applicant will engage in any business activity covered
397 by this chapter.



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

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

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

410 (g) Documentation of a minimum of two (2) years'
411 experience directly in mortgage lending by a person named as the
412 qualifying individual of the company. This experience shall have
413 been within the previous four (4) years from the date of
414 application. If the proof of experience is with a company that is
415 located outside of Mississippi, then the qualifying individual
416 shall be required to complete four (4) hours of approved courses
417 on the Mississippi S.A.F.E. Mortgage * * * Act * * *. The
418 qualifying individual shall also be licensed as a loan originator
419 with the department. Evidence shall include, where applicable:

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

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

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



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

435 (3) The application shall be filed on the Nationwide
436 Mortgage Licensing System and Registry together with the
437 following:

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

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

444 (c) Except as provided in this paragraph (c), a set of
445 fingerprints from any local law enforcement agency from the
446 following applicants:

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

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

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

455 (iv) All loan originators; and

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

460 (4) Applicants for a mortgage loan originator license shall
461 apply in a form as prescribed by the commissioner. Each such form
462 shall contain content as set forth by rules, regulations,



463 instructions or procedures of the commissioner and may be changed
464 or updated as necessary by the commissioner in order to carry out
465 the purposes of this chapter. The initial license of a mortgage
466 loan originator shall be accompanied by a fee of One Hundred
467 Dollars (\$100.00) to be paid to the Nationwide Mortgage Licensing
468 System and Registry and any additional fees as required by the
469 Nationwide Mortgage Licensing System and Registry. The
470 commissioner shall not issue a mortgage loan originator license
471 unless the commissioner makes at a minimum the following findings:

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

476 (b) The applicant has not been convicted of, or pled
477 guilty or nolo contendere to, (i) a felony in a domestic, foreign
478 or military court during the seven-year period preceding the date
479 of application for licensing and registration; * * * or (ii) a
480 crime that, if committed within this state, would constitute a
481 felony under the laws of this state; or (iii) a misdemeanor of
482 fraud, theft, forgery, bribery, embezzlement or making a
483 fraudulent or false statement in any jurisdiction. All of this is
484 provided that any pardon of a conviction shall not be a conviction
485 for purposes of this subsection.

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

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

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



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

497 (g) This individual must work for a Mississippi
498 licensed company and work from the location licensed with the
499 department. The licensed location that he or she is assigned to
500 must be within one hundred twenty-five (125) miles of his or her
501 residency. If the licensed loan originator resides and works in
502 Mississippi, then he or she may work from any licensed location of
503 the licensed company within the State of Mississippi. However, an
504 owner of a minimum of ten percent (10%) of a licensed company or
505 the named qualifying individual on file with the department, who
506 is a licensed loan originator with the department, may work from
507 any licensed location of the licensed company within the State of
508 Mississippi in the capacity of a loan originator as described in
509 this chapter.

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

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

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

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



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

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

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

538 (8) For the purposes of this section and in order to reduce
539 the points of contact which the Federal Bureau of Investigation
540 may have to maintain for purposes of subsection (7)(a) and (b)(ii)
541 of this section, the commissioner may use the Nationwide Mortgage
542 Licensing System and Registry as a channeling agent for requesting
543 information from and distributing information to the Department of
544 Justice or any governmental agency.

545 (9) For the purposes of this section and in order to reduce
546 the points of contact which the commissioner may have to maintain
547 for purposes of subsection (7)(b)(i) and (ii) of this section, the
548 commissioner may use the Nationwide Mortgage Licensing System and
549 Registry as a channeling agent for requesting and distributing
550 information to and from any source so directed by the
551 commissioner.

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

554 81-18-11. (1) Each mortgage loan originator shall be
555 covered by a surety bond in accordance with this section. If the
556 mortgage loan originator is an employee or exclusive agent of a
557 person subject to this chapter, the surety bond of the person who
558 is subject to this chapter may be used in lieu of the mortgage
559 loan originator's surety bond requirement.



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

564 (3) The penal sum of the surety bond shall be maintained in
565 an amount that reflects the dollar amount of loans originated as
566 determined by the commissioner, but shall not exceed Twenty-five
567 Thousand Dollars (\$25,000.00) for a mortgage broker or One Hundred
568 Fifty Thousand Dollars (\$150,000.00) for a mortgage lender.

569 (4) When an action is commenced on a licensee's bond, the
570 commissioner may require the filing of a new bond. Immediately
571 upon recovery upon any action on the bond, the licensee shall file
572 a new bond.

573 (5) All surety bonds shall be in favor, first, of the State
574 of Mississippi for the use, benefit and indemnity of any person
575 who suffers any damage or loss as a result of the company's breach
576 of contract or of any obligation arising from contract or any
577 violation of law, and, second, for the payment of any civil
578 penalties, criminal fines, or costs of investigation and/or
579 prosecution incurred by the State of Mississippi, including local
580 law enforcement agencies.

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

584 **SECTION 8.** Section 81-18-13, Mississippi Code of 1972, is
585 reenacted and amended as follows:

586 81-18-13. (1) In order to fulfill the purposes of this
587 chapter, the commissioner is authorized to establish relationships
588 or contracts with the Nationwide Mortgage Licensing System and
589 Registry or other entities designated by the Nationwide Mortgage
590 Licensing System and Registry to collect and maintain records and
591 process transaction fees or other fees related to licensees or
592 other persons subject to this chapter.



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

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

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

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

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

613 (3) For the purposes of this section and in order to reduce
614 the points of contact which the Federal Bureau of Investigation
615 may have to maintain for purposes of subsection (2)(a) and (b)(ii)
616 of this section, the commissioner may use the Nationwide Mortgage
617 Licensing System and Registry as a channeling agent for requesting
618 information from and distributing information to the Department of
619 Justice or any governmental agency.

620 (4) For the purposes of this section and in order to reduce
621 the points of contact which the commissioner may have to maintain
622 for purposes of subsection (2)(b)(i) and (ii) of this section, the
623 commissioner may use the Nationwide Mortgage Licensing System and
624 Registry as a channeling agent for requesting and distributing



625 information to and from any source so directed by the
626 commissioner.

627 (5) Upon receipt of an application for licensure, which
628 shall include the required set of fingerprints from any local law
629 enforcement agency, the department or designated third party shall
630 conduct such an investigation as it deems necessary to determine
631 that the applicant and its officers, directors and principals are
632 of good character and ethical reputation; that the applicant
633 demonstrates reasonable financial responsibility; and that the
634 applicant has reasonable policies and procedures to receive and
635 process customer grievances and inquiries promptly and fairly.

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

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

643 (8) The department shall not issue a license if it finds
644 that the applicant, or any person who is a director, officer,
645 partner or qualifying individual of the applicant, has been
646 convicted of: (a) a felony in any jurisdiction; or (b) a crime
647 that, if committed within this state, would constitute a felony
648 under the laws of this state; or (c) a misdemeanor of fraud,
649 theft, forgery, bribery, embezzlement or making a fraudulent or
650 false statement in any jurisdiction. For the purposes of this
651 chapter, a person shall be deemed to have been convicted of a
652 crime if the person has pleaded guilty to a crime before a court
653 or federal magistrate, or plea of nolo contendere, or has been
654 found guilty of a crime by the decision or judgment of a court or
655 federal magistrate or by the verdict of a jury, irrespective of
656 the pronouncement of sentence or the suspension of a sentence,
657 unless the person convicted of the crime has received a pardon



658 from the President of the United States or the Governor or other
659 pardoning authority in the jurisdiction where the conviction was
660 obtained.

661 (9) The department shall deny a license if it finds that the
662 applicant has had a mortgage loan originator license revoked in
663 any governmental jurisdiction, except that a subsequent formal
664 vacation of that revocation shall not be deemed a revocation.

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

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

680 **SECTION 9.** Section 81-18-14, Mississippi Code of 1972, is
681 reenacted and amended as follows:

682 81-18-14. (1) In order to meet the prelicensing education
683 requirement referred to in Section 81-18-9(4)(d), a person shall
684 complete at least twenty (20) hours of education approved in
685 accordance with subsection (2) of this section, which shall
686 include at least:

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

688 (b) Three (3) hours of ethics, which shall include

689 instruction on fraud, consumer protection and fair lending issues;



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

692 (d) Four (4) hours of education related to the
693 Mississippi S.A.F.E. Mortgage * * * Act * * *.

694 (2) For the purposes of subsection (1) of this section,
695 prelicensing education courses shall be reviewed, and approved by
696 the Nationwide Mortgage Licensing System and Registry based upon
697 reasonable standards. Review and approval of a prelicensing
698 education course shall include review and approval of the course
699 provider.

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

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

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

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

718 (7) In order to meet the written test requirement for
719 mortgage loan originators referred to in Section 81-18-9(4) (e), an
720 individual shall pass, in accordance with the standards
721 established under this subsection, a qualified written test
722 developed by the Nationwide Mortgage Licensing System and Registry



723 and administered by a test provider approved by the Nationwide
724 Mortgage Licensing System and Registry based upon reasonable
725 standards.

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

730 (a) Ethics;

731 (b) Federal law and regulation pertaining to mortgage
732 origination;

733 (c) State law and regulation pertaining to mortgage
734 origination; and

735 (d) Federal and state law and regulation, including
736 instruction on fraud, consumer protection, the nontraditional
737 mortgage marketplace and fair lending issues.

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

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

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

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



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

759 **SECTION 10.** Section 81-18-15, Mississippi Code of 1972, is
760 reenacted and amended as follows:

761 81-18-15. (1) Each mortgage broker and mortgage lender
762 license shall remain in full force and effect until relinquished,
763 suspended, revoked or expired. With each initial application for
764 a license to operate as a mortgage broker or mortgage lender, the
765 applicant shall pay through the Nationwide Mortgage Licensing
766 System and Registry to the commissioner a license fee of Seven
767 Hundred Fifty Dollars (\$750.00); however, if the initial mortgage
768 broker or mortgage lender license is issued between November 1 and
769 December 31, the license will expire December 31 of the following
770 licensing year. Upon the expiration of the initial license, the
771 licensee shall pay an annual renewal fee of Four Hundred
772 Seventy-five Dollars (\$475.00) on or before December 31 of each
773 year. If the annual renewal fee remains unpaid, the license shall
774 expire, but not before December 31 of any year for which the
775 annual renewal fee has been paid. If any person engages in
776 business as provided for in this chapter without paying the
777 license fee provided for in this subsection before commencing
778 business or before the expiration of the person's current license,
779 as the case may be, then the person shall be liable for the
780 initial license fee, which is Seven Hundred Fifty Dollars
781 (\$750.00), plus a penalty in an amount not to exceed Twenty-five
782 Dollars (\$25.00) for each day that the person has engaged in such
783 business without a license or after the expiration of a license.
784 All licensing fees and penalties shall be paid into the Consumer
785 Finance Fund of the department. If the application is withdrawn
786 or denied, the application fee along with any other applicable fee
787 are not refundable.



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

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

792 (b) The mortgage loan originator has satisfied the
793 annual continuing education requirements described in Section
794 81-18-15(5).

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

798 (3) The license of a mortgage loan originator failing to
799 satisfy the minimum standards for license renewal shall expire.
800 The commissioner may adopt procedures for the reinstatement of
801 expired licenses consistent with the standards established by the
802 Nationwide Mortgage Licensing System and Registry. If the renewal
803 fee remains unpaid, the license shall expire, but not before
804 December 31 of any year for which the annual renewal fee has been
805 paid. However, if the initial loan originator license is issued
806 between November 1 and December 31, the license will expire
807 December 31 of the following licensing year. If the renewal fee
808 is not paid before the expiration date of the license, the
809 mortgage loan originator shall be liable for the initial license
810 fee, which is One Hundred Dollars (\$100.00), in order to renew.

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

819 (5) In order to meet the annual continuing education
820 requirements referred to in Section 81-18-15(2) (b), a licensed



821 mortgage loan originator shall complete at least twelve (12) hours
822 of education approved in accordance with subsection (2) of this
823 section, which shall include at least:

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

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

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

829 (d) Two (2) hours of education related to the

830 Mississippi S.A.F.E. Mortgage * * * Act * * *.

831 (6) For the purposes of subsection (5) of this section,
832 continuing education courses shall be reviewed, and approved by
833 the Nationwide Mortgage Licensing System and Registry based upon
834 reasonable standards. Review and approval of a continuing
835 education course shall include review and approval of the course
836 provider.

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

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

846 (9) A licensed mortgage loan originator:

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

850 (b) May not take the same approved course in the same
851 or successive years to meet the annual requirements for continuing
852 education, with the exception of the course concerning the

853 Mississippi S.A.F.E. Mortgage * * * Act * * *.



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

859 (11) A person having successfully completed the education
860 requirements approved by the Nationwide Mortgage Licensing System
861 and Registry in subsection (5) of this section for any state shall
862 be accepted as credit towards completion of continuing education
863 requirements in Mississippi.

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

868 (13) A person meeting the requirements of Section
869 81-18-15(2)(a) and (c) may make up any deficiency in continuing
870 education as established by rule or regulation of the
871 commissioner.

872 **SECTION 11.** Section 81-18-17, Mississippi Code of 1972, is
873 reenacted and amended as follows:

874 81-18-17. (1) Each license issued under this chapter shall
875 state the address of the licensee's principal place of business,
876 the licensee's assigned licensed location and the name of the
877 licensee.

878 (2) A licensee shall post the original license in a
879 conspicuous place in the assigned place of business of the
880 licensee.

881 (3) A license may not be transferred or assigned.

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

884 (5) A licensed mortgage broker or mortgage lender shall
885 notify the department through the Nationwide Mortgage Licensing
886 System and Registry of any change in the address of its principal



887 place of business or of any change in the address of an additional
888 licensed branch location within thirty (30) days of the change.

889 (6) No licensee shall open a branch office in this state or
890 a branch office outside this state from which the licensee has
891 direct contact with consumers regarding origination or brokering
892 Mississippi residential property, without prior approval of the
893 department. An application for any branch office shall be made
894 through the Nationwide Mortgage Licensing System and Registry on a
895 form prescribed by the department, which shall include at least
896 evidence of compliance with subsection (1) of Section 81-18-25 as
897 to that branch and shall be accompanied by payment of a
898 nonrefundable application fee of One Hundred Dollars (\$100.00) and
899 at least one (1) loan originator application licensed at that
900 branch office. The application shall be approved unless the
901 department finds that the applicant has not conducted business
902 under this chapter in accordance with law. * * * Each branch
903 office that currently holds a branch license shall renew that
904 branch license before the expiration date of the main company
905 license, on or before December 31; however, if the initial branch
906 license is issued between November 1 and December 31, the license
907 will expire December 31 of the following licensing year. The
908 license renewal shall be on a form prescribed by the department
909 with a nonrefundable renewal application fee of Twenty-five
910 Dollars (\$25.00). If the annual renewal fee remains unpaid, the
911 license shall expire, but not before December 31 of any year for
912 which the annual renewal fee has been paid. If the renewal fee is
913 not paid before the expiration date of the license, the branch
914 shall be liable for the initial license fee, which is One Hundred
915 Dollars (\$100.00), in order to renew.

916 (7) A licensed mortgage broker or mortgage lender shall
917 notify the department within thirty (30) days by submitting a
918 sponsorship removal in the Nationwide Mortgage Licensing System
919 and Registry when a loan originator is released from its



920 employment. In addition, the licensed mortgage broker or mortgage
921 lender shall notify the department within thirty (30) days through
922 the Nationwide Mortgage Licensing System and Registry when there
923 is a change of the qualifying individual of the licensee.

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

926 81-18-19. (1) Except as provided in this section, no person
927 shall acquire directly or indirectly ten percent (10%) or more of
928 the voting shares of a corporation or ten percent (10%) or more of
929 the ownership of any other entity licensed to conduct business
930 under this chapter unless it first files an application in
931 accordance with the requirements prescribed in Section 81-18-9.

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

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

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

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



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

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

959 (5) A person acquiring an interest in a licensee in a
960 transaction that is requesting exemption from filing an
961 application for approval of the application shall send a written
962 request to the department for an exemption within thirty (30) days
963 before the closing of the transaction.

964 **SECTION 13.** Section 81-18-21, Mississippi Code of 1972, is
965 reenacted as follows:

966 81-18-21. (1) Any person required to be licensed under this
967 chapter shall maintain in its offices, or such other location as
968 the department shall permit, the books, accounts and records
969 necessary for the department to determine whether or not the
970 person is complying with the provisions of this chapter and the
971 rules and regulations adopted by the department under this
972 chapter. These books, accounts and records shall be maintained
973 apart and separate from any other business in which the person is
974 involved and may represent historical data for three (3) years
975 preceding the date of the last license application date forward.
976 The books, accounts and records shall be kept in a secure location
977 under conditions that will not lead to their damage or
978 destruction. If the licensee wishes to keep the files in a
979 location other than the location listed on the license, then the
980 licensee first must submit a written request on a form designated
981 by the department and gain written approval from the commissioner
982 before storing the files at an off-site secure location.

983 (2) To assure compliance with the provisions of this
984 chapter, the department may examine the books and records of any



985 licensee without notice during normal business hours. The
986 commissioner shall charge the licensee an examination fee in an
987 amount not less than Three Hundred Dollars (\$300.00) nor more than
988 Six Hundred Dollars (\$600.00) for each office or location within
989 the State of Mississippi, plus any actual expenses incurred while
990 examining the licensee's records or books that are located outside
991 the State of Mississippi. However, in no event shall a licensee
992 be examined more than once in a two-year period unless for cause
993 shown based upon consumer complaint and/or other exigent reasons
994 as determined by the commissioner.

995 (3) The department, its designated officers and employees,
996 or its duly authorized representatives, for the purposes of
997 discovering violations of this chapter and for the purpose of
998 determining whether any person or individual reasonably suspected
999 by the commissioner of conducting business that requires a license
1000 under this chapter, may investigate those persons and individuals
1001 and examine all relevant books, records and papers employed by
1002 those persons or individuals in the transaction of business, and
1003 may summon witnesses and examine them under oath concerning
1004 matters as to the business of those persons, or other such matters
1005 as may be relevant to the discovery of violations of this chapter
1006 including, without limitation, the conduct of business without a
1007 license as required under this chapter.

1008 (4) Each licensee, individual or person subject to this
1009 chapter shall make available to the commissioner upon request the
1010 books and records relating to the operations of the licensee,
1011 individual or person subject to this chapter. The commissioner
1012 shall have access to those books and records and interview the
1013 officers, principals, mortgage loan originators, employees,
1014 independent contractors, agents, and customers of the licensee,
1015 individual or person subject to this chapter concerning their
1016 business.



1017 (5) Each licensee, individual or person subject to this
1018 chapter shall make or compile reports or prepare other information
1019 as directed by the commissioner in order to carry out the purposes
1020 of this section including, but not limited to:

1021 (a) Accounting compilations;

1022 (b) Information lists and data concerning loan
1023 transactions in a format prescribed by the commissioner; or

1024 (c) Such other information deemed necessary to carry
1025 out the purposes of this section.

1026 (6) In making any examination or investigation authorized by
1027 this chapter, the commissioner may control access to any documents
1028 and records of the licensee or person under examination or
1029 investigation. The commissioner may take possession of the
1030 documents and records or place a person in exclusive charge of the
1031 documents and records in the place where they are usually kept.
1032 During the period of control, no individual or person shall remove
1033 or attempt to remove any of the documents and records except under
1034 a court order or with the consent of the commissioner. Unless the
1035 commissioner has reasonable grounds to believe the documents or
1036 records of the licensee have been or are at risk of being altered
1037 or destroyed for purposes of concealing a violation of this
1038 chapter, the licensee or owner of the documents and records shall
1039 have access to the documents or records as necessary to conduct
1040 its ordinary business affairs.

1041 (7) The commissioner shall report regularly violations of
1042 this chapter, as well as enforcement actions and other relevant
1043 information, to the Nationwide Mortgage Licensing System and
1044 Registry subject to the provisions contained in Section 81-18-63.

1045 (8) Examinations and investigations conducted under this
1046 chapter and information obtained by the department, except as
1047 provided in subsection (7) of this section, in the course of its
1048 duties under this chapter are confidential.



1049 (9) In the absence of malice, fraud or bad faith a person is
1050 not subject to civil liability arising from the filing of a
1051 complaint with the department, furnishing other information
1052 required by this chapter, information required by the department
1053 under the authority granted in this chapter, or information
1054 voluntarily given to the department related to allegations that a
1055 licensee or prospective licensee has violated this chapter.

1056 (10) In order to carry out the purposes of this section, the
1057 commissioner may:

1058 (a) Accept and rely on examination or investigation
1059 reports made by other government officials, within or without this
1060 state; or

1061 (b) Accept audit reports made by an independent
1062 certified public accountant for the licensee, individual or person
1063 subject to this chapter in the course of that part of the
1064 examination covering the same general subject matter as the audit
1065 and may incorporate the audit report in the report of the
1066 examination, report of investigation or other writing of the
1067 commissioner.

1068 (11) The authority of this section shall remain in effect,
1069 whether such a licensee, individual or person subject to this
1070 chapter acts or claims to act under any licensing or registration
1071 law of this state, or claims to act without that authority.

1072 (12) No licensee, individual or person subject to
1073 investigation or examination under this section may knowingly
1074 withhold, abstract, remove, mutilate, destroy or secrete any
1075 books, records, computer records or other information.

1076 **SECTION 14.** Section 81-18-23, Mississippi Code of 1972, is
1077 reenacted and amended as follows:

1078 81-18-23. (1) Each mortgage licensee shall submit to the
1079 Nationwide Mortgage Licensing System and Registry reports of
1080 condition, which shall be in such form and shall contain such



1081 information as the Nationwide Mortgage Licensing System and
1082 Registry may require.

1083 (2) The department, in its discretion, may relieve any
1084 company from the payment of any penalty, in whole or in part, for
1085 good cause.

1086 (3) If a company fails to pay a penalty from which it has
1087 not been relieved, the department may maintain an action at law to
1088 recover the penalty.

1089 (4) Within fifteen (15) days of the occurrence of any of the
1090 following events, a company shall file with the Nationwide
1091 Mortgage Licensing System and Registry the applicable change in
1092 the disclosure questions and shall file a written report with the
1093 commissioner describing the event and its expected impact on the
1094 activities of the company in this state:

1095 (a) The filing for bankruptcy or reorganization by the
1096 company;

1097 (b) The institution of revocation or suspension
1098 proceedings against the company by any state or governmental
1099 authority;

1100 (c) Any felony indictment of the company or any of its
1101 directors, executive officers, qualifying individual or loan
1102 originators;

1103 (d) Any felony conviction of the company or any of its
1104 directors, executive officers, qualifying individual or loan
1105 originators; or

1106 (e) Any misdemeanor conviction, in which fraud is an
1107 essential element, of any of the company's directors, executive
1108 officers, qualifying individual or loan originators.

1109 (5) If the company, owner, qualifying individual of a
1110 company or licensed loan originator is involved in a civil action
1111 concerning the company, then the person shall notify the
1112 commissioner in writing within sixty (60) days after the initial
1113 filing of the civil action.



1114 **SECTION 15.** Section 81-18-25, Mississippi Code of 1972, is
1115 reenacted as follows:

1116 81-18-25. (1) Each principal place of business and branch
1117 office in the state shall meet all of the following requirements:

1118 (a) Be in compliance with local zoning ordinances and
1119 have posted any licenses required by local government agencies.
1120 It is the responsibility of the licensee to meet local zoning
1121 ordinances and obtain the required occupational licenses; however,
1122 zoning cannot be residential. If there is no zoning in the area,
1123 then the person shall submit to the department a letter from the
1124 city or county stating that there is no zoning.

1125 (b) Consist of at least one (1) secure enclosed room or
1126 secure building of stationary construction in which negotiations
1127 of mortgage loan transactions may be conducted in privacy.
1128 Stationary construction does not include the use of portable
1129 buildings. If there is no zoning in the requested location and
1130 the property is used for residential purposes, then the person
1131 shall utilize an enclosed room with a dedicated outside door.

1132 (c) Display a permanent sign outside the place of
1133 business readily visible to the general public, unless the display
1134 of sign violates local zoning ordinances or restrictive covenants.
1135 The sign must contain the name of the licensee and the words
1136 "Mississippi Licensed Mortgage Company" or, if the initial license
1137 is obtained after July 1, 2007, the words "Licensed by the
1138 Mississippi Department of Banking and Consumer Finance."

1139 (2) Each licensee shall prominently display the original
1140 license at the principal place of business and each branch office.

1141 (3) Each person licensed under this chapter shall
1142 prominently display his or her original license in the office
1143 where the person is employed.

1144 (4) If one (1) of the following is correct, then that
1145 location shall be licensed as a mortgage broker or mortgage lender
1146 under this chapter and not as a branch:



1147 (a) It is a separate entity operating as an independent
1148 business or mortgage operation which is not under the direct
1149 control, management supervision and responsibility of the
1150 licensee;

1151 (b) The licensee is not the lessee or owner of the
1152 branch and the branch is not under the direct and daily ownership,
1153 control, management and supervision of the licensee;

1154 (c) All assets and liabilities of the branch are not
1155 assets and liabilities of the licensee, and all income and
1156 expenses of the branch are income and expenses of the licensee and
1157 properly accounted for in the financial records and tax returns of
1158 the licensee; or

1159 (d) All practices, policies and procedures, including,
1160 but not limited to, those relating to employment and operations,
1161 are not originated and established by the licensee or registered
1162 company and are not applied consistently to the principal place of
1163 business and all branches.

1164 Nothing in this subsection (4) shall affect or change, or be
1165 construed as affecting or changing, the existing statutory law and
1166 common law on agency, principal and agent, independent
1167 contractors, and parent and subsidiary companies.

1168 **SECTION 16.** Section 81-18-27, Mississippi Code of 1972, is
1169 reenacted as follows:

1170 81-18-27. (1) No person required to be licensed under this
1171 chapter shall:

1172 (a) Directly or indirectly employ any scheme, device or
1173 artifice to defraud or mislead borrowers or lenders or to defraud
1174 any person.

1175 (b) Misrepresent to or conceal from an applicant for a
1176 mortgage loan or mortgagor, material facts, terms or conditions of
1177 a transaction to which the licensee is a party.

1178 (c) Fail to disburse funds in accordance with a written
1179 commitment or agreement to make a mortgage loan.



1180 (d) Fail to truthfully account for monies belonging to
1181 a party to a residential mortgage loan transaction.

1182 (e) Improperly refuse to issue a satisfaction of a
1183 mortgage loan.

1184 (f) Fail to account for or deliver to any person any
1185 personal property obtained in connection with a mortgage loan,
1186 such as money, funds, deposits, checks, drafts, mortgages or other
1187 documents or things of value that have come into the possession of
1188 the licensee and that are not the property of the licensee, or
1189 that the licensee is not by law or at equity entitled to retain.

1190 (g) Engage in any transaction, practice, or course of
1191 business that is not in good faith, or that operates a fraud upon
1192 any person in connection with the making of or purchase or sale of
1193 any mortgage loan, including the use of correction fluid on any
1194 document associated with the mortgage loan.

1195 (h) Engage in any fraudulent residential mortgage
1196 underwriting practices, which include, but are not limited to,
1197 making in any manner, any false or deceptive statement or
1198 representation including, with regard to the rates, points or
1199 other financing terms or conditions for a residential mortgage
1200 loan, or engage in bait and switch advertising.

1201 (i) Solicit or enter into a contract with a borrower
1202 that provides in substance that the person or individual subject
1203 to this chapter may earn a fee or commission through "best
1204 efforts" to obtain a loan even though no loan is actually obtained
1205 for the borrower.

1206 (j) Induce, require, or otherwise permit the applicant
1207 for a mortgage loan or mortgagor to sign a security deed, note, or
1208 other pertinent financial disclosure documents with any blank
1209 spaces to be filled in after it has been signed, except blank
1210 spaces relating to recording or other incidental information not
1211 available at the time of signing.



1212 (k) Make, directly or indirectly, any residential
1213 mortgage loan with the intent to foreclose on the borrower's
1214 property. For purposes of this paragraph, there is a presumption
1215 that a person has made a residential mortgage loan with the intent
1216 to foreclose on the borrower's property if any of the following
1217 circumstances are proven:

1218 (i) Lack of substantial benefit to the borrower;
1219 (ii) The probability that full payment of the loan
1220 cannot be made by the borrower;

1221 (iii) That the person has made a significant
1222 proportion of loans foreclosed under similar circumstances;

1223 (iv) That the person has provided an extension of
1224 credit or collected a mortgage debt by extortion;

1225 (v) That the person does business under a trade
1226 name that misrepresents or tends to misrepresent that the person
1227 is a bank, trust company, savings bank, savings and loan
1228 association, credit union, or insurance company.

1229 (l) Charge or collect any direct payment, compensation
1230 or advance fee from a borrower unless and until a loan is actually
1231 found, obtained and closed for that borrower, and in no event
1232 shall that direct payment, compensation or advance fee exceed
1233 seven and ninety-five one-hundredths percent (7.95%) of the
1234 original principal amount of the loan, and any such direct
1235 payments, compensation or advance fees shall be included in all
1236 annual percentage rate (APR) calculations if required under
1237 Regulation Z of the federal Truth in Lending Act (TILA). A direct
1238 payment, compensation or advance fee as defined in this section
1239 shall not include:

1240 (i) Any direct payment, compensation or advance
1241 fee collected by a licensed mortgage broker or mortgage lender to
1242 be paid to a nonrelated third party;

1243 (ii) Any indirect payment to a licensed mortgage
1244 broker or mortgage lender by a lender if those fees are not



1245 required to be disclosed under the Real Estate Settlement
1246 Procedures Act (RESPA);

1247 (iii) Any indirect payment or compensation by a
1248 lender to a licensee required to be disclosed by the licensee
1249 under RESPA, provided that the payment or compensation is
1250 disclosed to the borrower by the licensee on a good faith estimate
1251 of costs, is included in the APR if required under Regulation Z of
1252 TILA, and is made pursuant to a written agreement between the
1253 licensee and the borrower as may be required by Section 81-18-33;

1254 (iv) A fee not to exceed one percent (1%) of the
1255 principal amount of a loan for construction, provided that a
1256 binding commitment for the loan has been obtained for the
1257 prospective borrower; or

1258 (v) An advance fee, known as a lock-in fee,
1259 collected by a licensee to be paid to a lender to lock in an
1260 interest rate and/or a certain number of points on a mortgage loan
1261 from the lender as provided in Section 81-18-28.

1262 (m) Pay to any person not licensed under the provisions
1263 of this chapter any commission, bonus or fee in connection with
1264 arranging for or originating a mortgage loan for a borrower,
1265 except that a licensed loan originator may be paid a bonus,
1266 commission, or fee by his or her licensed employer.

1267 (n) Refuse to provide the loan payoff within three (3)
1268 business days of an oral or written request from a borrower or
1269 third party. Proof of authorization of the borrower shall be
1270 submitted for a third-party request.

1271 (o) Knowingly withhold, extract, remove, mutilate,
1272 destroy or conceal any books, records, computer records or other
1273 information which are required by law to be disclosed.

1274 (p) Negligently make any false statement or knowingly
1275 and willfully make any omission of material fact in connection
1276 with any information or reports filed with a governmental agency
1277 or the Nationwide Mortgage Licensing System and Registry or in



1278 connection with any investigation conducted by the commissioner or
1279 another governmental agency.

1280 (q) Fail to comply with this chapter or rules or
1281 regulations promulgated under this chapter, or fail to comply with
1282 any other state or federal law, including the rules and
1283 regulations under that law, applicable to any business authorized
1284 or conducted under this chapter.

1285 (r) Conduct any business covered by this chapter
1286 without holding a valid license as required under this chapter, or
1287 assist or aid and abet any person in the conduct of business under
1288 this chapter without a valid license as required under this
1289 chapter.

1290 (s) Make any payment, threat or promise, directly or
1291 indirectly, to any person for the purposes of influencing the
1292 independent judgment of the person in connection with a
1293 residential mortgage loan, or make any payment threat or promise,
1294 directly or indirectly, to any appraiser of a property, for the
1295 purposes of influencing the independent judgment of the appraiser
1296 with respect to the value of the property.

1297 (t) Solicit, advertise or enter into a contract for
1298 specific interest rates, points or other financing terms unless
1299 the terms are actually available at the time of soliciting,
1300 advertising or contracting.

1301 (u) Fail to make disclosures as required by this
1302 chapter and any other applicable state or federal law including
1303 regulations under that law.

1304 (v) Cause or require a borrower to obtain property
1305 insurance coverage in an amount that exceeds the replacement cost
1306 of the improvements as established by the property insurer.

1307 (2) A licensed mortgage broker or mortgage lender shall only
1308 broker a residential mortgage loan to a mortgage broker or
1309 mortgage lender licensed under this chapter or to a person exempt
1310 from licensure under the provisions of this chapter.



1311 (3) No nonbanking entity may use any sign or handwritten or
1312 printed paper indicating that it is a bank, savings bank, trust
1313 company or place of banking. No entity may use the word "bank,"
1314 "savings bank," "banking," "banker" or "trust company," or the
1315 equivalent or plural of any of these words, in connection with any
1316 business other than that of banking. This subsection does not
1317 prohibit a person from acting in a trust capacity.

1318 (4) No person shall use the name or logo of any banking
1319 entity in connection with the sale, offering for sale, or
1320 advertising of any financial product or service without the
1321 express written consent of the banking entity.

1322 (5) No unlicensed Mississippi location of a Mississippi
1323 licensed mortgage broker or mortgage lender may advertise mortgage
1324 services if the unlicensed location is more than fifty (50) miles
1325 from a licensed Mississippi location.

1326 **SECTION 17.** Section 81-18-28, Mississippi Code of 1972, is
1327 reenacted as follows:

1328 81-18-28. (1) A licensed mortgage broker or mortgage lender
1329 may enter into lock-in agreements and collect a lock-in fee from a
1330 borrower on the lender's behalf. The lock-in fee shall not exceed
1331 the following:

1332 (a) No fee may be collected to lock in for sixty (60)
1333 days or less;

1334 (b) One percent (1%) of the principal amount of the
1335 loan to lock in for more than sixty (60) days, but not to exceed
1336 one hundred eighty (180) days;

1337 (c) One and one-half percent (1-1/2%) of the principal
1338 amount of the loan to lock in for more than one hundred eighty
1339 (180) days, but not to exceed two hundred seventy (270) days; or

1340 (d) Two percent (2%) of the principal amount of the
1341 loan to lock in for more than two hundred seventy (270) days.



1342 (2) Before the collection of a lock-in fee, the applicant
1343 must be provided a copy of the lock-in fee agreement. This
1344 agreement shall contain at least the following:

1345 (a) Identification of the property that is being
1346 purchased with the loan;

1347 (b) The principal amount and term of the loan;

1348 (c) The initial interest rate and/or points, whether
1349 the interest rate is fixed or variable, and if variable, the index
1350 and margin, or the method by which an interest rate change for the
1351 mortgage loan will be calculated;

1352 (d) The amount of the lock-in fee, whether the fee is
1353 refundable or nonrefundable, the time by which the lock-in fee
1354 must be paid to the lender, and if the fee is refundable, the
1355 terms and conditions necessary to obtain the refund; and

1356 (e) The length of the lock-in period that the agreement
1357 covers.

1358 **SECTION 18.** Section 81-18-29, Mississippi Code of 1972, is
1359 reenacted as follows:

1360 81-18-29. The commissioner shall promulgate those rules and
1361 regulations, not inconsistent with law, necessary for the
1362 enforcement of this chapter.

1363 **SECTION 19.** Section 81-18-31, Mississippi Code of 1972, is
1364 reenacted as follows:

1365 81-18-31. The department shall promulgate regulations
1366 governing the advertising of mortgage loans, including, but not
1367 limited to, the following requirements:

1368 (a) That all advertisements for loans regulated under
1369 this chapter may not be false, misleading or deceptive. No person
1370 whose activities are regulated under this chapter may advertise in
1371 any manner so as to indicate or imply that its interest rates or
1372 charges for loans are "recommended," "approved," "set" or
1373 "established" by the State of Mississippi;



1374 (b) That all licensees shall maintain a copy of all
1375 advertisements citing interest rates or payment amounts primarily
1376 disseminated in this state and shall attach to each advertisement
1377 documentation that provides corroboration of the availability of
1378 the interest rate and terms of loans and names the specific media
1379 sources by which the advertisements were distributed;

1380 (c) That all published advertisements disseminated
1381 primarily in this state by a license shall contain the name and an
1382 office address of the licensee, which shall be the same as the
1383 name and address of the licensee on record with the department;

1384 (d) That an advertisement containing either a quoted
1385 interest rate or monthly payment amount must include:

1386 (i) The interest rate of the mortgage, a statement
1387 as to whether the rate is fixed or adjustable, and the adjustment
1388 index and frequency of adjustments;

1389 (ii) The term in years or months to fully repay
1390 the mortgage;

1391 (iii) The APR as computed under federal
1392 guidelines; and

1393 (e) That no licensee shall advertise its services in
1394 Mississippi in any media disseminated primarily in this state,
1395 whether print or electronic, without the words "Mississippi
1396 Licensed Mortgage Company" or, if the initial license is obtained
1397 after July 1, 2007, the words "Licensed by the Mississippi
1398 Department of Banking and Consumer Finance."

1399 (f) That the unique identifier of any person
1400 originating a residential mortgage loan shall be clearly shown on
1401 all residential mortgage loan application forms, solicitations or
1402 advertisements, including business cards or Web sites, and any
1403 other documents as established by rule, regulation or order of the
1404 commissioner.

1405 **SECTION 20.** Section 81-18-33, Mississippi Code of 1972, is
1406 reenacted and amended as follows:



1407 81-18-33. The individual borrower files of a licensee shall
1408 contain at least the following:

1409 (a) A mortgage origination agreement provided to the
1410 borrower containing at least the following statements:

1411 (i) "As required by Mississippi Law, (licensed
1412 company name) has secured a bond issued by (name of insurance
1413 company), a surety company authorized to do business in this
1414 state. A certified copy of this bond is filed with the
1415 Mississippi Commissioner of Banking and Consumer Finance."

1416 (ii) "As a borrower you are protected under the
1417 Mississippi S.A.F.E. Mortgage * * * Act * * *."

1418 (iii) "Complaints against a licensee may be made
1419 by contacting the:

1420 Mississippi Department of Banking and
1421 Consumer Finance
1422 P.O. Drawer 23729
1423 Jackson, MS 39225-3729";

1424 (b) A copy of the original loan application signed and
1425 dated by the licensee;

1426 (c) A copy of the signed closing statement as required
1427 by HUD or documentation of denial or cancellation of the loan
1428 application;

1429 (d) A copy of the good faith estimate of costs provided
1430 to the borrower;

1431 (e) A copy of the appraisal or statement of value if
1432 procured as a part of the loan application process;

1433 (f) A copy of a loan lock-in agreement, if any,
1434 provided by the licensee;

1435 (g) A copy of the disclosures required under Regulation
1436 Z of the federal Truth In Lending Act and other disclosures as
1437 required under federal regulations and evidence that those
1438 disclosures have been properly and timely made to the borrower;
1439 and



1440 (h) A copy of the final signed Uniform Residential Loan
1441 Application. However, any mortgage licensee who holds a license
1442 under the provisions of the Small Loan Regulatory Law, Section
1443 75-67-101 et seq., and the Small Loan Privilege Tax Law, Section
1444 75-67-201 et seq., may substitute an application that is otherwise
1445 compliant with federal and state law.

1446 **SECTION 21.** Section 81-18-35, Mississippi Code of 1972, is
1447 reenacted as follows:

1448 81-18-35. Each licensee shall maintain a journal of mortgage
1449 transactions at the principal place of business as stated on its
1450 license, which shall include at least the following information:

- 1451 (a) Name of applicant and co-applicant, if applicable;
1452 (b) Date of application; and
1453 (c) Disposition of loan application, indicating date of
1454 loan funding, loan denial, withdrawal and name of lender if
1455 applicable.

1456 **SECTION 22.** Section 81-18-36, Mississippi Code of 1972, is
1457 reenacted as follows:

1458 81-18-36. (1) (a) All monies paid to a licensee for
1459 payment of taxes, loan commitment deposits, work completion
1460 deposits, appraisals, credit reports or insurance premiums on
1461 property that secures any loan made or serviced by the licensee
1462 shall be deposited in an account that is insured by the Federal
1463 Deposit Insurance Corporation or the National Credit Union
1464 Administration and shall be kept separate, distinct, and apart
1465 from funds belonging to the licensee.

1466 (b) The funds, when deposited, are to be designated as
1467 an "escrow account," or under some other appropriate name,
1468 indicating that the funds are not the funds of the licensee.

1469 (2) The licensee shall, upon reasonable notice, account to
1470 any debtor whose property secures a loan made by the licensee for
1471 any funds which that person has paid to the licensee for the



1472 payment of taxes or insurance premiums on the property in
1473 question.

1474 (3) The licensee shall, upon reasonable notice, account to
1475 the commissioner for all funds in the company's escrow account.

1476 (4) Escrow accounts are not subject to execution or
1477 attachment on any claim against the licensee.

1478 (5) It is unlawful for any licensee knowingly to keep or
1479 cause to be kept any funds or money in any bank or other financial
1480 institution under the heading of "escrow account" or any other
1481 name designating the funds or monies belonging to the debtors of
1482 the licensee, except actual funds paid to the licensee for the
1483 payment of taxes and insurance premiums on property securing loans
1484 made or serviced by the company.

1485 **SECTION 23.** Section 81-18-37, Mississippi Code of 1972, is
1486 reenacted as follows:

1487 81-18-37. (1) The department may suspend or revoke any
1488 license for any reason that would have been grounds for refusal to
1489 issue an original license or for:

1490 (a) A violation of any provision of this chapter or any
1491 rule or regulation adopted under this chapter;

1492 (b) Failure of the licensee to pay, within thirty (30)
1493 days after it becomes final and nonappealable, a judgment
1494 recovered in any court within this state by a claimant or creditor
1495 in an action arising out of the licensee's business in this state
1496 as a mortgage broker or mortgage lender.

1497 (2) Notice of the department's intention to enter an order
1498 denying an application for a license under this chapter or of an
1499 order suspending or revoking a license under this chapter shall be
1500 given to the applicant, licensee in writing, sent by registered or
1501 certified mail addressed to the principal place of business of the
1502 applicant or licensee. Within thirty (30) days of the date of the
1503 notice of intention to enter an order of denial, suspension or
1504 revocation under this chapter, the applicant, licensee may request



1505 in writing a hearing to contest the order. If a hearing is not
1506 requested in writing within thirty (30) days of the date of the
1507 notice of intention, the department shall enter a final order
1508 regarding the denial, suspension or revocation. Any final order
1509 of the department denying, suspending or revoking a license shall
1510 state the grounds upon which it is based and shall be effective on
1511 the date of issuance. A copy of the final order shall be
1512 forwarded promptly by registered or certified mail addressed to
1513 the principal place of business of the applicant or licensee.

1514 **SECTION 24.** Section 81-18-39, Mississippi Code of 1972, is
1515 reenacted as follows:

1516 81-18-39. (1) For purposes of this section, the term
1517 "person" shall be construed to include any officer, director,
1518 employee, affiliate or other person participating in the conduct
1519 of the affairs of the person subject to the orders issued under
1520 this section.

1521 (2) If the department reasonably determines that a person
1522 required to be licensed or registered under this chapter has
1523 violated any law of this state or any order or regulation of the
1524 department, the department may issue a written order requiring the
1525 person to cease and desist from unlawful or unauthorized
1526 practices. In the case of an unlawful purchase of mortgage loans,
1527 the cease and desist order to a purchaser shall constitute the
1528 knowledge required under this section for any subsequent
1529 violations.

1530 (3) Any person required to be licensed or registered under
1531 this chapter who has been deemed by the commissioner, after notice
1532 and hearing, to have violated the terms of any order properly
1533 issued by the department under this section shall be liable for a
1534 civil penalty not to exceed Three Thousand Dollars (\$3,000.00).
1535 The department, in determining the amount of the penalty, shall
1536 take into account the appropriateness of the penalty relative to
1537 the size of the financial resources of the person, the good faith



1538 efforts of the person to comply with the order, the gravity of the
1539 violation, the history of previous violations by the person, and
1540 other factors or circumstances that contributed to the violation.
1541 The department may compromise, modify or refund any penalty that
1542 has been imposed under this section. Any person assessed a
1543 penalty as provided in this subsection shall have the right to
1544 request a hearing on the amount of the penalty within ten (10)
1545 days after receiving notification of the assessment. If no
1546 hearing is requested within ten (10) days of the receipt of the
1547 notice, the penalty shall be final except as to judicial review in
1548 the Chancery Court of the First Judicial District of Hinds County.
1549 Upon the filing of a petition for judicial review, the court shall
1550 issue an order to the licensee requiring the licensee to show
1551 cause why it should not be entered. If the court determines,
1552 after a hearing upon the merits or after failure of the person to
1553 appear when so ordered, that the order of the department was
1554 properly issued, it shall grant the penalty sought by the
1555 department.

1556 **SECTION 25.** Section 81-18-40, Mississippi Code of 1972, is
1557 reenacted as follows:

1558 81-18-40. (1) For the purpose of conducting investigations,
1559 examinations or other proceedings under this chapter, the
1560 commissioner or his designee may issue subpoenas to any
1561 individual, person or other entity for the production of all
1562 books, papers, records, files, documents or other things, and may
1563 subpoena and compel the attendance of witnesses to give testimony,
1564 and may administer oaths. Subpoenas as herein provided may be
1565 served either by personal process or by registered mail, and upon
1566 service shall command attendance of such witnesses, and/or
1567 production of such papers and documents, at the time and place so
1568 specified.

1569 (2) Any person or entity who fails or refuses to comply with
1570 a subpoena issued hereunder may be assessed by the commissioner a



1571 civil penalty of not more than Five Hundred Dollars (\$500.00) for
1572 each day of noncompliance, and any privileges or licenses issued
1573 by the commissioner to the person or entity may be suspended for
1574 not more than six (6) months. In addition to the civil penalty,
1575 the commissioner shall be entitled to the assistance of the
1576 chancery court or the chancellor in vacation, which, on petition
1577 by the commissioner or his designee, shall issue ancillary
1578 subpoenas and petitions and may punish as for contempt of court in
1579 the event of noncompliance therewith, and assess attorneys' fees
1580 and costs, if deemed appropriate.

1581 **SECTION 26.** Section 81-18-41, Mississippi Code of 1972, is
1582 reenacted as follows:

1583 81-18-41. Nothing in this chapter shall preclude a person
1584 whose license has been suspended or revoked from continuing to
1585 service mortgage loans pursuant to servicing contracts in
1586 existence at the time of the suspension or revocation for a
1587 reasonable transition period, as determined by the commissioner,
1588 after the date of the entry of the final decision in the case
1589 suspending or revoking the license.

1590 **SECTION 27.** Section 81-18-43, Mississippi Code of 1972, is
1591 reenacted as follows:

1592 81-18-43. (1) In order to ensure the effective supervision
1593 and enforcement of this chapter, the commissioner may:

1594 (a) Deny, suspend, revoke, condition or decline to
1595 renew a license for a violation of this chapter, rules or
1596 regulations issued under this chapter or order or directive
1597 entered under this chapter.

1598 (b) Deny, suspend, revoke, condition or decline to
1599 renew a license if an applicant or licensee fails at any time to
1600 meet the requirements of Section 81-18-9(4) or 81-18-15(2), or
1601 withholds information or makes a material misstatement in an
1602 application for a license or renewal of a license.



1603 (c) Order restitution against persons subject to this
1604 chapter for violations of this chapter.

1605 (d) Impose civil penalties on persons subject to this
1606 chapter under subsections (2) and (3) of this section.

1607 (e) Issue orders or directives under this chapter as
1608 follows:

1609 (i) Order or direct persons subject to this
1610 chapter to cease and desist from conducting business, including
1611 immediate temporary orders to cease and desist.

1612 (ii) Order or direct persons subject to this
1613 chapter to cease any harmful activities or violations of this
1614 chapter, including immediate temporary orders to cease and desist.

1615 (iii) Enter immediate temporary orders to cease
1616 business under a license issued under the authority granted under
1617 Section 81-18-7(6) if the commissioner determines that the license
1618 was erroneously granted or the licensee is currently in violation
1619 of this chapter.

1620 (iv) Order or direct such other affirmative action
1621 as the commissioner deems necessary.

1622 (2) The commissioner may impose a civil penalty on a
1623 mortgage loan originator or person subject to this chapter, if the
1624 commissioner finds, on the record after notice and opportunity for
1625 hearing, that the mortgage loan originator or person subject to
1626 this chapter has violated or failed to comply with any requirement
1627 of this chapter or any regulation prescribed by the commissioner
1628 under this chapter or order issued under authority of this
1629 chapter. The maximum amount of penalty for each act or omission
1630 described in this subsection shall be Twenty-five Thousand Dollars
1631 (\$25,000.00).

1632 (3) Each violation or failure to comply with any directive
1633 or order of the commissioner is a separate and distinct violation
1634 or failure.



1635 (4) For a first offense, the licensee, person required to be
1636 licensed, or employee may be found guilty of a misdemeanor and,
1637 upon conviction thereof, shall be punishable by imprisonment in
1638 the county jail for not more than one (1) year;

1639 (5) For a second or subsequent offense, the licensee, person
1640 required to be licensed, or employee shall be guilty of a felony
1641 and, upon conviction thereof, may be punished by imprisonment in
1642 the custody of the State Department of Corrections for a term not
1643 less than one (1) year nor more than five (5) years.

1644 (6) Compliance with the criminal provisions of this section
1645 shall be enforced by the appropriate law enforcement agency, which
1646 may exercise for that purpose any authority conferred upon the
1647 agency by law.

1648 (7) The commissioner shall report regularly violations of
1649 this chapter, as well as enforcement actions and other relevant
1650 information, to the Nationwide Mortgage Licensing System and
1651 Registry subject to the provisions contained in Section 81-18-63.

1652 (8) The state may enforce its rights under the surety bond
1653 as required in Section 81-18-11 as an available remedy for the
1654 collection of any civil penalties, criminal fines or costs of
1655 investigation and/or prosecution incurred.

1656 (9) Any person assessed a penalty as provided in this
1657 section shall have the right to request a hearing on the amount of
1658 the penalty within ten (10) days after receiving notification of
1659 the assessment. If no hearing is requested within ten (10) days
1660 of the receipt of the notice, the penalty shall be final except as
1661 to judicial review in the Chancery Court of the First Judicial
1662 District of Hinds County. Upon the filing of a petition for
1663 judicial review, the court shall issue an order to the licensee
1664 requiring the licensee to show cause why it should not be entered.
1665 If the court determines, after a hearing upon the merits or after
1666 failure of the person to appear when so ordered, that the order of



1667 the department was properly issued, it shall grant the penalty
1668 sought by the department.

1669 **SECTION 28.** Section 81-18-53, Mississippi Code of 1972, is
1670 reenacted as follows:

1671 81-18-53. The provisions of this chapter shall apply to the
1672 activities of retail sellers of manufactured homes to the extent
1673 as determined by the United States Department of Housing and Urban
1674 Development through guidelines, rules, regulations or interpretive
1675 letters.

1676 **SECTION 29.** Section 81-18-61, Mississippi Code of 1972, is
1677 reenacted as follows:

1678 81-18-61. (1) In addition to any other duties imposed upon
1679 the commissioner by law, the commissioner shall require mortgage
1680 loan originators to be licensed and registered through the
1681 Nationwide Mortgage Licensing System and Registry. In order to
1682 carry out this requirement, the commissioner is authorized to
1683 participate in the Nationwide Mortgage Licensing System and
1684 Registry. For this purpose, the commissioner may establish, by
1685 rule, regulation or order, requirements as necessary, including
1686 but not limited to:

1687 (a) Background checks for:

1688 (i) Criminal history through fingerprint or other
1689 databases;

1690 (ii) Civil or administrative records;

1691 (iii) Credit history; or

1692 (iv) Any other information as deemed necessary by
1693 the Nationwide Mortgage Licensing System and Registry;

1694 (b) The payment of fees to apply for or renew licenses
1695 through the Nationwide Mortgage Licensing System and Registry;

1696 (c) The setting or resetting as necessary of renewal or
1697 reporting dates; and

1698 (d) Requirements for amending or surrendering a license
1699 or any other such activities as the commissioner deems necessary



1700 for participation in the Nationwide Mortgage Licensing System and
1701 Registry.

1702 (2) The commissioner shall establish a process by which
1703 mortgage loan originators may challenge information entered into
1704 the Nationwide Mortgage Licensing System and Registry by the
1705 commissioner.

1706 (3) In order to fulfill the purposes of this chapter, the
1707 commissioner is authorized to establish relationships or contracts
1708 with the Nationwide Mortgage Licensing System and Registry or
1709 other entities designated by the Nationwide Mortgage Licensing
1710 System and Registry to collect and maintain records and process
1711 transaction fees or other fees related to licensees or other
1712 persons subject to this chapter.

1713 (4) A loan processor or underwriter who is an independent
1714 contractor may not engage in the activities of a loan processor or
1715 underwriter unless the independent contractor loan processor or
1716 underwriter obtains and maintains a license under Section
1717 81-18-7(4). Each independent contractor loan processor or
1718 underwriter licensed as a mortgage loan originator must have and
1719 maintain a valid unique identifier issued by the Nationwide
1720 Mortgage Licensing System and Registry.

1721 **SECTION 30.** Section 81-18-63, Mississippi Code of 1972, is
1722 reenacted as follows:

1723 81-18-63. (1) Except as otherwise provided in Public Law
1724 110-289, Section 1512, the requirements under any federal law or
1725 applicable state law regarding the privacy or confidentiality of
1726 any information or material provided to the Nationwide Mortgage
1727 Licensing System and Registry, and any privilege arising under
1728 federal or state law (including the rules of any federal or state
1729 court) with respect to that information or material, shall
1730 continue to apply to the information or material after the
1731 information or material has been disclosed to the Nationwide
1732 Mortgage Licensing System and Registry. The information and



1733 material may be shared with all state and federal regulatory
1734 officials with mortgage industry oversight authority without the
1735 loss of privilege or the loss of confidentiality protections
1736 provided by federal law or applicable state law.

1737 (2) In order to promote more effective regulation and reduce
1738 regulatory burden through supervisory information sharing, the
1739 commissioner is authorized to enter agreements or sharing
1740 arrangements with other governmental agencies, the Conference of
1741 State Bank Supervisors, the American Association of Residential
1742 Mortgage Regulators or other associations representing
1743 governmental agencies as established by rule, regulation or order
1744 of the commissioner.

1745 (3) Information or material that is subject to a privilege
1746 or confidentiality under subsection (1) of this section shall not
1747 be subject to:

1748 (a) Disclosure under any federal or state law governing
1749 the disclosure to the public of information held by an officer or
1750 an agency of the federal government or the respective state; or

1751 (b) Subpoena or discovery, or admission into evidence,
1752 in any private civil action or administrative process, unless with
1753 respect to any privilege held by the Nationwide Mortgage Licensing
1754 System and Registry with respect to that information or material,
1755 the person to whom the information or material pertains waives, in
1756 whole or in part, in the discretion of the person, that privilege.

1757 (4) Any applicable state law relating to the disclosure of
1758 confidential supervisory information or any information or
1759 material described in subsection (1) of this section that is
1760 inconsistent with subsection (1) shall be superseded by the
1761 requirements of this section.

1762 (5) This section shall not apply with respect to the
1763 information or material relating to the employment history of, and
1764 publicly adjudicated disciplinary and enforcement actions against,



1765 mortgage loan originators that is included in the Nationwide
1766 Mortgage Licensing System and Registry for access by the public.

1767 **SECTION 31.** Section 81-18-51, Mississippi Code of 1972, is
1768 reenacted and amended as follows:

1769 81-18-51. Sections 81-18-1 through 81-18-63 shall stand
1770 repealed on July 1, 2013.

1771 **SECTION 32.** This act shall take effect and be in force from
1772 and after July 1, 2010.

