



4 Hour MS SAFE: Review of Mortgage License Law

Student Manual
(Online Instructor-Led)

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Module 1

Mississippi Department of Banking and Consumer Finance

Introduction

The contents of this lesson are provided through the “Mississippi S.A.F.E. Mortgage Lending Act of 2009” (Miss. Code Ann. 81-18-1), and will be referenced to as “the Act” within the text of this lesson.

Department/Agency - Responsibilities and Limitations (§81-18-40)

- For the purpose of conducting investigations, examinations, or other proceedings, the Commissioner or his designee is authorized to issue subpoenas to any individual, person or other entity for the production of all:
 - Books
 - Papers
 - Records
 - Files
 - Documents or other things
- Commissioner may subpoena and compel the attendance of witnesses to give testimony
- Commissioner may administer oaths
- Subpoenas may be served either by personal process or by registered mail
- Shall command attendance of such witnesses and/or production of such papers and documents at the time and place specified in the subpoena
- Any person or entity who fails or refuses to comply with a subpoena may be assessed by the Commissioner a civil penalty of not more than \$500 for each day of non-compliance, and any privileges or licenses issued by the Commissioner to the person or entity may be suspended for not more than 6 months

- In addition to the civil penalty, the Commissioner shall be entitled to the assistance of the chancery court or the chancellor in vacation, which, on petition by the Commissioner or his designee, shall issue ancillary subpoenas and petitions and may punish as for contempt of course in the event of non-compliance therewith, and assess attorney's fees and costs, if deemed appropriate

Responsibilities and Limitations (§81-18-61)

- The Commissioner may establish, by rule, regulation or order, requirements as necessary, including but not limited to:
 - Background checks for:
 - Criminal history through fingerprint or other databases
 - Civil or administrative records
 - Credit history
 - Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry (NMLS&R)
 - The payment of fees to apply for or renew licenses through the Nationwide Mortgage Licensing System and Registry
 - The setting or resetting of renewal or reporting dates
 - Requirements for amending or surrendering a license or any other such activities as the Commissioner deems necessary for participation in the Nationwide Mortgage Licensing System and Registry
- The Commissioner shall establish a process by which mortgage loan originators may challenge information entered into the NMLS&R by the Commissioner
- A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless the independent contractor loan processor obtains and maintains a license.
 - Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the NMLS&R.

Confidentiality - (§81-18-63)

- The requirements or privilege arising under any federal law or applicable state law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry (NMLS&R), shall continue to apply to the information or material after it has been disclosed to NMLS&R
- The information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority, without the loss of privilege or the loss of confidentiality protections provided by federal law or applicable state law
- In order to promote more effective regulation and reduce regulatory burden through supervisory information sharing, the Commissioner is authorized to enter agreements or sharing arrangements with:
 - Other governmental agencies
 - The Conference of State Bank Supervisors
 - The American Association of Residential Mortgage Regulators, or
 - Other associations representing governmental agencies as established by rule, regulation or order of the Commissioner
- Information or material that is subject to a privilege or confidentiality shall not be subject to:
 - Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or
 - Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the NMLS&R
- Shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the NMLS&R for access by the public

Module 2

Mississippi State Law and Regulation Definitions

Introduction

- The contents of this lesson are provided through the “Mississippi S.A.F.E. Mortgage Lending Act of 2009” (Miss. Code Ann. § 81-18-1), and will be referenced to as “the Act” within the text of this lesson

Definitions (Miss. Code Ann. § 81-18-3)

- Application
 - The submission of a borrower's financial information in anticipation of a credit decision, whether written or computer-generated
 - If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a federally related mortgage loan
 - The subsequent addition of an identified property to the submission converts the submission to an application for a federally related mortgage loan
- Borrower
 - A person who submits an application for a loan secured by a first or subordinate mortgage or deed of trust on a single to four family home to be occupied by a natural person
- Branch
 - A location of a company in or outside of the state that conducts business as a mortgage broker or mortgage lender
 - A location shall be considered a branch regarding mortgage broker or mortgage lender activities in any of the following:
 - If the location is used on any type of advertisement

- If any type of record, loan file or application of the company is located at the location, with the exception of unstaffed storage facilities; or
- If the activities of a mortgage loan originator occurs at the location

- Commissioner
 - The Commissioner of the Mississippi Department of Banking and Consumer Finance

- Commitment
 - A statement by a lender required to be licensed that sets forth the terms and conditions upon which the lender is willing to make a particular mortgage loan to a particular borrower

- Company
 - A licensed mortgage broker or mortgage lender

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

- Department
 - The Department of Banking and Consumer Finance of the State of Mississippi

- Depository Institution
 - Any bank or savings association; includes any credit union

- Executive Officer
 - The chief executive officer, the president, the principal financial officer, the principal operating officer, each vice president with responsibility involving policymaking functions for a significant aspect of a person's business
 - The secretary, the treasurer, or any other person similar managerial performing or supervisory functions with respect to any organization whether incorporated or unincorporated

- Federal Banking Agencies
 - The Board of Governors of the Federal Reserve System,
 - The Office of the Comptroller of the Currency,
 - The Office of Thrift Supervision,
 - The National Credit Union Administration, and
 - The Federal Deposit Insurance Corporation

- Housing Finance Agency
 - Any authority that is chartered by a state to help meet the affordable housing needs of the residents of the state, is supervised directly or indirectly by the state government, is subject to audit and review by the state in which it operates, and whose activities make it eligible to be a member of the National Council of State Housing Agencies.

- Immediate Family Member
 - A spouse, child, sibling, parent, grandparent, grandchild, including:
 - Stepparent,
 - Stepchild,
 - Stepsibling, and
 - Adoptive relationships

- Individual
 - A “natural person”

- License
 - A license to act as a mortgage broker or mortgage lender issued by the department

- Licensee
 - A person who is required to be licensed as a mortgage broker or mortgage lender

- Loan Processor or Underwriter
 - An individual who performs clerical or support duties as an employee at the direction, supervision, and instruction of a person licensed or exempt from licensing under this Act
 - The term "clerical or support duties" may include, after the receipt of an application:
 - The receipt, collection, distribution and analysis of information common for the processing or underwriting of a residential mortgage loan
 - Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that the communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms
 - An individual engaging solely in loan processor or underwriter activities, shall not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator

- Lock-In Agreement
 - A written agreement stating the terms of the lock-in fee

- Lock-In Fee
 - A fee collected by a licensee to be paid to a lender to guarantee an interest rate or a certain number of points on a mortgage loan from the lender

- “Make a Mortgage Loan”
 - To advance funds, offer to advance funds or make a commitment to advance funds to a borrower

- Misrepresent
 - To make a false statement of a substantive fact or to engage in, with intent to deceive or mislead, any conduct that leads to a false belief that is material to the transaction

- Mortgage Broker
 - Any person who:
 - Directly or indirectly (or by electronic activity) solicits, places or negotiates residential mortgage loans for others
 - Offers to solicit, place or negotiate residential mortgage loans for others that does not close residential mortgage loans in the company name
 - Does not use its own funds, or who closes residential mortgage loans in the name of the company and sells, assigns or transfers the loan to others within forty-eight (48) hours of the closing

- Mortgage Lender
 - Any person who directly or indirectly (or by electronic activity) originates, makes, funds or purchases or offers to originate, make, or fund or purchase a residential mortgage loan or who services residential mortgage loans

- Mortgage Lending Process
 - The process through which a person seeks or obtains a mortgage loan, including, but not limited to:
 - Solicitation
 - Application
 - Origination
 - Negotiation of terms
 - Third-party provider services
 - Underwriting
 - Signing and closing
 - Funding of the loan
 - Documents involved in the mortgage lending process include, but are not limited to:
 - Uniform residential loan applications or other loan applications
 - Appraisal reports
 - HUD-1 settlement statements
 - Supporting personal documentation for loan applications such as W-2 forms
 - Verifications of income and employment, bank statements, tax returns, payroll stubs and any required disclosures

- Mortgage Loan Originator
 - An individual who for compensation or gain or in the expectation of compensation or gain takes a residential mortgage loan application, and offers or negotiates terms of a residential mortgage loan
 - Does not include:
 - An individual engaged solely as a loan processor or underwriter except as otherwise provided in this Act
 - A person or entity that is licensed or registered that only performs real estate brokerage activities, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator
 - A person or entity solely involved in extensions of credit relating to timeshare plans

- Nationwide Mortgage Licensing System and Registry (NMLS&R)
 - A mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators

- Natural Person
 - A human being, as distinguished from an artificial person created by law

- Non-traditional Mortgage Product
 - Any mortgage product other than a 30 year fixed rate mortgage

- Offering or Negotiating a Residential Mortgage Loan
 - Presenting Mortgage loan terms to a borrower for acceptance;
 - Communicating directly or indirectly with a borrower for purposes of reaching an understanding about prospective loan terms; or

- Recommending, referring or steering a borrower to a particular lender or set of loan terms, in accordance with a duty to or incentive from any person other than the borrower

- Person
 - A natural person, sole proprietorship, corporation, limited liability company, partnership, trust or any other group of individuals, however organized

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

- Qualifying Individual
 - An owner or employee of a mortgage broker or mortgage lender who:
 - Submits documentation of two (2) years' experience directly related to mortgage lending and who shall be primarily responsible for the operations of the licensed mortgage broker or mortgage lender
 - Is licensed as a loan originator
 - Resides within one hundred twenty-five (125) miles of the licensed principal place of business of the company
 - Will also be designated as a Qualifying Individual in the Nationwide Mortgage Licensing System and Registry

- Real Estate Brokerage Activity
 - Any activity that involves offering or providing real estate brokerage services to the public, including any of the following:
 - Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of immovable property
 - Bringing together parties interested in the sale, purchase, lease, rental, or exchange of immovable property
 - Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of immovable property, other than in connection with providing financing with respect to any such transaction
 - Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law

- Records or Documents
 - Any item in hard copy or produced in a format of storage commonly described as electronic, imaged, magnetic, microphotographic or otherwise
 - Any reproduction so made shall have the same force and effect as the original thereof and be admitted in evidence equally with the original

- Registered Mortgage Loan Originator
 - Any individual who:
 - Meets the definition of mortgage loan originator and is an employee of a depository institution, a subsidiary that is either owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the Farm Credit Administration; and
 - Is registered with, and maintains a unique identifier through, the NMLS&R

- Residential Mortgage Loan
 - Any loan primarily for personal, family or household use that is secured by a mortgage, deed of trust or other equivalent consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling

- Residential Real Estate
 - Any real property located in Mississippi upon which is constructed or intended to be constructed a dwelling
 - A dwelling is a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives

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

- “Taking an Application for a Residential Mortgage Loan”
 - Receiving such application for the purpose of deciding, or influencing or soliciting the decision of another, whether to extend an offer of residential mortgage loan terms to a borrower or prospective borrower, or to accept the terms offered by a borrower or prospective borrower in response to a solicitation, whether the application is received directly or indirectly from the borrower or prospective borrower.
 - However, an individual whose only role with respect to the application is physically handling a completed application form or transmitting a completed form to a lender on behalf of a prospective borrower does not take an application.

- Unique Identifier
 - A number or other identifier assigned by protocols established by the NMLS&R

Module 3

Mississippi License Law and Regulation

Introduction

The contents of this lesson are provided through the “Mississippi S.A.F.E. Mortgage Lending Act of 2009” (Miss. Code Ann. § 81-18-1), and will be referenced to as “the Act” within the text of this lesson

Persons Required to be Licensed

Mortgage Broker, Mortgage Lender, or Mortgage Loan Originator Licensing Requirement; Violations - (Miss. Code Ann. § 81-18-7)

- No person shall transact business in Mississippi as a mortgage broker or lender unless licensed by the department
- A violation of this section does not affect the obligation of the borrower under the terms of the mortgage loan
 - The department shall publish and provide for distribution of information regarding approved or revoked licenses
- Every person who directly or indirectly controls a person who violates this section, including a general partner, executive officer, joint venture, contractor, or director of the person, violates this section to the same extent of the person, unless the person whose violation arises under this subsection shows by a preponderance of evidence the burden of proof that he or she did not know and, in the exercise of reasonable care, could not have known of the existence of the facts by reason of which the original violation is alleged to exist.
- An individual, unless specifically exempted, shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this state without first obtaining and annually maintaining a license.
 - Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the NMLS&R
- For the purposes of implementing an orderly and efficient licensing process, the Commissioner may establish licensing rules or regulations and interim procedures for licensing and acceptance of applications.

- For previously registered or licensed individuals, the Commissioner may establish expedited review and licensing procedures.

Persons Required to be Licensed

Loan Processor or Underwriter - (Miss. Code Ann. § 81-18-61)

- A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless the independent contractor loan processor or underwriter obtains and maintains a license under Section 81-18-7
- Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the NMLS&R

Loan Originators – (MS SAFE Act Regulations; Section 2)

- Loan originators include W-2 employees as well as 1099 employees
- If loan originator transfers to another mortgage broker or lender, the initial loan originator application must be completed in the NMLS&R
- Sponsorship removal must be completed by the company within the NMLS&R within 30 days of loan originator's last day of employment
- Movement from one mortgage broker or lender to another does not waive the loan originator's continuing education requirement
- Examples of activities that will cause the requirement of licensure as a loan originator are:
 - Completing or assisting in completing an application for a loan
 - Advising or counseling a borrower on loan terms
 - Recommending or referring a borrower to a specific lender based upon factors specific to the borrower
 - Taking of an application for the purpose of deciding whether or not to extend the requested offer of a loan to the borrower
 - Does not include an individual performing purely administrative or clerical tasks

- Obtaining financial information from the borrower to be used by a person in making a credit decision
- Assisting the borrower in obtaining or applying to obtain a residential mortgage loan by advising on loan terms

Exemptions (Miss. Code Ann. § 81-18-5)

- Registered mortgage loan originators, when acting for an entity described in Section 81-18-3(gg)
- Any person who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual
- Any person, estate, or trust who owner finances in one (1) calendar year, no more than ten (10) residential mortgage loans or no more than 20% of his total residential units sold, whichever is greater
- A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of the lender, mortgage broker, or other mortgage loan originator
- A depository institution, or a subsidiary that is owned and controlled by a depository institution, or an institution regulated by the Farm Credit Association
- Any mortgage lender who holds a valid license under the provisions of the Small Loan Regulatory Law, Section 75-67-101 et seq., and the Small Loan Privilege Tax Law, Section 75-67-201 et seq., and whose mortgage lending activities are limited solely to the servicing of mortgage loans that were in such mortgage lender's own loan portfolio as of December 31, 2009.
- Any bona fide non-profit organization and its employees who demonstrate, to the satisfaction of the Commissioner through the periodic examination of the books and activities of the organization, that they continually meet the following requirements, at a minimum:
 - Maintains tax-exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986
 - Promotes affordable housing or provides homeownership education, or similar services
 - Conducts its activities in a manner that serves public or charitable purposes

- Receives funding and revenue and charges fees in a manner that does not incentivize the organization or its employees to act other than in the best interest of its clients
- Compensates employees in a manner that does not incentivize employees to act other than in the best interest of its clients
- Provides to or identifies for the borrower residential mortgage loans with terms that are favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs.
- Any person who is an employee of a government agency or housing finance agency who acts as a mortgage loan originator in accordance with his duties as an employee of such agency.
- Any person who performs clerical or support duties at the direction of and subject to the supervision and instruction of a state-licensed loan originator or a registered loan originator.

Licensee Qualifications and Application Process

Application for License - (Miss. Code Ann.§ 81-18-9)

- Applicants for a license shall apply in a form as prescribed by the Commissioner. Each form shall contain content as set forth by rule, regulation, instruction, or procedure of the Commissioner and may be changed or updated as necessary by the Commissioner in order to carry out the purpose of this chapter.
- The mortgage broker and mortgage lender application for a license shall be made through the NMLSR and shall include, but is not limited to the following:
 - The legal name, residence, and business address of the applicant and, if applicable, of every principal, together with the resume of the applicant and of every principal of the applicant.
 - In addition, an independent credit report obtained from a consumer reporting agency and information related to any administrative, civil, or criminal findings by any governmental jurisdiction of every principal and executive officer.
 - The legal name of the mortgage broker or mortgage lender in addition to the name under which the applicant will conduct business in the state, neither of which may be already assigned to a licensed mortgage broker or mortgage lender.

- The complete address of the applicant's principal place of business, branch office(s), and any other locations at which applicant will engage in any business activity covered by this chapter.
 - All locations shall be within the United States of America or a territory of the United States of America, including Puerto Rico and the U.S. Virgin Islands.
- A copy of the certificate of incorporation, if a Mississippi corporation.
- Documentation satisfactory to the Department as to a certificate of existence of authority to transact business lawfully in Mississippi from the Mississippi Secretary of State, if a limited liability company, partnership, trust or any other group of persons, however organized.
 - Does not pertain to applicants organized as an individual or as a sole proprietorship.
- If a foreign entity, a copy of a certificate of authority to conduct business in Mississippi and the address of the principal place of business of the foreign entity.
- Documentation of a minimum of 2 years' experience directly related to mortgage lending activities by a person named as the qualifying individual of the company.
 - The qualifying individual shall be primarily responsible for the operations of the licensed mortgage broker or mortgage lender. Only one (1) qualifying individual shall be named for Mississippi and this person shall be the qualifying individual for only one (1) licensee
 - This experience shall have been within the previous 4 years from the date of application
 - The qualifying individual shall also be licensed as a loan originator with the Department, shall be employed at the main office address of the applicant, and shall reside within 125 miles of the main office address of the applicant.
 - Evidence of experience shall include, where applicable:
 - Copies of business licenses issued by governmental agencies.
 - Written letters of employment history of the person filing the application for at least two (2) years before the date of the filing of an application, included, but not limited to:

- Job descriptions
 - Length of employment
 - Names, addresses, and phone numbers of past employers
- A listing of wholesale lenders with whom the applicant has done business with in the past two (2) years, directly as either a mortgage broker or loan originator.
- Any other data and pertinent information as the Department may require with respect to the applicant, its directors, principals, trustees, officers, members, contractors, or agents.
 - A resume alone shall not be sufficient proof of employment history
- The mortgage broker and mortgage lender applications shall be filed on the NMLS&R together with the following:
 - The license fee
 - An original or certified copy of a surety bond in favor of the State of Mississippi for the use, benefit, and indemnity of any person who suffers any damage or loss as a result of the company's breach of contract or of any obligation arising therefrom or any violation of law.
 - A set of fingerprints from any local law enforcement agency from the following applicants:
 - All persons operating as a sole proprietorship that plan to conduct a mortgage brokering or lending business in the State of Mississippi
 - Partners in a partnership or principal owners of a limited liability company that own at least 10% of the voting shares of the company
 - Any shareholders owning 10% or more of the outstanding shares of the corporation
 - All executive officers of the applicant
 - All loan originators
 - The named qualifying individual of the company.

- The applicant can only name one individual as the qualifying individual for the state of Mississippi.
 - At least one (1) employee shall be licensed as a loan originator at a licensed location.
- In connection with an application for licensing as a mortgage broker or lender, the required stockholders, owners, directors and executive officers of the applicant shall, at a minimum, furnish to the NMLS&R, information concerning the individual's identity, including:
 - Fingerprints from any local law enforcement agency for submission to the FBI and any governmental entity authorized to receive that information for a state, national and international criminal history background check; and
 - Personal history and experience in a form prescribed by the NMLS&R, including the submission of authorization for the NMLS&R and the Commissioner to obtain:
 - An independent credit report obtained from a consumer-reporting agency described in the Fair Credit Reporting Act; and
 - Information related to any administrative, civil or criminal findings by any governmental jurisdiction.
- Upon receipt of an application for licensure, the Department or designated third party shall conduct an investigation as it deems necessary to determine:
 - That the applicant and its officers, directors, and principals are of good character and ethical reputation
 - That the applicant demonstrates reasonable financial responsibility; and
 - That the applicant has reasonable policies and procedures to receive and process customer grievances and inquiries promptly and fairly.
- The Commissioner shall not license an applicant unless he is satisfied that the applicant will operate its mortgage activities in compliance with the laws, rules and regulations of this state and the United States.
- If an applicant satisfies the requirements for a mortgage broker or mortgage lender license, the Commissioner shall issue the license, unless the Commissioner finds any of the following:
 - The applicant has had a mortgage lender, mortgage broker or mortgage servicer license revoked in any governmental jurisdiction, except that a subsequent formal vacation of the revocation shall not be deemed a revocation; or

- The applicant or its controlling persons has been convicted of, or pled guilty or nolo contendere to:
 - A felony in a domestic, foreign or military court during the seven year period preceding the date of application for licensing; or
 - A crime at any time preceding the date of application involving an act of fraud, dishonesty, a breach of trust, or money laundering; or
 - A misdemeanor of fraud, theft, forgery, bribery, embezzlement or making a fraudulent or false statement in any jurisdiction
 - However, any pardon or expungement of a conviction shall not be a conviction for purposes of this section
- Applicants for a mortgage loan originator license shall apply in a form prescribed by the Commissioner and shall be filed on the NMLS&R. Each such form shall contain content as set forth by rules, regulations, instructions, or procedures of the Commissioner and may be changed or updated as necessary by the Commissioner in order to carry out the purposes of this chapter.
 - The initial license of a mortgage loan originator shall be accompanied by a fee of \$200 to be paid to the NMLS&R.
 - The Commissioner shall not issue a mortgage loan originator license unless the Commissioner makes at a minimum the following findings:
 - The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a later formal vacation of that revocation shall not be deemed a revocation.
 - The applicant has not be convicted of, or pled guilty or nolo contendere to:
 - A felony in a domestic, foreign, or military court during the 7 year period preceding the date of application for licensing and registration;
 - A crime at any time preceding the date of application involving an act of fraud, dishonesty, a breach of trust, or money laundering that, if committed within this state, would constitute a felony under the laws of this state; or
 - A misdemeanor of fraud, theft, forgery, bribery, embezzlement, or making a fraudulent or false statement in any jurisdiction.

- However, any pardon or expungement of a conviction shall not be a conviction for purposes of this section
- The applicant has demonstrated financial responsibility, character and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly and efficiently.
- The applicant has completed the pre-licensing education requirement
- The applicant has passed a written test that meets the test requirement
- The applicant has met the surety bond requirement
- This individual must work for a Mississippi licensed company and work from the location licensed with the Department.
 - The licensed location that he or she is assigned to must be within 125 miles of his or her residency.
 - If the licensed loan originator resides and works in Mississippi, then he or she may work from any licensed location of the licensed company within the state of Mississippi
 - An owner of a minimum of 10% of a licensed company, or the named qualifying individual on file with the Department, who is a licensed loan originator with the Department, may work from any licensed location of the licensed company within the state of Mississippi in the capacity of a loan originator.
- The loan originator shall display the current, original license issued by the Department in the licensed office in which he or she is assigned.
- In order to fulfill the purpose of this chapter, the Commissioner has established a relationship with the NMLS&R to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter.
- In connection with an applications for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the NMLS&R information concerning the applicant's identity, including:

- Fingerprints for submission to the FBI and any other governmental agency or entity authorized to receive that information for a state, national and international criminal history background check; and
- Personal history and experience including the submission of authorization for the NMLS&R and the Commissioner to obtain:
 - An independent credit report obtained from a consumer reporting agency as described in the Fair Credit Reporting Act; and
 - Information related to any administrative, civil or criminal findings by any governmental jurisdiction.
- For the purposes of this section and in order to reduce the points of contact which the FBI may have to maintain for purposes of this section, the Commissioner may use the NMLS&R as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency.
- For the purposes of this section and in order to reduce the points of contact which the Commissioner may have to maintain for purposes of this section, the Commissioner may use the NMLS&R as a channeling agent for requesting information from and distributing information to any source so directed by the Commissioner.

Licensee Qualifications and Application Process

Financial Responsibility - Surety Bond (Miss. Code Ann. § 81-18-11)

- Each mortgage loan originator shall be covered by a surety bond in accordance with this section. If the mortgage loan originator is an employee or exclusive agent of a person subject to this chapter, the surety bond of the person who is subject to this chapter may be used in lieu of the mortgage loan originator's surety bond requirement.
- The surety bond shall be in a form as prescribed by the Commissioner, and shall provide coverage for each mortgage loan originator in an amount as prescribed in this subsection
- The penal sum of the surety bond shall be maintained in an amount as determined by the Commissioner by rule or regulation and shall be based upon loan activity during the previous year, but shall not exceed \$25,000.00 for a mortgage broker, or \$150,000.00 for a mortgage lender.
 - For an initial applicant, the bond amount shall be set at \$25,000 for a mortgage broker, and \$150,000 for a mortgage lender.

- When an action is commenced on a licensee's bond, the Commissioner may require the filing of a new bond. Immediately upon recovery upon any action on the bond, the licensee shall file a new bond.
- All surety bonds shall be in favor, first, of the State of Mississippi for the use, benefit and indemnity of any person who suffers any damage or loss as a result of the company's breach of contract or of any obligation arising from contract or any violation of law, and, second, for the payment of any civil penalties, criminal fines, or costs of investigation and/or prosecution incurred by the State of Mississippi, including local law enforcement agencies.
- The Commissioner may promulgate rules or regulations with respect to the requirements for the surety bonds as are necessary to accomplish the purposes of this chapter

Pre-Licensing Education and Test Requirement - (Miss. Code Ann.§ 81-18-14)

- In order to meet the pre-licensing education requirement, a person shall complete at least 20 hours of approved education, and shall include at least:
 - 3 hours of federal law and regulations
 - 3 hours of ethics
 - shall include instruction on fraud, consumer protection and fair lending issues
 - 2 hours of training related to lending standards for the non-traditional mortgage product marketplace
 - 4 hours of education related to the Mississippi SAFE Mortgage Licensing Act of 2009
- A person previously licensed who applies to be licensed again, must prove that they have completed all of the continuing education requirements for the year in which the license was last held

Testing and Retesting

- An individual shall pass a licensing exam developed by the NMLS&R that adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:
 - Ethics
 - Federal law and regulation pertaining to mortgage origination
 - State law and regulation pertaining to mortgage origination
 - Federal and state law regulation, including instruction on fraud, consumer protection, the non-traditional mortgage marketplace and fair lending issues
- 75% required to pass licensing exam
- An individual may take licensing exam 3 consecutive times with each consecutive taking occurring at least 30 days after the preceding test
- After failing 3 consecutive tests, an individual shall wait at least 6 months before taking the test again
- A licensed mortgage loan originator who fails to maintain a valid license for a period of 5 years or longer shall retake the test, not taking into account any time during which such individual is a registered mortgage loan originator

Application Submission and Grounds for Denying a License (Miss. Code Ann. § 81-18-13)

- Upon receipt of an application for licensure, which shall include the required set of fingerprints from any local law enforcement agency, the Department or designated third party, shall conduct an investigation to determine that the applicant and its officers, directors and principals:
 - Are of good character and ethical reputation
 - Demonstrates reasonable financial responsibility
 - Has reasonable policies and procedures to receive and process customer grievances and inquiries promptly and fairly
- The Department shall not license an applicant unless it is satisfied that the applicant will operate its mortgage activities in compliance with the laws, rules and regulations of Mississippi and the United States

- The Department shall not issue a license or registration if it finds that the applicant, or any person who is a director, executive officer, partner, or qualifying individual of the applicant, has been convicted of:
 - A felony in any jurisdiction; or
 - A crime that, if committed within Mississippi, would constitute a felony under the state laws; or
 - A misdemeanor of fraud, theft, forgery, bribery, embezzlement or making a fraudulent or false statement in any jurisdiction
 - A person shall be deemed to have been convicted of a crime if:
 - the person has pleaded guilty to a crime before a court or federal magistrate, or plea of nolo contendere, or
 - has been found guilty of a crime by the decision or judgment of a court or federal magistrate, or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension of a sentence, unless the person convicted of the crime has received a pardon from the President of the United States or the Governor or other pardoning authority in the jurisdiction where the conviction was obtained or has received an expungement of the conviction
- The Department shall deny a license if it finds that the applicant has had a mortgage loan originator license revoked in any government jurisdiction, except that a subsequent formal vacation of that revocation shall not be deemed a revocation
- Within thirty (30) days after receipt of a completed application, final verification from the Department of Public Safety and/or FBI, and payment of licensing fees prescribed by this chapter, the department shall either grant or deny the request for license. However, if the Federal Financial Institutions Examination Council (FFIEC) prescribes a lesser period of time within which the department shall either grant or deny the request for license, then that time limitation shall supersede this subsection
- A person shall not be indemnified for any act covered by this chapter for any fine or penalty incurred under this chapter as a result of any violation of this chapter or regulations, due to the legal form, corporate structure, or choice of organization of the person included, but not limited to, a limited liability corporation.

License Maintenance - (Miss. Code Ann.§ 81-18-15)

License Fee

- Each mortgage broker and mortgage lender license shall remain in full force and effect until relinquished, suspended, revoked or expired. With each initial application for a license to operate as a mortgage broker or mortgage lender, the applicant shall pay through the NMLS&R to the Commissioner a license fee of \$1,500, and on or before December 31 of each year thereafter, an annual renewal fee of \$1,000
 - If the annual renewal fee remains unpaid, the license shall expire, but not before December 31 of any year for which the annual renewal fee has been paid. If any person engages in business as provided for in this chapter and the renewal fee is not paid before the expiration date of the license, then the licensee shall be liable for the initial license fee, which is \$1,500, plus a penalty in an amount not to exceed \$25.00 for each day that the person has engaged in such business without a license or after the expiration the license. All licensing fees and penalties shall be paid into the Consumer Finance Fund of the department. If the application is withdrawn or denied, the application fee along with any other applicable fee are not refundable

Renewal

- The minimum standards for license renewal for mortgage loan originators shall include the following:
 - The mortgage loan originator continues to meet the minimum standards for license issuance
 - The mortgage loan originator has satisfied the annual continuing education requirements
 - The mortgage loan originator has paid all required fees for renewal of the license
 - Annual renewals of this license shall require a fee of \$100
- The license of a mortgage loan originator failing to satisfy the minimum standards for license renewal shall expire.
 - If the renewal fee remains unpaid, the license shall expire, but not before December 31 of any year for which the annual renewal fee has been paid. However, if the initial loan originator license is issued between November 1 and December 31, the license will expire December 31 the following licensing year.

- If renewal fee is not paid before the expiration date of the license, the mortgage loan originator shall be liable for the initial license fee in order to renew.
- Any licensee making timely and proper application for a license renewal shall be permitted to continue to operate under its existing license until its application is approved or rejected, but shall not be released from, or otherwise indemnified for any act covered by this chapter, or for any penalty incurred under this chapter as a result of any violation of this chapter or regulations, pending final approval or disapproval of the application for the license renewal.

Continuing Education

- In order to meet the annual continuing education requirements, a loan originator shall complete at least 12 hours of approved education, which shall include at least:
 - 3 hours of federal law and regulations
 - 2 hours of ethics
 - shall include instruction on fraud, consumer protection and fair lending issues
 - 2 hours of training related to lending standards for the nontraditional mortgage product marketplace
 - 2 hours of education related to the Mississippi SAFE Mortgage Licensing Act of 2009
- Continuing education courses shall be reviewed and approved by the NMLS&R based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.
- Nothing in this section shall preclude any education course, as approved by the NMLS&R, that is provided by the employer of the mortgage loan originator or an entity that is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or entity.
- A licensed mortgage loan originator:
 - May only receive credit for a continuing education course in the year in which the course is taken

- May not take the same approved course in the same or successive years to meet the annual requirements for continuing education, with the exception of the course concerning the Mississippi SAFE Act
- A licensed mortgage loan originator who is an approved instructor of an approved continuing education course, may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of 2 hours credit for every hour taught
- A person having successfully completed the education requirements approved by the NMLS&R within this section for any state, shall be accepted as credit towards completion of the continuing education requirements in Mississippi
- A licensed mortgage loan originator who later becomes unlicensed must complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license
- A person meeting the license and fee requirements may make up any deficiency in continuing education as established by rule or regulation of the Commissioner.

Personal Information Updates and Required Notifications - (Miss. Code Ann.§ 81-18-17)

- A license may not be transferred or assigned
- No licensee shall transact business under any name other than that designated in the license
- A licensed mortgage broker or mortgage lender shall notify the Department through the NMLS&R of any change in the address of its principal place of business or of any change in the address of an additional licensed branch location within 30 days of the change
- No licensee shall open a branch office in or outside Mississippi from which the licensee has direct contact with consumers regarding origination or brokering Mississippi residential property, without prior approval of the Department
- A licensed mortgage broker or mortgage lender shall notify the Department within 30 days by submitting a sponsorship removal in the NMLS&R when a loan originator is released from its employment.
 - In addition, the licensed mortgage broker or mortgage lender shall notify the Department within 30 days through the NMLS&R when there is a change in the qualifying individual of the licensee.

Interest in Licensee - (Miss. Code Ann.§ 81-18-19)

- Upon the filing and investigation of an application, the department shall permit the applicant to acquire the interest in the licensee if it is satisfied and finds that the applicant and its members, if applicable, its directors and officers, if a corporation, and any proposed new directors and officers have provided its surety bond and have the character, reputation and experience to warrant belief that the business will be operated fairly and in accordance with the law. If the application is denied, the department shall notify the applicant of the denial and the reasons for the denial
- A decision of the department denying a license, original or renewal, shall be conclusive, except that the applicant may seek judicial review in the Chancery Court of the First Judicial District of Hinds County, Mississippi
- The provisions of this section do not apply to the following, subject to required notification:
 - The acquisition of an interest in a licensee directly or indirectly including an acquisition by merger or consolidation by or with a person licensed under this chapter or exempt from this chapter
 - The acquisition of an interest in a licensee directly or indirectly including an acquisition by merger or consolidation by or with a person affiliated through common ownership with the licensee
 - The acquisition of an interest in a licensee by a person by bequest, devise, gift or survivorship or by operation of law
- A person acquiring an interest in a licensee in a transaction that is requesting exemption from filing an application for approval of the application shall send a written request to the department for an exemption within thirty (30) days before the closing of the transaction

Record Keeping and Reporting - (Miss. Code Ann.§ 81-18-21)

- Any person required to be licensed shall maintain in its offices, or such other location as the department shall permit, the books, accounts and records necessary for the department to determine whether or not the person is complying with the provisions of this chapter and the rules and regulations adopted by the department under this chapter.

- These books, accounts and records shall be maintained apart and separate from any other business in which the person is involved and may represent historical data for three (3) years preceding the date of the last license application date forward. The books, accounts and records shall be kept in a secure location under conditions that will not lead to their damage or destruction. If the licensee wishes to keep the files in a location other than the location listed on the license, then the licensee first must submit a written request on a form designated by the department and gain written approval from the commissioner before storing the files at an off-site secure location
- To assure compliance with the provisions of this chapter, the department may examine the books and records of any licensee without notice during normal business hours. The Commissioner shall charge the licensee an examination fee in an amount not less than \$300.00, nor more than \$600.00 per day with a maximum examination fee of \$2,400 for each office or location within the State of Mississippi, and an examination fee in an amount not less than \$300, nor more than \$800 per day for each office or location outside the state of Mississippi, plus any actual expenses incurred while examining the licensee's records or books that are located outside the State of Mississippi. However, in no event shall a licensee be examined more than once in a two-year period unless for cause shown based upon consumer complaint and/or other exigent reasons as determined by the commissioner
- The Department, its designated officers and employees, or its duly authorized representatives, for the purposes of discovering violations of this chapter and for the purpose of determining whether any person or individual reasonably suspected by the commissioner of conducting business that requires a license under this chapter, may investigate those persons and individuals and examine all relevant books, records and papers employed by those persons or individuals in the transaction of business, and may summon witnesses and examine them under oath concerning matters as to the business of those persons, or other such matters as may be relevant to the discovery of violations of this chapter including, without limitation, the conduct of business without a license as required under this chapter
- Each licensee, individual or person subject to this chapter shall make available to the commissioner upon request the books and records relating to the operations of the licensee, individual or person subject to this chapter. The commissioner shall have access to those books and records and interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual or person subject to this chapter concerning their business
- Each licensee, individual or person subject to this chapter shall make or compile reports or prepare other information as directed by the commissioner in order to carry out the purposes of this section including, but not limited to:

- Accounting compilations
- Information lists and data concerning loan transactions in a format prescribed by the commissioner; or
- Such other information deemed necessary to carry out the purposes of this section
- In making any examination or investigation authorized by this chapter, the commissioner may control access to any documents and records of the licensee or person under examination or investigation. The commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept
 - During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except under a court order or with the consent of the commissioner
 - Unless the commissioner has reasonable grounds to believe the documents or records of the licensee have been or are at risk of being altered or destroyed for purposes of concealing a violation of this chapter, the licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs
- The Commissioner shall report regularly violations of this chapter, as well as enforcement actions and other relevant information, to the NMLS&R
- Examinations and investigations conducted under this chapter and information obtained by the Department are confidential
- In the absence of malice, fraud or bad faith, a person is not subject to civil liability arising from the filing of a complaint with the Department, furnishing other information required by this chapter, or information voluntarily given to the Department related to allegations that a licensee or prospective licensee has violated this chapter
- The Commissioner may:
 - Accept and rely on examination or investigation reports made by other government officials, within or without this state; or
 - Accept audit reports made by an independent certified public accountant for the licensee, individual, or person subject to this chapter in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the Commissioner.

- The authority of this section shall remain in effect, whether such a licensee, individual, or person subject to this chapter acts or claims to act under any licensing or registration law of this state, or claims to act without that authority.
- No licensee, individual, or person subject to investigation or examination may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

Annual Written Report by Licensee - (Miss. Code Ann.§ 81-18-23)

- Each mortgage licensee shall submit to the NMLS&R reports of condition, which shall be in such form and shall contain such information as the NMLS&R may require.
- The Department, in its discretion, may relieve any company from the payment of any penalty, in whole or in part, for good cause.
- If a company fails to pay a penalty from which it has not been relieved, the Department may maintain an action at law to recover the penalty.
- Within 15 days of the occurrence of any of the following events, a company shall file with the NMLS&R the applicable change in the disclosure questions and shall submit the information through the NMLS&R or file a written report with the Commissioner describing the event and its expected impact on the activities of the company in this state:
 - The filing for bankruptcy or reorganization by the company;
 - The institution of revocation or suspension proceedings against the company by any state or governmental authority;
 - Any felony indictment of the company or any of its directors, executive officers, qualifying individual or loan originators;
 - Any misdemeanor conviction, in which fraud is an essential element, of any of the company's directors, executive officers, qualifying individual or loan originators.
- Licensees who are involved in civil actions shall notify the NMLS&R within 60 days of the occurrence. An explanation and supporting documentation for each civil action concerning the company shall be submitted through the NMLS&R. The Department may require additional information as necessary.

Principal Place of Business and Branch Offices - (Miss. Code Ann. § 81-18-25)

- Each principal place of business and branch office in the state shall meet all of the following requirements:
 - Be in compliance with local zoning ordinances and have posted any licenses required by local government agencies.
 - It is the responsibility of the licensee to meet local zoning ordinances and obtain the required occupational licenses; however, zoning cannot be residential
 - If there is no zoning in the area, then the person shall submit to the Department a letter from city or county stating that there is no zoning.
 - Consist of at least one (1) secure enclosed room or secure building of stationary construction in which negotiations of mortgage loan transactions may be conducted in privacy.
 - Stationary construction does not include the use of portable buildings.
 - If there is no zoning in the requested location and the property is used for residential purposes, then the person shall utilize an enclosed room with a dedicated outside door.
 - Display a permanent sign outside the place of business readily visible to the general public, unless the display of a sign violates local zoning ordinances or restrictive covenants.
 - The sign must contain the name of the licensee and the words “Mississippi Licensed Mortgage Company” or, the words “Licensed by the Mississippi Department of Banking and Consumer Finance.”
 - The signage shall also contain the NMLS&R Unique Identifier issued to that particular licensed location.
- If one (1) of the following is correct, then that location shall be licensed as a mortgage broker or mortgage lender under this chapter and not as a branch:
 - It is a separate entity operating as an independent business or mortgage operation which is not under the direct control, management supervision, and responsibility of the licensee;
 - The licensee is not the lessee or owner of the branch and the branch is not under the direct and daily ownership, control, management, and supervision of the licensee;

- All assets and liabilities of the branch are not assets and liabilities of the licensee, and all income and expenses of the branch are income and expenses of the licensee and properly accounted for in the financial records and tax returns of the licensee; or
- All practices, policies, and procedures, including, but not limited to, those relating to employment and operations, are not originated and established by the licensee or registered company and are not applied consistently to the principal place of business and all branches.
 - Nothing in this subsection shall affect or change, or be construed as affecting or changing, the existing statutory law and common law on agency, principal and agent, independent contractors, and parent and subsidiary companies.
- Each licensee shall notify the Department through the NMLS&R of any change in address of its principal place of business or of any additional location of business within 30 days prior to the change. Failure to notify will cause the company to be issued a civil money penalty.
- The branch office must display the original issued branch license, not a copy, in a place visible to the public.
- Wholesale lending offices only (have no direct contact with a consumer) are not required to be licensed. No origination or any type of consumer contact may occur at this location.

Module 4

Compliance

Introduction

The contents of this lesson are provided through the “Mississippi S.A.F.E. Mortgage Lending Act of 2009” (Miss. Code Ann. § 81-18-1), and will be referenced to as “the Act” within the text of this lesson

Prohibited Conduct and Practices - (Miss. Code Ann. § 81-18-27)

- No person required to be licensed shall:
 - Directly or indirectly employ any scheme, device or artifice to defraud or mislead borrowers or lenders, or to defraud any person
 - Misrepresent to or conceal from an applicant for a mortgage loan or mortgagor, material facts, terms or conditions of a transaction to which the licensee is a party
 - Fail to disburse funds in accordance with a written commitment or agreement to make a mortgage loan
 - Fail to truthfully account for monies belonging to a party to a residential mortgage loan transaction
 - Improperly refuse to issue a satisfaction of a mortgage loan
 - Fail to account for or deliver to any person any personal property obtained in connection with a mortgage loan, such as money, funds, deposits, checks, drafts, mortgages or other documents or things of value that have come into the possession of the licensee and that are not the property of the licensee, or that the licensee is not by law or at equity entitled to retain
 - Engage in any transaction, practice, or course of business that is not in good faith, or that operates a fraud upon any person in connection with the making of or purchase or sale of any mortgage loan

- Engage in any fraudulent residential mortgage underwriting practices, which include, but are not limited to, making in any manner, any false or deceptive statement or representation including, with regard to the rates, points or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising.
- Solicit or enter into a contract with a borrower that provides in substance that the person or individual may earn a fee or commission through "best efforts" to obtain a loan, even though no loan is actually obtained for the borrower
- Induce, require, or otherwise permit the applicant for a mortgage loan or mortgagor to sign a security deed, note, or other pertinent financial disclosure documents with any blank spaces to be filled in after it has been signed
 - An exception would be blank spaces relating to recording or other incidental information not available at the time of signing
- Make, directly or indirectly, any residential mortgage loan with the intent to foreclose on the borrower's property
 - There is a presumption that a person has made a residential mortgage loan with the intent to foreclose on the borrower's property if any of the following circumstances are proven:
 - Lack of substantial benefit to the borrower
 - The probability that full payment of the loan cannot be made by the borrower
 - That the person has made a significant proportion of loans foreclosed under similar circumstances
 - That the person has provided an extension of credit or collected a mortgage debt by extortion
 - That the person does business under a trade name that misrepresents or tends to misrepresent that the person is a(n):
 - Bank
 - Trust company
 - Savings bank
 - Savings and loan association

- Credit union
 - Insurance company
- Charge or collect any direct payment, compensation or advance fee from a borrower unless and until a loan is actually found, obtained and closed for that borrower
 - In no event shall that direct payment, compensation or advance fee exceed 7.95% of the original principal amount of the loan
 - Any such direct payments, compensation or advance fees shall be included in all annual percentage rate (APR) calculations, if required under Regulation Z
 - A direct payment, compensation or advance fee shall not include:
 - Any direct payment, compensation or advance fee collected by a licensed mortgage broker or mortgage lender to be paid to a non-related third party
 - Any indirect payment to a licensed mortgage broker or mortgage lender by a lender if those fees are not required to be disclosed under the Real Estate Settlement Procedures Act (RESPA)
 - Any indirect payment or compensation by a lender to a licensee required to be disclosed by the licensee under RESPA, provided that the payment or compensation is:
 - Disclosed to the borrower by the licensee on a good faith estimate of costs
 - Included in the APR, if required under Regulation Z of TILA
 - Is made pursuant to a written agreement between the licensee and the borrower as may be required
 - A fee not to exceed 1% of the principal amount of a loan for construction, provided that a binding commitment for the loan has been obtained for the prospective borrower
 - An advance fee, known as a lock-in fee, collected by a licensee to be paid to a lender to lock in an interest rate and/or a certain number of points on a mortgage loan from the lender

- Pay to any person not licensed, any commission, bonus, or fee in connection with arranging for or originating a mortgage loan for a borrower
 - A licensed loan originator may be paid a bonus, commission, or fee by his or her licensed employer
- Refuse to provide the loan payoff within 3 business days of an oral or written request from a borrower or third party
 - Proof of authorization of the borrower shall be submitted for a third-party request
- Knowingly withhold, extract, remove, mutilate, destroy or conceal any books, records, computer records or other information which are required by law to be disclosed
- Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the NMLS&R or in connection with any investigation conducted by the Commissioner or another governmental agency
- Fail to comply with this Act or promulgated rules or regulations, or fail to comply with any other state or federal law, including the rules and regulations under that law, applicable to any business authorized or conducted under this Act
- Conduct any business covered by this Act without holding a valid license, or assist or aid and abet any person in the conduct of business under this Act without a valid license
- Make any payment, threat or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment threat or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property
- Solicit, advertise or enter into a contract for specific interest rates, points or other financing terms unless the terms are actually available at the time of soliciting, advertising or contracting
- Fail to make required disclosures and any other applicable state or federal law including regulations under that law
- Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer

- A licensed mortgage broker or mortgage lender shall only broker a residential mortgage loan to a licensed mortgage broker or mortgage lender, or to a person exempt from licensure
- No non-banking entity may use any sign or handwritten or printed paper indicating that it is a bank, savings bank, trust company or place of banking
 - No entity may use the word “bank”, “savings bank”, “banking”, “banker”, or “trust company”, or the equivalent or plural of any of these words, in connection with any business other than that of banking.
 - This does not prohibit a person from acting in a trust capacity.
- No person shall use the name or logo of any banking entity in connection with the sale, offering for sale, or advertising of any financial product or service without the express written consent of the banking entity
- No unlicensed Mississippi location of a Mississippi licensed mortgage broker or mortgage lender may advertise mortgage services if the unlicensed location is more than 50 miles from a licensed Mississippi location

Fees and Charges

Lock-In Fees (Miss. Code Ann.§ 81-18-28)

- A licensed mortgage broker or mortgage lender may enter into lock-in agreements and collect a lock-in fee from a borrower on the lender's behalf. The lock-in fee shall not exceed the following:
 - Less than 60 days = no fee may be collected to lock in
 - 60 days to 180 days = 1% of the principal amount of the loan to lock in
 - 180 days to 270 days = 1½% of the principal amount of the loan to lock in
 - More than 270 days = 2% of the principal amount of the loan to lock in
- Before the collection of a lock-in fee, the applicant must be provided a copy of the lock-in agreement, which shall contain at least the following:
 - Identification of the property that is being purchased with the loan
 - The principal amount and term of the loan

- The initial interest rate and/or points
 - Whether the interest rate is fixed or variable, and
 - If variable, the index and margin, or the method by which an interest rate change for the mortgage loan will be calculated
- The amount of the lock-in fee
 - Whether the fee is refundable or non-refundable,
 - The time by which the lock-in fee must be paid to the lender, and
 - If the fee is refundable, the terms and conditions necessary to obtain the refund
- The length of the lock-in period that the agreement covers

Funds Paid to Licensee for Payment of Taxes or Insurance Premiums - (Miss. Code Ann. § 81-18-36)

- All monies paid to a licensee for payment of taxes, loan commitment deposits, work completion deposits, appraisals, credit reports or insurance premiums on property that secures any loan made or serviced by the licensee, shall be deposited in an account that is insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration and shall be kept separate, distinct, and apart from funds belonging to the licensee
 - The funds, when deposited, are to be designated as an "escrow account," or under some other appropriate name, indicating that the funds are not the funds of the licensee
- The licensee shall, upon reasonable notice, account to any debtor whose property secures a loan made by the licensee for any funds which that person has paid to the licensee for the payment of taxes or insurance premiums on the property in question
- The licensee shall, upon reasonable notice, account to the Commissioner for all funds in the company's escrow account
- Escrow accounts are not subject to execution or attachment on any claim against the licensee

- It is unlawful for any licensee knowingly to keep or cause to be kept any funds or money in their escrow account, except actual funds paid to the licensee for the payment of taxes and insurance premiums on property securing loans made or serviced by the company

Disclosures and Agreements

Required Contents of Individual Borrower Files – (Miss. Code Ann.§ 81-18-33)

- The individual borrower files of a licensee shall contain at least the following:
 - A mortgage origination agreement provided to the borrower containing at least the following statements:
 - “As required by Mississippi Law, (licensed company name) has secured a bond issued by (name of insurance company), a surety company authorized to do business in this state. A certified copy of this bond is filed with the Mississippi Commissioner of Banking and Consumer Finance.”
 - “As a borrower you are protected under the Mississippi SAFE Mortgage Act.”
 - “Complaints against a licensee may be made by contacting the:

Mississippi Department of Banking and Consumer Finance

P.O. Drawer 23729

Jackson, MS 39225-3729”
 - A copy of the original loan application signed and dated by the licensee;
 - A copy of the signed statement as required by HUD or documentation of denial or cancellation of the loan application;
 - A copy of the good-faith estimate of costs provided to the borrower;
 - A copy of the appraisal or statement of value if procured as part of the loan application process;
 - A copy of a loan lock-in agreement, if any, provided by the licensee;
 - A copy of the disclosures required under Regulation Z of the federal Truth in Lending Act and other disclosures as required under federal regulations

and evidence that those disclosures have been properly and timely made to the borrower; and

- A copy of the final signed Uniform Residential Loan Application.
 - However, any mortgage licensee who holds a license under the provisions of the Small Loan Regulatory Law and the Small Loan Privilege Tax Law, may substitute an application that is otherwise compliant with federal and state law.

Required Contents of Individual Borrower Files – (Miss. Code Ann. § 81-18-35 and MS SAFE Regulations – Section 8)

- Each licensee shall maintain a journal of mortgage transactions at the principal place of business as stated on its license for all Mississippi residential loans that the licensee originated and/or funded.
 - This journal shall be separate from non-Mississippi loans.
 - The journal shall include at least the following information:
 - Name of applicant and co-applicant, if applicable;
 - Date of application; and
 - Disposition of loan application, indicating date of loan closing, loan denial, withdrawal and name of lender if applicable.
- Each licensee shall maintain a journal of serviced loans at the principal place of business as stated on its license, for all Mississippi residential loans that the licensee owns and/or services
 - This journal shall be separate from non-Mississippi loans.
 - The journal shall include at least the following information:
 - The number of mortgage loans the licensee is servicing;
 - The type and characteristics of the loans;
 - The number of serviced loans in default, along with a breakdown of 30, 60, and 90 day delinquencies;
 - Information on loss mitigation activities, including details on workout arrangements undertaken; and
 - Information on foreclosures commenced.

- The required mortgage company files will be kept at the Books and Records Information address listed on the NMLS&R system.
- The individual borrower files of a mortgage broker and lender shall contain at least the following items. Please note, that the use of correction fluid on any document associated with the mortgage loan, which includes, but are not limited to, the below listed items is considered to be a fraudulent activity.
 - Individual borrower files shall contain the original or copy (unless otherwise specified below) of all documentation dated and signed by the borrower and/or loan originator, including, but not limited to:
 - Application (copy)
 - Credit file
 - Appraisal and invoice from appraiser (copy)
 - Right of Rescission
 - Broker or co-broker agreement
 - Good Faith Estimate (within 3 working days of taking application)
 - Preliminary Truth in Lending (within 3 days of the application date)
 - Servicing Disclosure, if funding the loan
 - Notice of Right to Receive a Copy of Appraisal
 - Controlled Business Agreement, when applicable
 - Proof of Assignment (transfer) of loan, if applicable
 - Equal Credit Opportunity Act Disclosure (within 3 days of application)
 - Fair Lending
 - Lock-in Agreement from lender
 - Copy of Turndown, if applicable
 - Copy of Notice of Cancellation from Broker/Lender
 - Mortgage Origination Agreement
 - Final HUD-1 Settlement Statement

- Final Truth-in-Lending – for all brokers or lenders who table fund at settlement
 - Promissory note (copy)
 - Deed of Trust (copy)
 - Final Uniform Residential Loan Application (1003) – signed and dated by the loan originator of the mortgage company and the borrower(s)
- These records are to be maintained for a minimum of 36 months from the date of the loan application, maintained in a secure format and maintained separately from any and all other business records (including other state mortgage records).
 - These records must be kept in a secure location.
 - An off-site secure location would include a storage facility with security, etc., and would not include a person’s home, unless this is the licensed location of the mortgage broker or lender
 - The Commissioner in his sole discretion, after giving written notice, may require records to be maintained for a longer period of time.
 - The following federal regulations may also be used as guides to supplement the minimum recordkeeping requirements state above:
 - Regulation B
 - Regulation X
 - Regulation Z
- However, the requirements outlined above are separate and apart from any recordkeeping requirements stated in federal regulations.
- Compliance with the provisions of this policy cannot be relied upon for ensuring compliance with federal regulations

Advertising - (Miss. Code Ann.§ 81-18-31 and MS SAFE Regulations – Section 7)

- The Department shall promulgate regulations governing the advertising of mortgage loans, including, but not limited to, the following requirements:
 - All advertisements for loans may not be false, misleading or deceptive

- No person may advertise in any manner so as to indicate or imply that its interest rates or charges for loans are “recommended”, “approved”, “set” or “established” by the State of Mississippi
- All licensees shall maintain a copy of all advertisements citing interest rates or payment amounts primarily disseminated in Mississippi and shall attach to each advertisement documentation that:
 - Provides corroboration of the availability of the interest rate and terms of loans
 - Names the specific media sources by which the advertisements were distributed
- All published advertisements disseminated primarily in Mississippi shall contain the name and an office address of the licensee
 - Shall be the same as the name and address of the licensee on record with the Department
- An advertisement containing either a quoted interest rate or monthly payment amount must include:
 - The interest rate of the mortgage, a statement as to whether the rate is fixed or adjustable, and the adjustment index and frequency of adjustments
 - The term in years or months to fully repay the mortgage
 - The APR as computed under federal guidelines
- No licensee shall advertise its services in Mississippi in any media disseminated primarily in Mississippi, whether print or electronic, without the words "Mississippi Licensed Mortgage Company" or the words "Licensed by the Mississippi Department of Banking and Consumer Finance"
- The NMLS&R unique identifier of any person originating a residential mortgage loan shall be clearly shown on:
 - All residential mortgage loan application forms
 - All solicitations or advertisements, including business cards or websites, and
 - Any other documents as established by rule, regulation or order of the Commissioner

- Advertisements are considered to be in print or by electronic means and do not include Internet websites and advertisements.
- Business cards are considered by the Department to be a form of advertisement and must meet the requirements for such.

Module 5

Disciplinary Action

Introduction

The contents of this lesson are provided through the “Mississippi S.A.F.E. Mortgage Lending Act of 2009” (Miss. Code Ann.§ 81-18-1), and will be referenced to as “the Act” within the text of this lesson

Suspension and Revocation of Licenses - (Miss. Code Ann.§ 81-18-37)

- The Department may suspend or revoke a license for:
 - A violation of any provision, rule or regulation adopted under the Mississippi SAFE Act
 - Failure of the licensee to pay, within 30 days after it becomes final and non-appealable, a judgment recovered in any court within Mississippi by a claimant or creditor in an action arising out of the licensee's business as a mortgage broker or mortgage lender
 - Notice of the Department's intention to enter an order denying an application for a license, or of an order suspending or revoking a license, shall be given to the applicant, licensee in writing, sent by registered or certified mail addressed to the principal place of business of the applicant or licensee
 - Within 30 days of the date of the notice of intention to enter an order of denial, suspension or revocation, the applicant or licensee may request in writing a hearing to contest the order
 - If a hearing is not requested in writing within 30 days of the date of the notice of intention, the Department shall enter a final order regarding the denial, suspension or revocation
 - Any final order of the Department denying, suspending or revoking a license shall state the grounds upon which it is based and shall be effective on the date of issuance
 - A copy of the final order shall be forwarded promptly by registered or certified mail addressed to the principal place of business of the applicant or licensee

Notifications, Hearings, and Appeals

Cease and Desist Order - (Miss. Code Ann. § 81-18-39)

- The Department may issue a written order requiring the person to cease and desist from unlawful or unauthorized practices
 - In the case of an unlawful purchase of mortgage loans, the cease and desist order to a purchaser shall constitute the knowledge required for any subsequent violations
- Any licensed person who has been deemed by the Commissioner, after notice and hearing, to have violated the terms of any order properly issued by the Department shall be liable for a civil penalty not to exceed \$3,000.
 - The Department, in determining the amount of the penalty, shall take into account the appropriateness of the penalty relative to the size of the financial resources of the person, the good faith efforts of the person to comply with the order, the gravity of the violation, the history of previous violations by the person, and other factors or circumstances that contributed to the violation.
 - The Department may compromise, modify or refund any penalty that has been imposed.
 - Any person assessed a penalty shall have the right to request a hearing on the amount of the penalty within 10 days after receiving notification of the assessment.
 - If no hearing is requested within 10 days of the receipt of the notice, the penalty shall be final except as to judicial review in the Chancery Court of the First Judicial District of Hinds County.
 - Upon the filing of a petition for judicial review, the court shall issue an order to the licensee requiring the licensee to show cause why it should not be entered.
 - If the court determines, after a hearing upon the merits or after failure of the person to appear when so ordered, that the order of the Department was properly issued, it shall grant the penalty sought by the Department

Continuation of Loan Servicing Under Existing Servicing Contracts by Suspended Licensee - (Miss. Code Ann.§ 81-18-41)

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

Penalties for Violations; Report of Violations; Hearings on Amount of Penalty; Judicial Review - (Miss. Code Ann.§ 81-18-43)

- In order to ensure the effective supervision and enforcement, the Commissioner may:
 - Deny, suspend, revoke, condition, or decline to renew a license for a violation
 - Deny, suspend, revoke, condition, or decline to renew a license if an applicant or licensee fails at any time to meet the licensing/renewal requirements, or withholds information or makes a material misstatement in an application for a license or renewal of a license
 - Order restitution against persons subject to this chapter for violations
 - Impose civil penalties on persons subject to this chapter
 - Issue orders or directives as follows:
 - Order or direct persons to cease and desist from conducting business, including immediate temporary orders to cease and desist
 - Order or direct persons to cease any harmful activities or violations, including immediate temporary orders to cease and desist
 - Enter immediate temporary orders to cease business under a license issued under the granted authority, if the Commissioner determines that the license was erroneously granted or the licensee is currently in violation
 - Order such other affirmative action as the Commissioner deems necessary

- The Commissioner may impose a civil penalty on a mortgage loan originator or person, if the Commissioner finds, on the record after notice and opportunity for hearing, that the mortgage loan originator has violated or failed to comply with any requirement or regulation prescribed by the Commissioner, or order issued under his authority.
 - The maximum amount of penalty for each act or omission shall be \$25,000
- Each violation or failure to comply with any directive or order of the Commissioner is a separate and distinct violation or failure
- For a 1st offense, the licensee, person required to be licensed, or employee may be found guilty of a misdemeanor and, upon conviction thereof, shall be punishable by imprisonment in the county jail for not more than one (1) year.
- For a 2nd or subsequent offense, the licensee, person required to be licensed, or employee may be found guilty of a misdemeanor and, upon conviction thereof, shall be found guilty of a felony and, upon conviction thereof, may be punished by imprisonment in the custody of the State Department of Corrections for a term not less than one (1) year, nor more than five (5) years.
- Compliance with the criminal provisions of this rule shall be enforced by the appropriate law enforcement agency, which may exercise for that purpose any authority conferred upon the agency by law
- The Commissioner shall report regularly violations, as well as enforcement actions and other relevant information, to the NMLS&R
- The state may enforce its rights under the surety bond as an available remedy for the collection of any civil penalties, criminal fines, or costs of investigation and/or prosecution incurred.
- Any person assessed a penalty shall have the right to request a hearing within 10 days after receiving notification of the assessment.
 - If no hearing is requested within 10 days, the penalty shall be final except as to judicial review in the Chancery Court of the First Judicial District of Hinds County
 - Upon the filing of a petition for judicial review, the court shall issue an order to the licensee requiring the licensee to show cause why it should not be entered.
 - If the court determines, after a hearing upon the merits or after failure of the person to appear when so ordered, that the order of the Department was properly issued, it shall grant the penalty sought by the Department.

Civil and Criminal Liability - (Miss. Code Ann.§ 81-18-47)

- A licensee shall have no liability for any act or practice done or omitted in conformity with (a) any rule or regulation of the commissioner, or (b) any rule, regulation, interpretation or approval of any other state or federal agency or any opinion of the Attorney General, notwithstanding that after such act or omission has occurred the rule, regulation, interpretation, approval or opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason
- A licensee acting in conformity with a written interpretation or approval by an official or employee of any state or federal agency or department, shall be presumed to have acted in accordance with applicable law, notwithstanding that after such act has occurred, the interpretation or approval is amended, rescinded, or determined by judicial or other authority to be incorrect or invalid for any reason

Penalties Assessed by Department – (Mississippi SAFE Mortgage Licensing Act of 2009 Regulations – Section 9)

- The company or loan originator, once assessed a penalty by the Department, will have 30 days in order to pay the full amount of the penalty, unless otherwise noted by the Department.

Module 6

Guidance on Non-Traditional Mortgage Product Risks

INTRODUCTION

On October 4, 2006, the Office of the Comptroller of the Currency (OCC), the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA), collectively called “the Agencies”, published final guidance in the *Federal Register* (Volume 71, Number 192, Pages 58609-58618) on non-traditional mortgage product risks (“interagency guidance”). The interagency guidance applies to all banks and their subsidiaries, savings and loan holding companies and their subsidiaries, and credit unions.

Recognizing that the interagency guidance does not cover a majority of loan originations, on June 7, 2006 the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) announced their intent to develop parallel guidance. Both CSBS and AARMR strongly support the purpose of the guidance adopted by the Agencies and are committed to promote uniform application of its consumer protections for all borrowers.

The following guidance will assist state regulators of mortgage brokers and mortgage companies (referred to as “providers”) not affiliated with a bank holding company or an insured financial institution to promote consistent regulation in the mortgage market and clarify how providers can offer non-traditional mortgage products in a way that clearly discloses the risks that borrowers may assume.

In order to maintain regulatory consistency, this guidance substantially mirrors the interagency guidance, except for the deletion of sections not applicable to non-depository institutions.

BACKGROUND

The Agencies developed their guidance to address risks associated with the growing use of mortgage products that allow borrowers to defer payment of principal and, sometimes, interest. These products, referred to as variously as “non-traditional”, “alternative”, or “exotic” mortgage loans (hereinafter referred to as “non-traditional mortgage loans”), include “interest-only” mortgages and “payment option” adjustable-rate mortgages. These products allow borrowers to exchange lower payments during an initial period for higher payments during a later amortization period.

While similar products have been available for many years, the number of institutions and providers offering them has expanded rapidly. At the same time, these products are offered to a wider spectrum of borrowers who may not otherwise qualify for more traditional mortgages. CSBS and AARMR are concerned that some borrowers may not fully understand the risks of these products. While many of these risks exist in other adjustable-rate mortgage products, the concern of CSBS and AARMR is elevated with non-traditional products because of the lack of principal amortization and potential for negative amortization. In addition, providers are increasingly combining these loans with other features that may compound risk. These features include simultaneous second-lien mortgages and the use of reduced documentation in evaluating an applicant's creditworthiness.

DEFINITIONS

Interest-Only Mortgage Loans

- A non-traditional mortgage on which, for a specified number of years (e.g., 3 or 5 years), the borrower is required to pay only the interest due on the loan during which time the rate may fluctuate or may be fixed.
- After the interest-only period, the rate may be fixed or fluctuate based on the prescribed index and payments include both principal and interest

Payment Option ARM

- A non-traditional mortgage that allows the borrower to choose from a number of different payment options. For example, each month, the borrower may choose a minimum payment option based on a "start" or introductory interest rate, an interest-only payment option based on the fully indexed interest rate, or a fully amortizing principal and interest payment based on a 15 year or 30 year loan term, plus any required escrow payments.
- The minimum payment option can be less than the interest accruing on the loan, resulting in negative amortization.
- The interest-only option avoids negative amortization, but does not provide for principal amortization
- After a specified number of years, or if the loan reaches a certain negative amortization cap, the required monthly payment amount is recast to require payments that will fully amortize the outstanding balance over the remaining loan term.

Reduced Documentation

- A loan feature that is commonly referred to as “low doc/no doc”, “no income/no asset”, “stated income”, or “stated assets”. For mortgage loans with this feature, a provider sets reduced or minimal documentation standards to substantiate the borrower’s income and assets.

Simultaneous Second-Lien Loan

- A lending arrangement where either a closed-ended second-lien or a home equity line of credit (HELOC) is originated simultaneously with the first lien mortgage loan, typically in lieu of a higher down payment.

CSBS-AARMR GUIDANCE ON NON-TRADITIONAL MORTGAGE PRODUCT RISKS

Residential mortgage lending has traditionally been a conservatively managed business with low delinquencies and losses and reasonably stable underwriting standards. In the past few years, consumer demand has been growing, particularly in high priced real estate markets, for closed-end residential mortgage loan products that allow borrowers to defer payment of principal and, sometimes, interest. These mortgage products, herein referred to as “non-traditional mortgage loans”, include such products as:

- “Interest-Only” Mortgages – where a borrower pays no loan principal for the first few years of the loan; and
- “Payment Option” Adjustable Rate Mortgages (ARMs) – where a borrower has flexible payment options with the potential for negative amortization.
 - Interest-only and payment option ARMs are variations of conventional ARMs, hybrid ARMs, and fixed rate products.
 - This guidance does not apply to reverse mortgages; home equity lines of credit (HELOCs), other than as discussed later in the Simultaneous Second-Lien Loans section; or fully amortizing residential loan products.

Many of these non-traditional mortgage loans are underwritten with less stringent income and asset verification requirements (“reduced documentation”) and are increasingly combined with simultaneous second-lien loans. Such risk layering, combined with the broader marketing of non-traditional mortgage loans, exposes providers to increased risk relative to traditional mortgage loans.

Given the potential for heightened risk levels, management should carefully consider and appropriately mitigate exposures created by these loans. To manage risks associated with non-traditional mortgage loans, management should:

- Ensure that loan terms and underwriting standards are consistent with prudent lending practices, including consideration of a borrower's repayment capacity; and
- Ensure that consumers have sufficient information to clearly understand loan terms and associated risks prior to making a product choice.

The Mississippi Department of Banking and Consumer Finance expects providers to effectively assess and manage the risks associated with non-traditional mortgage loan products.

Providers should use this guidance to ensure that risk management practices adequately address these risks. The Mississippi Department of Banking and Consumer Finance will carefully scrutinize risk management processes, policies, and procedures in this area. Providers that do not adequately manage these risks will be asked to take remedial action.

The focus of this guidance is on the higher risk elements of certain non-traditional mortgage products, not the product type itself. Providers with sound underwriting, and adequate risk management will not be subject to criticism merely for offering such products.

LOAN TERMS AND UNDERWRITING STANDARDS

When a provider offers non-traditional mortgage loan products, underwriting standards should address the effect of a substantial payment increase on the borrower's capacity to repay when the loan amortization begins.

Central to prudent lending is the internal discipline to maintain sound loan terms and underwriting standards despite competitive pressures. Providers are strongly cautioned against ceding underwriting standards to third parties that have different business objectives, risk tolerances, and core competencies. Loan terms should be based on a disciplined analysis of potential exposures and compensating factors to ensure risk levels remain manageable.

Qualifying Buyers

Payments on non-traditional loans can increase significantly when the loans begin to amortize. Commonly referred to as payment shock, this increase is of particular concern for payment option ARMs where the borrower makes minimum payments that

may result in a negative amortization. Some providers manage the potential for excessive negative amortization and payment shock by structuring the initial terms to limit the spread between the introductory interest rate and the fully indexed rate.

Nevertheless, a provider's qualifying standards should recognize the potential impact of payment shock, especially for borrowers with high loan-to-value (LTV) ratios, high debt-to-income (DTI) ratios, and low credit scores. Recognizing that a provider's underwriting criteria are based on multiple factors, a provider should consider these factors jointly in the qualification process and may develop a range of reasonable tolerances for each factor. However, the criteria should be based upon prudent and appropriate underwriting standards, considering both the borrower's characteristics and the product's attributes.

For all non-traditional mortgage loan products, a provider's analysis of a borrower's repayment capacity should include an evaluation of their ability to repay the debt by final maturity at the fully indexed rate, assuming a fully amortizing repayment schedule.

- The fully indexed rate equals the index rate prevailing at origination plus the margin that will apply after the expiration of an introductory interest rate.
 - The index rate is a published interest rate to which the interest rate on an ARM is tied.
 - Some commonly used indices include the:
 - 1 Year Constant Maturity Treasury Rate (CMT)
 - 6 Month London Interbank Offered Rate (LIBOR)
 - 11th District Cost of Funds (COFI), and
 - Moving Treasury Average (MTA), a 12 month moving average of the monthly average yields of the U.S. Treasury securities adjusted to a constant maturity of 1 year
 - The margin is the number of percentage points a lender adds to the index value to calculate the ARM interest rate at each adjustment period.
 - In different interest rate scenarios, the fully indexed rate for an ARM loan based on a lagging index (e.g., MTA rate) may be significantly different from the rate on a comparable 30 year fixed-rate product. In these cases, a credible market rate should be used to qualify the borrower and determine repayment capacity
- The fully amortizing payment schedule should be based on the term of the loan.

- For example, the amortizing payment for a loan with a 5 year interest only period and a 30 year term would be calculated based on a 30 year amortization schedule.
 - For balloon mortgages that contain a borrower option for an extended amortization period, the fully amortizing payment schedule can be based on the full term the borrower may choose.

In addition, for products that permit negative amortization, the repayment analysis should be based upon the initial loan amount plus any balance increase that may accrue from the negative amortization provision.

- The balance that may accrue from the negative amortization provision does not necessarily equate to the full negative amortization cap for a particular loan.
- The spread between the introductory or “teaser” rate and the accrual rate will determine whether or not a loan balance has the potential to reach the negative amortization cap before the end of the initial payment option period (usually 5 years).
 - For example, a loan with a 115% negative amortization cap, but a small spread between the introductory rate and the accrual rate, may only reach a 109% maximum loan balance before the end of the initial payment option period, even if only minimum payments are made. The borrower could be qualified based on this lower maximum loan balance.

Furthermore, the analysis of repayment capacity should avoid over-reliance on credit scores as a substitute for income verification in the underwriting process. The higher the loan’s credit risk, either from loan features or borrower characteristics, the more important it is to verify the borrower’s income, assets, and outstanding liabilities.

Collateral-Dependent Loans

Providers should avoid the use of loan terms and underwriting practices that may heighten the need for a borrower to rely on the sale or refinancing of the property once amortization begins.

Loans to individuals who do not demonstrate the capacity to repay, as structured, from the sources other than the collateral pledged, may be unfair and abusive.

- A loan will not be determined to be collateral-dependent solely through the use of reduced documentation

Providers that originate collateral-dependent mortgage loans may be subject to criticism and corrective action.

Risk Layering

Providers that originate or purchase mortgage loans that combine non-traditional features, such as interest only loans with reduced documentation or a simultaneous second-lien loan, face increased risk.

When features are layered, a provider should demonstrate that mitigating factors support the underwriting decision and the borrower's repayment capacity. Mitigating factors could include higher credit scores, lower LTV and DTI ratios, significant liquid assets, mortgage insurance or other credit enhancements.

While higher pricing is often used to address elevated risk levels, it does not replace the need for sound underwriting.

Reduced Documentation

Providers increasingly rely on reduced documentation, particularly unverified income, to qualify borrowers for non-traditional mortgage loans. Because these practices essentially substitute assumptions and unverified information for analysis of a borrower's repayment capacity and general creditworthiness, they should be used with caution. As the level of credit risk increases, it is expected that a provider will more diligently verify and document a borrower's income and debt reduction capacity. Clear policies should govern the use of reduced documentation. For example, stated income should be accepted only if there are mitigating factors that clearly minimize the need for direct verification of repayment capacity. For many borrowers, providers generally should be able to readily document income using recent W-2 statements, pay stubs, or tax returns.

Simultaneous Second-Lien Loans

Simultaneous second-lien loans reduce owner equity and increase credit risk. Historically, as combined loan-to-value ratios, so do defaults. A delinquent borrower with minimal or no equity in a property may have little incentive to work with a lender to bring the loan current and avoid foreclosure.

In addition, second-lien home equity lines of credit (HELOCs) typically increase borrower exposure to increasing interest rates and monthly payment burdens. Loans with minimal or no owner equity generally should not have a payment structure that allows for delayed or negative amortization without other significant risk mitigating factors.

Introductory Interest Rates

Many providers offer introductory interest rates set well below the fully indexed rate as a marketing tool for payment option ARM products. When developing non-traditional mortgage product terms, a provider should consider the spread between the introductory rate and the fully indexed rate. Since initial and subsequent monthly payments are based on these low introductory rates, a wide initial spread means that borrowers are more likely to experience negative amortization, severe payment shock, and an earlier-than-scheduled recasting of monthly payments. Providers should minimize the likelihood of disruptive early recastings and extraordinary payment shock when setting introductory rates.

Lending to Subprime Borrowers

Providers of mortgage programs that target subprime borrowers through tailored marketing, underwriting standards, and risk selection should ensure that such programs do not feature terms that could become predatory or abusive. They should also recognize that risk-layering features in loans to subprime borrowers may significantly increase risks for both the provider and the borrower.

Non-Owner-Occupied Investor Loans

Borrowers financing non-owner-occupied investment properties should qualify for loans based on their ability to service the debt over the life of the loan. Loan terms should reflect an appropriate combined LTV ratio that considers the potential for negative amortization and maintains sufficient borrower equity over the life of the loan. Further, underwriting standards should require evidence that the borrower has sufficient cash reserves to service the loan, considering the possibility of extended periods of property vacancy and the variability of debt service requirements associated with non-traditional mortgage loan products.

RISK MANAGEMENT PRACTICES

Providers should ensure risk management practices keep pace with the growth of non-traditional mortgage products and changes in the market. Providers that originate or invest in non-traditional mortgage loans should adopt more robust risk management practices and manage these exposures in a thoughtful, systematic manner.

To meet expectations, providers should:

- Develop written policies that specify acceptable product attributes, production, sales and securitization practices, and risk management expectations; and
- Design enhanced performance measures and management reporting that provide early warning for increasing risk.

Policies

A provider's policies for non-traditional mortgage lending activity should set acceptable levels of risk through its operating practices and policy exception tolerances. Policies should reflect appropriate limits on risk layering and should include risk management tools for risk mitigation purposes. Further, a provider should set growth and volume limits by loan type, with special attention for products and product combinations in need of heightened attention due to easing terms or rapid growth.

Concentrations

Providers with concentrations in non-traditional mortgage products should have well-developed monitoring systems and risk management practices. Further, providers should consider the effect of employee and third party incentive programs that could produce higher concentrations of non-traditional mortgage loans. Concentrations that are not effectively managed will be subject to elevated supervisory attention and potential examiner criticism to ensure timely remedial action.

Controls

A provider's quality control, compliance, and audit procedures should focus on mortgage lending activities posing high risk. Controls to monitor compliance with underwriting standards and exceptions to those standards are especially important for non-traditional loan products. The quality control function should regularly review a sample of non-traditional mortgage loans from all origination channels and a representative sample of underwriters to confirm that policies are being followed. When control systems or operating practices are found deficient, business-line managers should be held accountable for correcting deficiencies in a timely manner.

Third-Party Originations

Providers often use third-parties, such as mortgage brokers or correspondents, to originate non-traditional mortgage loans. Providers should have strong systems and controls in place for establishing and maintaining relationships with third-parties, including procedures for performing due diligence. Oversight of third-parties should involve monitoring the quality of originations so that they reflect the provider's lending standards and compliance with applicable laws and regulations.

Monitoring procedures should track the quality of loans by both origination source and key borrower characteristics. This will help providers identify problems such as early

payment defaults, incomplete documentation, and fraud. If appraisal, loan documentation, credit problems, or consumer complaints are discovered, the provider should take immediate action. Remedial action could include more thorough application reviews, more frequent re-underwriting, or even termination of the third-party relationship.

Secondary Market Activity

The sophistication of a provider's secondary market risk management practices should be commensurate with the nature and volume of activity. Providers with significant secondary market activities should have comprehensive, formal strategies for managing risks. Contingency planning should include how the provider will respond to reduced demand in the secondary market.

While third-party loan sales can transfer a portion of the credit risk, a provider remains exposed to reputation risk when credit losses on sold mortgage loans or securitization transactions exceed expectations. As a result, a provider may determine that it is necessary to repurchase defaulted mortgages to protect its reputation and maintain access to the markets.

CONSUMER PROTECTION ISSUES

While non-traditional mortgage loans provide flexibility for consumers, the Mississippi Department of Banking and Consumer Finance is concerned that consumers may enter into these transactions without fully understanding the product terms. Non-traditional mortgage products have been advertised and promoted based on their affordability in the near term; that is, their lower initial payments compared with traditional types of mortgages.

In addition to apprising consumers of the benefits of non-traditional mortgage products, providers should take appropriate steps to alert consumers to the risks of these products, including the likelihood of increased future payment obligations. This information should be provided in a timely manner – before disclosures may be required under the Truth in Lending Act or other laws – to assist the consumer in the product selection process.

Concerns and Objectives

More than traditional ARMs, mortgage products such as payment option ARMs and interest-only mortgages can carry a significant risk of payment shock and negative amortization that may not fully be understood by consumers.

For example, consumer payment obligations may increase substantially at the end of an interest-only period or upon the “recast” of a payment option ARM. The magnitude of these payment increases may be affected by factors such as the expiration of promotional interest rates, increases in the interest rate index, and negative amortization. Negative amortization also results in lower levels of home equity as compared to a traditional amortizing mortgage product. When borrowers go to sell or refinance the property, they may find that negative amortization has substantially reduced or eliminated their equity in it, even when the property has appreciated. The concern that consumers may not fully understand these products would be exacerbated by marketing and promotional practices that emphasize potential benefits without also providing clear and balanced information about material risks.

In light of these considerations, communications with consumers, including advertisements, oral statements, promotional materials, and monthly statements should provide clear and balanced information about the relative benefits and risks of these products, including the risk of payment shock and the risk of negative amortization. Clear, balanced, and timely communication to consumers of the risks of these products will provide consumers with useful information at crucial decision-making points, such as when they are shopping for loans or deciding which monthly payment amount to make. Such communication should help minimize potential consumer confusion and complaints, foster good customer relations, and reduce legal and other risks to the provider.

Legal Risks

Providers that offer non-traditional mortgage products must ensure that they do so in a manner that complies with all applicable laws and regulations. With respect to the disclosures and other information provided to consumers, applicable laws and regulations include the following:

- Truth in Lending Act (TILA) and its implementing regulation, Regulation Z
- Section 5 of the Federal Trade Commission Act (FTC Act)

TILA and Regulation Z contain rules governing disclosures that providers must provide for closed-end mortgages in advertisements, with an application (these program disclosures apply to ARM products and must be provided at the time and application is provided, or before the consumer pays a non-refundable fee, whichever is earlier), before loan consummation, and when interest rates change. Section 5 of the FTC Act prohibits unfair or deceptive acts or practices.

Other federal laws, including the fair lending laws and the Real Estate Settlement Procedures Act (RESPA), also apply to these transactions. Moreover, the sale or securitization of a loan may not affect a provider’s potential liability for violations of TILA,

RESPA, the FTC Act, or other laws in connection with its origination of the loan. State laws, including laws regarding unfair or deceptive acts or practices, may apply.

RECOMMENDED PRACTICES FOR ADDRESSING THE RISKS RAISED BY NON-TRADITIONAL MORTGAGE PRODUCTS

Communications with Consumers

When promoting or describing non-traditional mortgage products, providers should give consumers information that is designed to help them make informed decisions when selecting and using these products. Meeting this objective requires appropriate attention to the timing, content, and clarity of information presented to consumers. Thus, providers should give consumers information at a time that will help consumers select products and choose among payment options. For example, providers should offer clear and balanced product descriptions when a consumer is shopping for a mortgage – such as when the consumer makes an inquiry to the provider about a mortgage product and receives information about non-traditional mortgage products, or when marketing relating to non-traditional mortgage products is given by the provider to the consumer – not just upon the submission of an application or at consummation. The provision of such information would serve as an important supplement to the disclosures currently required under TILA and Regulation Z, or other laws.

Providers should also strive to: (1) Focus on information important to consumer decision making; (2) Highlight key information so that it will be noticed; (3) Employ a user-friendly and readily navigable format for presenting the information; and (4) Use plain language, with concrete and realistic examples. Comparative tables and information describing key features of available loan products, including reduced documentation programs, also may be useful for consumers considering the non-traditional mortgage products and other loan features.

Providers may not be able to incorporate all of the recommended practices when advertising non-traditional mortgages through certain forms of media, such as radio, television, or billboards. Nevertheless, providers should provide clear and balanced information about the risks of these products in all forms of advertising.

- **Promotional Materials and Product Descriptions**
 - Promotional materials and other product descriptions should provide information about the costs, terms, features, and risks of non-traditional mortgages that can assist consumers in their product selection decisions, including information about the following matters:
 - Payment Shock

- Providers should apprise consumers of potential increases in payment obligations for these products, including circumstances in which interest rates or negative amortization reach a contractual limit.
 - For example, product descriptions could state the maximum monthly payment a consumer would be required to pay under a hypothetical loan example once amortizing payments are required and the interest rate and negative amortization caps have been reached (consumers should also be apprised of other material changes in payment obligations, such as balloon payments).
 - Such information could also describe when structural payment changes will occur (e.g., when introductory rates expire, or when amortizing payments are required), and what the new payment amount would be or how it is calculated.
 - As applicable, these descriptions could indicate that a higher payment may be required at other points in time due to factors such as negative amortization or increases in the interest rate index.
- Negative Amortization
 - When negative amortization is possible under the terms of a non-traditional mortgage product, consumers should be apprised of the potential for increasing principal balances and decreasing home equity, as well as other potential adverse consequences of negative amortization.
 - For example, product descriptions should disclose the effect of negative amortization on loan balances and home equity, and could describe the potential consequences to the consumer of making minimum payments that cause the loan to negatively amortize.
 - One possible consequence is that it could be more difficult to refinance the loan or to obtain cash upon a sale of a home.
 - Prepayment Penalties
 - If the provider may impose a penalty in the event that the consumer prepays to mortgage, consumers should be alerted to this fact and to the need to ask the lender about the amount of any such penalty.

- Cost of Reduced Documentation Loans
 - If a provider offers both reduced and full documentation loan programs and there is a pricing premium attached to the reduced documentation program, consumers should be alerted of this fact.
- **Monthly Statements on Payment Option ARMs**
 - Monthly statements that are provided to consumers on payment option ARMs should provide information that enables consumers to make informed payment choices, including an explanation of each payment option available and the impact of that choice on loan balances.
 - For example, the monthly payment statement should contain an explanation, as applicable, next to the minimum payment amount that making this payment would result in an increase to the consumer's outstanding loan balance. Payment statements could also provide the consumer's current loan balance, what portion of the consumer's previous payment was allocated to principal and to interest, and, if applicable, the amount by which the principal balance increased. Providers should avoid leading payment option ARM borrowers to select a non-amortizing or negatively-amortizing payment (for example, through the format or content of monthly statements).
- **Practices to Avoid**
 - Providers should also avoid practices that obscure significant risks to the consumer.
 - For example, if a provider advertises or promotes a non-traditional mortgage by emphasizing the comparatively lower initial payments permitted for these loans, the provided should also give clear and comparably prominent information alerting the consumer to the risks. Such information should explain, as relevant, that these payment amounts will increase, that a balloon payment may be due, and that the loan balance will not decrease any may even increase due to the deferral of interest and/or principal payments. Similarly, providers should avoid promoting payment patterns that are structurally unlikely to occur. Such practices could raise legal and other risks for providers.
 - For example, marketing materials for payment option ARMs may promote low predictable payments until the recast date. Such marketing should be avoided in circumstances in which the minimum payments are so low that the negative

amortization caps would be reached and higher payment obligations would be triggered before the scheduled recast, even if interest rates remain constant.

- Providers should also avoid such practices as:
 - Giving consumers unwarranted assurances or predictions about the future direction of interest rates (and, consequently, the borrower's future obligations);
 - Making one-sided representations about the cash savings or expanded buying power to be realized from non-traditional mortgage products in comparison with amortizing mortgages;
 - Suggesting that initial minimum payments in a payment option ARM will cover accrued interest (or principal and interest) charges; and
 - Making misleading claims that interest rates or payment obligations for these products are "fixed".

Control Systems

- Providers should develop and use strong control systems to monitor whether actual practices are consistent with their policies and procedures relating to non-traditional mortgage products. Providers should design control systems to address compliance and consumer information concerns as well as the discussed risk management considerations. Lending personnel should be trained so that they are able to convey information to consumers about the product terms and risks in a timely, accurate, and balanced manner. As products evolve and new products are introduced, lending personnel should receive additional training, as necessary, to continue to be able to convey information to consumers in this manner.
- Lending personnel should be monitored to determine whether they are following these policies and procedures. Providers should review consumer complaints to identify potential compliance, reputation, and other risks. Attention should be paid to appropriate legal review and to using compensation programs that do not improperly encourage lending personnel to direct consumers to particular products.
- With respect to non-traditional mortgage loans that a provider makes, purchases, or services using a third-party, such as a mortgage broker, correspondent, or other intermediary, the provider should take appropriate steps to mitigate risks relating to compliance and consumer information concerns discussed in this guidance. These steps would ordinarily include, among other things:

- Conducting due diligence and establishing other criteria for entering into and maintaining relationships with such third-parties,
- Establishing criteria for third-party compensation designed to avoid providing incentives for originations inconsistent with this guidance,
- Setting requirements for agreements with such third-parties
- Establishing procedures and systems to monitor compliance with applicable agreements, policies, and laws, and
- Implementing appropriate corrective actions in the event that the third-party fails to comply with applicable agreements, policies, or laws.