

BANKING
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING

General Provisions – Miscellaneous and Mortgage Loans, Fees, and Obligations

Department Organization-Nonpublic Records

Residential Mortgage Lenders; Correspondent Mortgage Lenders; Residential Mortgage Brokers;
Qualified Individual Licensees; Mortgage Loan Originators

Fees, License Terms and Annual Reports for Licensees

Proposed Amendments: N.J.A.C. 3:1-7, 7.4, 7.6, 16.1 and 16.3; 3:3-2.1, 3:15; and 3:23-2.1 and
4.1

Proposed New Rules: N.J.A.C. 3:15-1.8, 2.3, 2.11, 2.12 and 2.15

Proposed Repeals: N.J.A.C. 3:1-16.11 and 3:15-2.10, 2.11, 4.2, 6.8, 6.10, 6.11, 6.13, 10.3 and
11.1

Authorized By: Neil N. Jasey, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8, 8.1 and 15e; 17:9A-1 et seq., 17:12B-1 et seq., 17:13-125, 17:11C-
51 et seq.; and 47:1A-1 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2009- 235

Submit comments by October 2, 2009 to:

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The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) proposes to amend substantially N.J.A.C. 3:15 in response to the enactment of the New Jersey Residential Mortgage Lending Act in P.L. 2009, c. 53 (“RMLA” or “the Act”), which is codified at N.J.S.A. 17:11C-51 to 89. The RMLA was enacted in response to new Federal requirements established in the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, 12 U.S.C. §§5101 et seq. (SAFE Act). The SAFE Act requires a nationwide registry system, the Nationwide Mortgage Licensing System and Registry (NMLS&R), for all persons licensed by the states to engage in residential mortgage lending, brokerage and origination activity. The functions to be performed by the NMLS&R include license application and renewal processing, fee collection, verification of satisfaction of pre-licensing education, national and State license examination requirements and continuing education.

Throughout the proposed amendments to Chapter 15, the new terminology utilized in the RMLA for residential mortgage licensees replaces the terms found in the former Licensed Lenders Act, N.J.S.A. 17:11C-1 et seq., and all necessary statutory and public law cites and rule cross references are updated. Further, the chapter is amended to provide that all filings with the Department and the nationwide registry shall be submitted electronically and all records required to be maintained by business licensees may be kept electronically.

The RMLA establishes enhanced licensing standards, business practices and oversight for residential mortgage lenders and correspondent mortgage lenders, residential mortgage brokers and qualified individual licensees and imposes a new licensure requirement on mortgage loan originators. These newly designated terms replace the terms mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender and registered mortgage solicitor utilized in the Licensed Lenders Act and the current rules. Both residential first and residential secondary

lending activities are authorized under each of the RMLA licenses. As a result, there will no longer be a separate licensing category for secondary lenders. In order to continue to fund secondary residential mortgage loans, current licensees with only secondary lender authority, of which there are less than five, will have to be licensed under the RMLA and the proposed amended rules as a mortgage lender and meet the applicable licensing standards. Consumer lender and sales finance activity will be governed by the New Jersey Consumer Finance Licensing Act (CFLA), also enacted as part of P.L. 2009, c. 53 and codified at N.J.S.A. 17:11C-1 to 50, formerly the New Jersey Licensed Lenders Act, and the rules to be promulgated thereunder. Provisions regarding consumer lender and sales finance activity have therefore been deleted from N.J.A.C. 3:15 as part of this rulemaking and will be recodified at N.J.A.C. 3:17 in the near future.

The major requirements under the RMLA for business licensure as a residential mortgage lender, a residential correspondent mortgage lender, or a residential mortgage broker include: completed electronic application through the NMLS&R which will assign a unique identifier; criminal history record background check for all partners, members and managers of a limited liability company (LLC), corporate officers, directors, and stockholders owning 10 percent or more of the shares of a corporation; a general finding of responsibility and fitness for licensure; licensure of at least one officer, member, director, partner or owner as a qualified individual in affiliation with the business entity applicant; proof of surety bond coverage; demonstration of tangible net worth; and payment of required fees, including non-refundable application fees.

The major requirements under the RMLA for individual licensure as either a qualified individual licensee or a mortgage loan originator are as follows: completed electronic application through the NMLS&R which will assign a unique identifier; completed criminal history

background check; general finding of character and fitness for licensure; affiliation with one residential mortgage lender or residential mortgage broker business licensee; completion of pre-licensing education; successful passage of written national and state examinations; completion of continuing education requirements starting in 2011; and coverage under an employing business licensee's surety bond and payment of required fees, including non-refundable application fees. Mortgage solicitors, who previously were only subject to registration, are now required to be licensed as mortgage loan originators. Pursuant to N.J.S.A. 17:11C-65 and P.L. 2009, c. 53 §. 74, the Commissioner may issue orders to ensure a smooth transition and to that end the Department will issue a series of bulletins and orders addressing timeframes for current mortgage licensees and registrants under the Licensed Lenders Act to obtain licensure under the RMLA without any interruption in business as a result of the new licensing law.

The provisions of the New Jersey Rehabilitated Convicted Offenders Act (RCOA), N.J.S.A. 2A:168A-1 et seq., are specifically inapplicable to applicants for the RMLA licenses. Thus, current licensees and registrants with a disqualifying criminal conviction will not be able to invoke the provisions of the RCOA and will be ineligible for licensure under N.J.S.A. 17:11C-51 et seq. and these rules. The implications of this are further discussed under Economic Impact.

The following specific amendments are found in each subchapter of Chapter 15:

Subchapter 1 – Identification of the RMLA as the enabling statute for these amendments; definitions of residential mortgage lenders, mortgage brokers, correspondent mortgage lenders, qualified individual licensees, and mortgage loan originators as those business and individual licensees subject to these rules; and establishment of the Commissioner's broad authority to oversee implementation of the RMLA, including coordination with the NMLS&R to facilitate electronic processing of all applicants and licensees through the use of a unique identifier. The

term “secondary lender” is deleted since the RMLA does not distinguish between primary and secondary lenders, although the distinction between first and secondary residential mortgage loans remains. Additional new proposed definitions include the terms “clerical or support duties,” “business licensee,” “Federal banking agency,” “immediate family member,” “individual,” “individual licensee,” “licensee,” “loan processor or underwriter,” “mortgage loan originator,” “Nationwide Mortgage Licensing System and Registry,” “nontraditional mortgage product,” “qualified individual licensee,” “registered mortgage loan originator,” “residential mortgage broker,” “residential mortgage lender,” “residential mortgage loan,” “residential real estate” and “unique identifier.” Proposed amendments also delete definitions related to consumer lender or sales finance company regulation, as rules applicable to those lenders will be codified in new Chapter 17, to be proposed shortly. The Department also proposes to amend the definitions of “branch office,” “closed end loan,” “correspondent mortgage banker,” “depository institution,” “first mortgage loan,” “licensing period,” “license period,” and “secondary mortgage loan” to conform to the RMLA. The amendments to the definition of “first mortgage loan,” although deleting the reference to real estate “a portion of which may be used for nonresidential purposes,” do not represent a change of position on the part of the Department because it believes that the definition of “residential mortgage loan” includes a mortgage loan on such a property. The Department also proposes to amend the definition of “originate” to include the offering to make a residential mortgage loan in order to clarify that solicitation activity with respect to such loans that occurs prior to the taking of an application, including advising on loan terms such as rates, fees and other costs, may only be conducted by persons licensed under the Act. In the proposed amendments to N.J.A.C. 3:15-1.3, the requirement for a New Jersey place of business is deleted and in its stead each licensee is required to maintain a principal office,

whether in New Jersey or another state. Requirements under N.J.A.C. 3:15-1.3 for a suitable location for in-State offices where licensees have direct contact with consumers is largely unchanged, while the requirements for out-of-State offices where such contact occurs seek to ensure a consumer's right to privacy regarding conversations and documents involving personal financial information. N.J.A.C. 3:15-1.3 is also amended to require licensees with more than one licensed location to identify one office as a principal office and to require the business licensee to advise the Commissioner of any change in such designation. N.J.A.C. 3:15-1.5 is amended to delete the reference to permitting four authorities under the Licensed Lenders Act, as that Act has been supplanted by the RMLA in regards to residential mortgage lending and related activities. N.J.A.C. 3:15-1.7 has been amended to provide for the availability of individual licenses for inspection and the display of business licenses at the place of business. Proposed new N.J.A.C. 3:15-1.8 gives the Commissioner wide authority, pursuant to the RMLA, to coordinate with the nationwide system and registry and facilitate its operation.

Subchapter 2 amendments include who must be licensed and exemptions to licensure. Amended N.J.A.C. 3:15-2.1 addresses requirements for both business and individual licensees and reflects the RMLA language regarding the relationship between a mortgage loan originator and the business licensee. This section also specifies that a qualified individual licensed as a mortgage lender or broker may act as an originator without obtaining a separate license. Amended N.J.A.C. 3:15-2.2 sets forth the submissions necessary for licensure as a business licensee, including a criminal history record background check of officers, directors, partners, limited liability company members and managers and shareholders owning 10 percent or more of the business entity; FBI and New Jersey State Police fingerprint checks; an executed bond, financial audit, and statement demonstrating tangible net worth; the non-refundable application

fee; and a certification that the applicant's principal office complies with these rules. New N.J.A.C. 3:15-2.3 sets forth the submissions necessary for licensure as a qualified individual licensee or mortgage loan originator. Pursuant to the RMLA, these include a credit report, a criminal history record background check and evidence of completion of the education requirement. Applications for licensure as a qualified individual licensee and a mortgage loan originator are not subject to the Rehabilitated Convicted Offenders Act. Hence certain convictions will statutorily disqualify the applicant unless a pardon has been granted. Costs for criminal history record background checks, credit reports and all required fees will be established by the outside agencies involved, such as the FBI, the New Jersey State Police or a credit reporting agency. Current N.J.A.C. 3:15-2.3 through 2.8 are proposed to be recodified as N.J.A.C. 3:15-2.4 through 2.9. Current N.J.A.C. 3:15-2.3 is also proposed to be amended to remove certain requirements applicable to New Jersey branch offices. The proposed suitable branch location requirements incorporate and cross-reference the provisions in N.J.A.C. 3:15-1.3. Amended N.J.A.C. 3:15-2.5 addresses applications for renewal of a business license. The application shall include a demonstration of tangible net worth as required pursuant to these rules. Amended N.J.A.C. 3:15-2.6 governs renewal of branch licenses, while amended N.J.A.C. 3:15-2.7 permits late renewal of a business or branch license, provided that the late renewal occurs no later than the end of February immediately after the expiration date, and establishes a penalty for late filing of \$600.00 per business license and \$500.00 per branch license. A renewal application submitted after the end of February immediately after the expiration date shall be treated as a new application. The amendments to N.J.A.C. 3:15-2.7 make clear that the Department may impose fines and penalties against anyone engaged in a licensed activity who does not possess a current appropriate license. Amended N.J.A.C. 3:15-2.8 permits formerly

licensed qualified individual licensees or mortgage loan originators in good standing to apply to reactivate their license for up to five years. Applications to reactivate may be made pursuant to the format and standards of the NMLS&R and upon completion of continuing education in a number of hours that would have fulfilled the continuing education requirement from the last calendar year in which the individual was licensed. With the exception of the prelicensure education and examination requirements, applicants for reactivation would have to fulfill all of the other qualifications for licensure. Amended N.J.A.C. 3:15-2.8 deletes the subsections containing provisions for different types of inactive licenses and combines them into one subsection. It also deletes the permitted inactive period of three two-year license periods and replaces it with a maximum five year inactive period and requires that inactive individual licensees meet continuing education requirements to be eligible for reactivation. These requirements are established in the RMLA.

Proposed N.J.A.C. 3:15-2.9 outlines the submissions necessary for conversion from one type of license to another. The proposed amendments to this section include replacing references to the Licensed Lenders Act authorities with the names of the new license types and deleting the reference to mortgage solicitors. The amendments also impose the requirement that applicants for conversion to a mortgage lender or correspondent mortgage lender demonstrate the tangible net worth required for each license by RMLA.

Proposed N.J.A.C. 3:15-2.10 establishes pre-licensing education requirements for mortgage loan originators and qualified individual licensees as required by the SAFE Act and the RMLA. Pre-licensing education includes at least 20 hours of education from an approved NMLS&R provider; with a minimum of three hours of instruction on Federal statutes and regulations, three hours of instruction on ethics, and two hours of instruction related to lending

standards for the nontraditional mortgage product marketplace. Pre-licensing education requirements of another state that have been approved by the NMLS&R will be accepted as for credit towards completion of these requirements. N.J.A.C. 3:15-2.10, No waiver of examination, is proposed for repeal. New N.J.A.C. 3:15-2.11 sets forth the general scope of coverage of the Federal law and State licensing examinations for mortgage loan originators and qualified individual licensees. The tests developed shall include at a minimum: questions on federal and state statutes and regulations pertaining to mortgage loan origination; other federal and state statutes and rules regarding fraud, consumer protection, fair lending issues and the non-traditional mortgage product marketplace; and ethics. The qualified individual licensee test shall also include questions relating to employee supervision and office management as well as licensing and regulatory compliance issues. An applicant must receive a test grade of at least 75 percent correct answers on each written examination to obtain a passing score. The tests may be taken up to three consecutive times; applicants who fail to pass shall not take a subsequent consecutive test until at least 30 calendar days have passed since the preceding test date. Applicants who do not pass after three consecutive attempts must wait at least six months before taking the test again. N.J.A.C. 3:15-2.11, failure to pass the examination, is proposed for repeal. New N.J.A.C. 3:15-2.12 establishes continuing education requirements for renewal as a mortgage loan originator or qualified individual licensee of at least 12 hours, including three hours of instruction on Federal statutes and regulations, two hours of instruction on ethics, and two hours of instruction related to lending standards for the non-traditional mortgage product marketplace. The rule establishes the timeframes for completing the continuing education courses and the circumstances under which an approved instructor-licensee or an applicant who took a course in another state may receive credit.

Amended N.J.A.C. 3:15-2.13 mandates that a business licensee notify the Commissioner within 10 days of the revocation, suspension or lapse of the qualified individual's license and that the business licensee must appoint another qualified individual licensee within 60 days. The proposed amendments to N.J.A.C. 3:15-2.14 delete the procedure for registration of mortgage solicitors under the Licensed Lenders Act and establish new requirements addressing applications for renewal of mortgage loan originator or qualified individual licenses, while new N.J.A.C. 3:15-2.15 regulates late renewal of individual licenses and the penalties for late filing. Current N.J.A.C. 3:15-2.15 and 2.16 are recodified as N.J.A.C. 3:15-2.17 and 2.18. Recodified N.J.A.C. 3:15-2.16 establishes the procedure for submission of an application for approval of a sale or transfer or change of control of a business licensee and requires the submission of a complete application at least 90 days prior to the anticipated sale date. Each new officer, director, manager or member of an LLC, partner or owner as well as any individual who now owns at least 10 percent of the business, shall be subject to a criminal background check, including fingerprinting and a credit check. Certain criminal convictions are not subject to the Rehabilitated Convicted Offenders' Act and will result in a statutorily mandated disqualification to serve as a principal unless a pardon has been granted. As proposed to be amended, recodified N.J.A.C. 3:15-2.17 expressly permits the Department to proceed against the licensee's bond if there are any outstanding assessments due and owing when a business licensee ceases to operate. Recodified N.J.A.C. 3:15-2.18 sets forth requirements on licensee notifications to the Department when a potentially disqualifying event occurs.

Subchapter 3 – N.J.A.C. 3:15-3.1 establishes that mortgage lenders or mortgage brokers seeking an initial license must obtain a \$150,000 surety bond. Surety bond amounts for each subsequent year are based on closed loan volumes as outlined in the rule. The proposed

amendment deleting the number of applications taken by brokers as the basis for determining bond amounts is based on the RMLA. The increase in the initial bond amount is within the parameters established by the Act and is based on the provision that eliminates the separate secondary lender authority and allows all licensees to handle secondary loans. The remainder of the amendments to this subchapter primarily conform the licensee terminology in the existing rules to the new terminology established by the RMLA.

Subchapter 4 – N.J.A.C. 3:15-4.1 provides that all fees associated with licensing are to be paid electronically via the nationwide mortgage registry and licensing system. N.J.A.C. 3:15-4.2 is repealed. The new fee amounts are permissible under the Act and are proposed in subsections (b) and (c) under N.J.A.C. 3:15-4.1. Initial license application fees are proposed to be as follows: business - \$1,200; each branch office - \$1,000; qualified individual - \$500.00; qualified individual who changes affiliations - \$250.00; mortgage loan originator - \$150.00; and mortgage loan originator who changes affiliations - \$50.00. Business entities licensed under the Licensed Lenders Act that apply for licensure under the RMLA as mortgage lenders or mortgage brokers by July 31, 2010 are proposed to be charged application fees of \$600.00 for each existing business and \$100.00 for each existing branch office for which licensure is sought. The NMLS&R will establish its own set of charges on licensees for use of the nationwide system and registry.

Subchapter 5 – Amended N.J.A.C. 3:15-5.3 establishes tangible net worth requirements in the rules for business licensees as follows: residential mortgage lender - \$250,000; correspondent mortgage lender - \$150,000; and residential mortgage broker - \$50,000. These amounts are prescribed in the RMLA.

Subchapter 6 – Amended N.J.A.C. 3:15-6.3 requires that licensees shall preserve all books, records, accounts and documents related to the business for three years from the date of closed entry and that all books, records, accounts and documents may be maintained electronically, so long as they can be reproduced either electronically or on paper and delivered to the Department within five days of a business licensee’s receipt of a request from the Department to produce the records. Records retention practices previously codified at N.J.A.C. 3:15-6.10 are recodified in this section and specifically provide that in the case of a licensee that ceases to do business, the Commissioner may elect to store abandoned books, accounts and records and make a claim against the bond for costs of moving and storage. Amended N.J.A.C. 3:15-6.11 authorizes the Commissioner to charge an hourly rate of \$50.00 per hour for Departmental investigations of unlicensed persons. N.J.A.C. 3:15-6.12 is amended to provide that the annual reports of business licensees under the RMLA shall be filed no later than May 1 of each year whereas it is currently April 1. The proposed later date will make it easier for licensees and their accountants to comply because the weeks prior to the April 15 Federal Income Tax filing deadline are typically extremely busy for accountants, with the demands on their time making coordination between licensees and their accountants to prepare annual reports in late March very difficult. The balance of amendments to this subchapter primarily conform the licensee terminology to reflect the terminology in the RMLA, clarify the rules and renumber them.

Subchapter 7 – Amendments to this subchapter primarily conform the licensee terminology to reflect the terminology in the RMLA and remove the distinction between first and secondary mortgage lenders.

Subchapter 8 – Amendments to this subchapter require the inclusion of the NMLS&R-assigned unique identifier in all advertisements by licensees, address false, misleading or deceptive claims or misrepresentations, include a provision stating that, unless exempt, only persons licensed under the Act may offer residential mortgage loans through advertisements or direct or indirect solicitations, and provide for the use of approved alternate names.

Subchapters 9 and 10 - Amendments to these subchapters primarily conform the licensee terminology to reflect the terms used in RMLA and delete those provisions applicable to sales finance and consumer lender activities. Those rules will be recodified through a subsequent proposal. Subchapter 11 is repealed in its entirety and reserved.

Miscellaneous amendments are also included as part of this rulemaking in response to the regulatory changes required by the RMLA. The Department proposes to amend N.J.A.C. 3:1-7.4 and 7.6 to delete the references to the now out-of-date term “licensed lenders.” In N.J.A.C. 3:1-7.6, the Department proposes to add the new term of “business licensee” under RMLA and also reference “licensees” under the CFLA. In general, these sections require the licensee to keep the Department up to date on address changes and also address the penalties for late filing of annual reports or payments of assessments. The underlying requirements are unchanged by the proposed language updates.

The Department proposes to amend in N.J.A.C. 3:1-16.1 the definition of “mortgage loan” to conform it to the definition in the RMLA and repeal N.J.A.C. 3:1-16.11 regarding certain operative dates under the Licensed Lenders Act. The Department also proposes to change the terms “mortgage banker” to “mortgage lender,” “correspondent mortgage banker” to “correspondent mortgage lender,” and correct the statutory citations where needed in the subchapter in several definitions. As to N.J.A.C. 3:3-2.1, the Department proposes to add an

additional paragraph, N.J.A.C. 3:3-2.1(a)10, to ensure that certain information shared with the NMLS&R is exempt from the category of public records under N.J.S.A. 47:1A-1 et seq.

As to N.J.A.C. 3:23, the Department proposes to amend N.J.A.C. 3:23-2.1 to delete the reference to licensed lenders under the Licensed Lenders Act, and replace it with references to the new Consumer Finance Licensing Act and Residential Mortgage Lending Act. These changes reflect the statutory changes in P.L. 2009, c. 53 and associated rule changes. The subsection is also proposed to be amended to delete the statutory references setting the annual report dates for check cashers, insurance premium finance companies and pawnbrokers because these statutes were amended several years ago to provide for the date to be set by rule. Lastly, the Department proposes to amend N.J.A.C. 3:23-4.1 to provide that the annual reports of business licensees under the RMLA shall be filed no later than May 1 of each year whereas it is currently April 1. These proposed changes conform N.J.A.C. 3:23-4.1 to conform it to N.J.A.C. 3:15-6.12 as proposed for amendment in this proposal.

This rule proposal provides for a comment period of 60 days, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The rule proposed amendments, repeals and new rules will apply to all mortgage lenders, mortgage brokers, qualified individual licensees and mortgage loan originators licensed under the RMLA. The proposed amendments, repeals and new rules reflect the heightened regulation of businesses and individuals in the residential mortgage industry, and implement recent revisions to the mortgage lending regulatory process mandated by the SAFE Act and RMLA.

The proposed amendments, repeals and new rules with their enhanced licensing qualifications and education requirements realize the intent of the RMLA “to protect consumers seeking mortgage loans and to ensure that the mortgage lending industry operates without unfair, deceptive, and fraudulent practices” and should, therefore, have a positive social impact.

Economic Impact

The proposed amendments, repeals and new rules require natural person applicants for licenses to complete pre-licensing education; pass written Federal and State law license examinations; and complete annual continuing education requirements as a precondition to license renewal. In addition, individual licensees will be subject to a State and Federal criminal history record background check, credit reporting and other disclosure requirements. Individual licensees will incur costs to comply with these new requirements imposed by the RMLA and these amended and new rules. Mandatory participation in the nationwide registry will include costs for utilizing that system as established by the NMLS&R. All licensees will be required to pay non-refundable application fees as well as penalties for late renewals in the amounts set forth in the proposal and permissible under the RMLA. Mortgage solicitors, who were only subject to a registration requirement under the Licensed Lenders Act, will now be required to obtain licensure under the RMLA as mortgage loan originators in order to continue to do business.

Business licensees will likewise incur costs to comply with the proposed amendments. Increased bond amounts and tangible net worth requirements mandated by the RMLA and set forth in these proposed amendments and new rules will further protect consumers but will cause licensees to incur additional costs. Mortgage loan originators may only be employed by one business licensee at a time and the business licensee’s bond will cover all of its mortgage loan

originators and the qualified individual licensee. The NMLS&R will establish its own fees for use of the nationwide registry by business licensees. In order to continue to fund secondary residential mortgage loans, current licensees with only secondary lender authority will have to be licensed under the RMLA as residential mortgage lenders and incur the costs of fulfilling the requirements for licensure as such, including providing proof of the required level of tangible net worth. The Department believes the costs related to these enhanced licensing requirements are outweighed by the benefits received by the public. Moreover, the new licensing requirements, application fees and penalties for late renewal are mandated by the provisions of the RMLA.

In addition, business principals will be subject to criminal background checks, including fingerprinting. Some current principals and currently licensed individuals and registered mortgage solicitors who have a criminal history may be ineligible for licensure because, pursuant to the RMLA, the provisions of the Rehabilitated Convicted Offenders Act are inapplicable to such principals and to applicants for licensure. Such a disqualification would have a substantial economic impact upon a business licensee with such a principal, an individual currently licensed under the Licensed Lenders Act or a registered solicitor if they were barred from the residential mortgage business due to a disqualifying conviction.

Federal Standards Analysis

The Federal “Secure and Fair Enforcement for Mortgage Licensing Act of 2008,” Title V of Pub. L. 110-289 (12 U.S.C. §§5101 et seq.) provides new, heightened protections to consumers throughout the residential mortgage lending process including pre-licensing education, national and State law testing requirements and continuing education for individual licensees.

The requirements of these proposed amendments, repeals and new rules exceed Federal standards only in the area of continuing education requirements. The SAFE Act establishes minimum annual continuing education requirements of eight hours per individual licensee, and permits states to exceed this minimum. The RMLA establishes minimum annual continuing education requirements of 12 hours per individual licensee and the higher standards of the RMLA are reflected in this rulemaking. Therefore, the Federal standards are exceeded in the proposed amendments and new rules in order to comply with the RMLA and carry out the clear intent of the New Jersey Legislature that licensees under RMLA complete 12 hours of annual continuing education in order to better protect New Jersey consumers.

Lastly, certain definitions contained in 15 U.S.C. §§1601 and 1605; section 603(p) of the Fair Credit Reporting Act, Pub. L. 91-508 (15 U.S.C. §1681a(p)); section 103(v) of the Truth in Lending Act, Pub. L. 90-321 (15 U.S.C. §1602(v)); section 5.7 of the “Farm Credit Act of 1971,” Pub. L. 92-181 (12 U.S.C. §2241); section 101 (53D) of Title 11, United States Code (11 U.S.C. §101 (53D)) and section 3 of the “Federal Deposit Insurance Act,” (12 U.S.C. §1813) are incorporated by reference in the proposed amended rules, making the scope of these definitions as set forth in the proposed amended rules the same as those imposed by Federal standards.

Jobs Impact

The Department anticipates that jobs will both be generated and lost as a result of the proposed amendments, repeals and new rules. Business and individual licensees whose background includes disqualifying criminal convictions will not be eligible for licensure under these proposed amended and new rules and the provisions of the RMLA. Therefore, some current licensees and registrants may be ineligible for licensure under the new Act and these

rules. New jobs may be generated for new licensees who take the place of ineligible individuals and for pre- and post- licensure education instructors. Also, jobs for compliance personnel may increase because of the enhanced licensing requirements.

The Department invites commenters to submit any data or studies concerning jobs impact of the proposed amendments together with written comments on other aspects of this proposal.

Agriculture Industry Impact

The Department does not expect any agriculture industry impact from the proposed amendments, repeals and new rules.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act, N.J.S.A. 52:14B-1 et seq., defines a “small business” as any business resident in this State that employs fewer than 100 full-time employees is independently owned and operated and is not dominant in its field. Many of the business licensees affected by the proposed amendments, repeals and new rules are small businesses.

The proposed amendments, repeals and new rules will continue to impose recordkeeping, reporting and other compliance requirements on these entities, as discussed in the Summary above. Some business licenses may choose to use the services of outside professionals, such as business trainers, compliance experts or attorneys, for assistance with meeting the new standards. The costs for this will vary based on the professional chosen and the amount of work requested. See the Economic Impact above.

The proposed amendments and new rules require licensees to operate in a manner that is responsible to the industry, their customers and the general public, consistent with the mandates

of the RMLA and the Federal SAFE Act. The Department does not believe that these requirements are unduly burdensome; rather, they are consistent with prudent regulatory practices. The purpose of these requirements providing important upgraded consumer protection does not vary based upon business size. Accordingly, no differentiation based on business size is provided.

Smart Growth Impact

The proposed amendments, repeals and new rules will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The proposed amendments, repeals and new rules will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the amendments, repeals and new rules would evoke a change in the average costs associated with housing because the proposed amendments, repeals and new rules concern the activities of licensing and regulation of residential mortgage lenders, brokers and mortgage loan originators.

Smart Growth Development Impact

The proposed amendments, repeals and new rules will have an insignificant impact on smart growth and there is an extreme unlikelihood that the amendments, repeals and new rules would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the

proposed amendments, repeals and new rules concern the activities of licensing and regulation of residential mortgage lenders, brokers and mortgage loan originators.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 3:1-16.11, and 3:15-2.10, 2.11, 4.2, 6.8, 6.10, 6.11, 6.13, 10.3 and 11.1.

Full text of the proposed amendments and new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 1

GENERAL PROVISIONS

SUBCHAPTER 7. MISCELLANEOUS

3:1-7.4 Address and official e-mail address change

(a) [Licensed lenders and each] **Each** licensee referenced in N.J.A.C. 3:23-2.1[(b)] that changes a licensed business address at any time shall, within 10 days of the change, submit information relative to the address change to the Commissioner, and surrender the affected license or licenses; except that pawnbrokers, check cashers and insurance premium finance companies shall comply with the provisions of N.J.A.C. 3:16-1.6, 3:24-1.5(h), or N.J.S.A. 17:16D-4, respectively. Licensees submitting a notice of change of address pursuant to this section shall submit their license or licenses for the issuance of the new license reflecting the change. Within 30 days of receipt of the notice of change of address and all documentation necessary to effectuate the change, the Commissioner shall issue a new license or licenses that reflect the change. With the exception of check cashers, while the licensee is awaiting the

issuance of the license or licenses reflecting the new address, the licensee may continue in business, provided that all documentation is supplied, unless the licensee receives notice of suspension or revocation, or unless the licensing period if any, expires.

(b) [Licensed lenders and each] **Each** licensee referenced in N.J.A.C. 3:23-2.1[(b)] that changes its official e-mail address shall, within 10 days of the change, notify the Department in writing of such a change. The written notice shall be supplied on letterhead signed by an officer of the licensed entity and include the full name of the entity, its old e-mail address, its new e-mail address and the effective date of the change. The notice shall be sent to: New Jersey Department of Banking and Insurance, Division of Banking, Attention: Office of Consumer Finance, 20 West State Street, P.O. Box 040, Trenton, New Jersey 08625-0040.

3:1-7.6 Penalty for late filing of annual reports and/or late payment of assessments

(a) [Licensed lenders] **Business licensees under the New Jersey Residential Mortgage Lending Act, N.J.S.A. 17:11C-51 et seq. (RMLA), licensees under the New Jersey Consumer Finance Licensing Act, N.J.S.A. 17:11C-1 to 43 (CFLA)**, motor vehicle installment sellers, home repair contractors, home financing agencies, check cashers, money transmitters, debt adjusters, foreign money transmitters, pawnbrokers, insurance premium finance companies, or any other licensees who fail to file an annual report on a timely basis as specified below shall be subject to a penalty as specified in (c) below. With the exception of [licensed lenders] **licensees under RMLA and CFLA**, all [such] licensees who file applications to renew their license after the license expiration date shall be subject to a penalty of \$50.00. [Licensed lenders] **Business licensees under RMLA and licensees under CFLA** who file renewal license applications after the expiration of their licenses shall be subject to N.J.A.C.

3:15-[2.6] **2.7 and 3:17-17, respectively**, including any penalties specified therein. **Individual licensees under RMLA who file renewal license applications after the expiration of their license shall be subject to N.J.A.C. 3:15-2.15.**

1. Annual reports filed electronically will be deemed late if received after [April 1st] **the date set in N.J.A.C. 3:23-4.1** of the year following the calendar year covered by the annual report.

2. – 4. (No change.)

(b) A [licensed lender] **business licensee under the RMLA, a licensee under the CFLA**, motor vehicle installment seller, home repair contractor, home financing agency, check casher, money transmitter, debt adjuster, foreign money transmitter, pawnbroker, insurance premium finance company, and any other licensee that submits payment of the assessment imposed upon them pursuant to N.J.S.A. 17:1C-33 et seq. and N.J.A.C. 3:5 after the due date indicated on their assessment statement shall be subject to a penalty.

1. – 2. (No change.)

(c) – (e) (No change.)

SUBCHAPTER 16. MORTGAGE LOANS, FEES, OBLIGATIONS

3:1-16.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

...

“Broker” means any mortgage broker as that term is defined in N.J.S.A. 17:11C-[2] **53** or any lender when accepting and processing a mortgage loan application on behalf of a lender which will issue the commitment or loan denial.

...

“Lender” means a State or Federally-chartered bank, savings bank, savings and loan association, credit union, or a mortgage [banker] **lender** or correspondent mortgage [banker] **lender** as defined in N.J.S.A. 17:11C-[2].

...

“Mortgage loan” means any closed-end loan to a borrower which is secured by a first mortgage on real property located in New Jersey on which there [is a] **are** one to [six family] **four** dwelling **units**, a portion of which may be used for nonresidential purposes.

...

3:1-16.3 Application process

(a) Before a lender or broker accepts any application fee in whole or in part, any credit report fee, appraisal fee or any fee charges as reimbursement for third party fees, the lender or broker shall make written disclosure to the borrower (which disclosure may be contained in the application) as required by this section or N.J.A.C. 3:1-16.10, respectively, setting forth:

1. – 5. (No change.)

6. For correspondent mortgage [bankers] **lenders**, a statement indicating that the licensee is a correspondent mortgage [banker] **lender** and as such does not hold mortgage loans or service mortgage loans for more than 90 days in the regular course of business.

(b) – (e) (No change.)

CHAPTER 3

DEPARTMENT ORGANIZATION

SUBCHAPTER 2. NONPUBLIC RECORDS

3:3-2.1 Nonpublic records

(a) Throughout the Department of Banking and Insurance, the following shall not be deemed to be public records pursuant to N.J.S.A. 47:1A-1 et seq.:

1. – 7. (No change.)

8. Personal or pension records of an individual employed by the Department, except that the following shall be deemed public records:

i. (No change.)

ii. Data contained in information which disclosed conformity with specific experimental, educational or medical qualifications required for government employment or for receipt of a public pension, but in no event shall detailed medical or psychological information be released; [and]

9. Personal or pension records of an employee, officer, director or other person affiliated with a financial institution, such as the residence address. Residence telephone number, salary or social security number, when such information is contained in any report, filing or record held by the Department[;]; and

10. Information provided to the Nationwide Mortgage Licensing System and Registry pursuant to the New Jersey Residential Mortgage Lending Act identifying an applicant's or licensee's social security number, home address, and home telephone number.

- (b) (No change.)

CHAPTER 15

[LICENSED LENDERS:] **RESIDENTIAL** MORTGAGE [BANKERS] **LENDERS**;
 CORRESPONDENT MORTGAGE [BANKERS] **LENDERS**; MORTGAGE BROKERS;
 [SECONDARY LENDERS; CONSUMER LENDERS AND SALES FINANCE COMPANIES]
QUALIFIED INDIVIDUAL LICENSEES; MORTGAGE LOAN ORIGINATORS

SUBCHAPTER 1. GENERAL PROVISIONS

3:15-1.1 Purpose and scope

(a) This chapter implements the New Jersey [Licensed Lenders] **Residential Mortgage Lending** Act, N.J.S.A 17:11C-[1] **51** et seq.

(b) This chapter shall apply to [all licensed lenders with mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender, consumer lender and/or sales finance company authority or authorities and registered mortgage solicitors] **residential mortgage lenders, correspondent mortgage lenders, residential mortgage brokers, qualified individual licensees and mortgage loan originators licensed under the Act** and those whose activities require they be licensed [or registered].

3:15-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meaning unless the context clearly indicates otherwise.

“Act” means the “New Jersey [Licensed Lenders] **Residential Mortgage Lenders** Act,” N.J.S.A. 17:11C-[1] **51** et seq.

“Alternate name” means an alternate name **of a licensed person other than an individual** registered pursuant to N.J.S.A. 14A:2-2.1(2) or 42:2B-4b.

“Application” means the document or documents or information, including the payment of any fees, that a particular lender or broker requires a borrower to submit for the purpose of having the lender or broker begin to process the **mortgage** loan document or documents to determine whether to grant or deny a loan.

[“Authority” means one of the activities permitted for a licensee pursuant to the Act: either mortgage banker, correspondent mortgage banker or mortgage broker; secondary lender; consumer lender; or sales finance business.

“Billing cycle” means the time interval between periodic billing dates. A billing cycle shall be considered monthly if the closing date of the cycle is the same date each month or does not vary by more than four days from such date.]

“Branch office” means any location where, in the regular course of business, applications for [first] mortgage loans , second mortgage loans, consumer loans or sales finance contracts] are distributed to or received from consumers, loan records are maintained, underwriting decisions are made, commitments or lock-in agreements are issued, or any fees or charges relating to the loan are received from consumers.

1 – 3. (No change.)

[4. A principal or branch office of a bank, savings bank, savings and loan association or credit union shall not also constitute a branch office of a licensee merely because the bank, savings bank, savings and loan association or credit union distributes or receives applications of the licensee at the principal or branch office.]

[5.] **4.** A licensed real estate office of a person licensed as a real estate broker or salesman pursuant to N.J.S.A. 45:15-1 et seq., does not constitute a branch **office** of [an entity licensed as a mortgage banker, correspondent mortgage banker or mortgage broker under the Act] **a business licensee** merely because the real estate broker or salesman distributes or receives an application of the [entity licensed as a mortgage banker, correspondent mortgage banker or mortgage broker] **business licensee** at that office, or because [an entity licensed as a mortgage banker, correspondent mortgage banker or mortgage broker under the Act] **a business licensee** or a [solicitor] **mortgage loan originator** of that licensee who does not hold himself out to the public as performing [mortgage banking, correspondent mortgage banking, or] **mortgage lending or** mortgage brokering there, and does not maintain an office or desk there, meets **prospective borrowers** at the office of the real estate broker as a convenience to the borrower and distributes or receives applications or fees there.

“Business licensee” means a corporation, association, joint venture, partnership, limited liability company, limited liability partnership, sole proprietorship, or any other legal entity, however organized, permitted under the laws of this State, that is licensed as a residential mortgage lender or residential mortgage broker, or that should be so licensed.

“Clerical or support duties” means and includes: the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; or communicating with a borrower to obtain the information

necessary for the processing or underwriting of a residential mortgage loan, to the extent that the communication does not include offering or negotiating loan rates or terms, or counseling borrowers about loan rates or terms. The term “clerical or support duties” does not include making representations to the public, through advertising or other means of communicating or providing information, such as through the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, indicating that a person can or will perform any of the activities of a licensee under the Act or of a person exempt from licensure pursuant to the Act or rules.

“Closed-end loan” with respect to a secondary mortgage loan means a **mortgage** loan pursuant to which the **business** licensee advances a specified amount of money and the borrower agrees to repay the principal and interest in substantially equal installments over a stated period of time, except that: the amount of the final installment payment may be substantially greater than the previous installments if the term of the loan is at least 36 months, or under 36 months if the remaining term of the first mortgage loan is under 36 months; or the amount of the installment payments may vary as a result of the change in the interest rate as permitted by the Act. [“Closed-end loan” with respect to a consumer loan means a loan pursuant to which the licensee advances a specified amount of money and the borrower agrees to repay the principal and interest in substantially equal installments over a stated period of time and which meets the requirements of N.J.S.A. 17:11C-35.]

...

[“Consumer lender” means a person licensed, or a person who should be licensed, under the Act to engage in the consumer loan business.

“Consumer loan” means a loan of \$50,000 or less made by a consumer lender pursuant to the terms of the Act, and not a first mortgage loan or a secondary mortgage loan.

“Consumer loan business” means the business of making loans of money, credit, goods or things in action in the amount of value of \$50,000 or less and charging, contracting for, or receiving a greater rate of interest, discount or consideration therefore than the lender would be permitted by law to charge if he or she were not a licensee hereunder, except as authorized by the Act and without first obtaining a license from the Commissioner. Any person directly or indirectly engaging in the business of soliciting or taking applications for such loans of \$50,000 or less, or in the business or negotiating or arranging or aiding the borrower or lender in procuring or making such loans of \$50,000 or less, or in the business of buying, discounting or indorsing notes, or of furnishing, or procuring guarantee or security for compensation in amounts of \$50,000 or less, shall be deemed to be engaging in the consumer loan business.]

...

“Correspondent mortgage [banker] **lender**” means a **residential** mortgage [banker] **lender** who:

1. (No change.)
2. Has shown to the Department's satisfaction an ability to fund **mortgage** loans through warehouse agreements, table funding agreements or otherwise.

...

“Depository institution” means [any entity holding a state or Federal charter for a bank, savings bank, savings and loan association or credit union, irrespective of whether the entity

accepts deposits] **a “depository institution” as defined in section 3 of the “Federal Deposit Insurance Act,” 12 U.S.C. §1813, and also means any credit union.**

“Direct contact” means in-person contact, and contact by means of a telephone, computer terminal, [internet] **Internet** or other electronic means during which contact, in the regular course of business, applications for first mortgage loans[, **or** second mortgage loans[, consumer loans or sales finance contracts] are distributed to or received from consumers, underwriting decisions are made, commitments or lock-in agreements are issued, or any fees or charges relating to the loan are authorized.

...

“Federal banking agency” means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, or the Federal Deposit Insurance Corporation, or any of their successor agencies.

“First mortgage loan” means [any loan secured by] a [first] **residential** mortgage **loan** [on real property on a one to six family dwelling, a portion of which may be used for nonresidential purposes] **secured in whole or in part by any interest in residential real estate which is not subject to any prior or superior mortgage lien.**

“Immediate family member” means a spouse, domestic partner as defined in N.J.S.A. 26:8A-3, partner in a civil union couple as defined in N.J.S.A. 37:1-29, parent, stepparent, grandparent, sibling, stepsibling, child, stepchild, and grandchild, as related by blood or by law.

“Individual” means a natural person.

“Individual licensee” means a natural person licensed as a qualified individual licensee for a residential mortgage lender or residential mortgage broker, correspondent mortgage lender or a mortgage loan originator.

...

“Lender” means a [bank, savings bank, savings and loan association, credit union, mortgage banker, correspondent mortgage banker, secondary lender, consumer lender, sales finance company or any other person who originates loans in this State] **residential mortgage lender.**

...

“License or licensing period” means the [two-year period beginning on July 1 of each odd numbered year and ending on June 30 of the next odd numbered year] **one-year calendar period beginning January 1, 2011 and each succeeding calendar year.**

[“Licensed lender” or “licensee” means a person who is licensed pursuant to the Act with one or more authorities.]

“Licensee” means a legal entity or individual who is licensed under the Act.

[“Liquid assets” means cash, marketable securities, and accounts receivable.]

“Loan processor” or “loan underwriter” means an individual who performs clerical or support duties as an employee, at the direction of and subject to the supervision and instruction of a licensee under the Act or a person exempt from licensure.

“Lock-in agreement” means an agreement between the lender and the borrower whereby the lender guarantees until a specified date the availability of a specified rate of interest or time price differential or specified formula by which the rate of interest or time price differential will

be determined and/or specific number discount points, provided the loan is approved and closed by the specified date. If a specified date is not determinable, the lender may fulfill the requirement of this provision by setting forth with specificity the method by which the duration of the lock-in period will be determined. The term "lock-in agreement" does not include [as] an agreement to fix the rate executed three or fewer calendar days before closing where appropriate disclosures have been made under the provisions of this chapter **and N.J.A.C. 3:1-16.2.**

...

["Mortgage banker" means any person, not exempt under section 4 of the Act and licensed pursuant to the provisions of the Act, and any person who should be licensed pursuant to the provisions of the Act, who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly originates, acquires or negotiates first mortgage loans in the primary market.

"Mortgage broker" means any person, not exempt under section 4 of the Act and licensed pursuant to the provisions of the Act, and any person who should be licensed pursuant to the provisions of the Act, who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly negotiates, places or sells for others or offers to negotiate, place or sell for others, first mortgage loans in the primary market.

"Mortgage loan" means any loan secured by a mortgage on real property on a one- to six-family dwelling, a portion of which structure may be used for nonresidential purposes.]

"Mortgage loan originator" or "originator" means any individual not exempt under section 5 of the Act and licensed pursuant to the provisions of the Act, and any individual who should be licensed pursuant to the provisions of the Act and this chapter who, for

compensation or gain, or in the expectation of compensation or gain, either directly or indirectly takes a residential mortgage loan application, or offers or negotiates terms of a residential mortgage loan. The term “mortgage loan originator” does not mean an individual:

1. Who is a qualified individual licensee for a residential mortgage lender or residential mortgage broker;

2. Engaged solely as a loan processor or underwriter, except as provided in section 4 of the Act; or

3. Engaged solely in extensions of credit relating to timeshare plans, as defined in section 101 (53D) of Title 11, United States Code (11 U.S.C. §101 (53D)).

[“Mortgage solicitor” means any person not licensed as a mortgage banker, correspondent mortgage banker, or mortgage broker who is employed as a solicitor by one, and not more than one, licensee, who is subject to the direct supervision and control of that licensee, and who solicits, provides or accepts first mortgage loan applications, or assists borrowers in completing first mortgage loan applications, and whose compensation is in any way based on the dollar amount or volume of first mortgage loan applications, first mortgage closings or other first mortgage loan activity.]

“Nationwide Mortgage Licensing System and Registry” (NMLS&R) or “nationwide system and registry” means the mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, or their successors, and utilized for licensing and registering residential mortgage lenders and residential mortgage brokers as business licensees in

accordance with the Act, and residential mortgage lenders and brokers as qualified individual licensees and mortgage loan originators as required pursuant to the Federal “Secure and Fair Enforcement for Mortgage Licensing Act of 2008,” Title V of Pub. L. 110-289 (12 U.S.C. §§5101 et seq.)

“Nontraditional mortgage product” means any mortgage product other than a 30-year fixed rate residential mortgage loan.

“Open-end loan” means a secondary mortgage loan made by a [secondary] **residential mortgage** lender [or a consumer loan made by a consumer lender] pursuant to a written agreement with the borrower whereby:

1. The [secondary lender or consumer] lender may permit the borrower to obtain advances of money from the [secondary lender or consumer] lender from time to time or the [secondary lender or consumer] lender may advance money on behalf of the borrower from time to time as directed by the borrower;

2. – 4. (No change.)

“Originate” means to **offer or** commit to make a **residential** mortgage loan, or to close a **residential** mortgage loan in the name of the licensee.

“Person” means an individual, **sole proprietorship**, association, joint venture, partnership, limited partnership association, limited liability company, corporation, trust, or any other group of individuals however organized.

...

“Primary market” means the market wherein [first] **residential** mortgage loans are originated between a lender and a borrower, whether or not through a mortgage broker or other

conduit, and shall not include the sale or acquisition of a **residential** mortgage loan after [closing of] the [mortgage] loan **is closed**.

“Qualified individual licensee” means an individual licensed as a residential mortgage lender or residential mortgage broker, who is required to be so licensed pursuant to the Act as a condition for a person to be issued or to hold a license as a business licensee, and who:

- 1. Meets, at a minimum, the licensing criteria applicable to a mortgage loan originator; and**
- 2. Is an officer, director, partner, owner, or principal of the business licensee.**

[“Registration period” means the two-year period beginning on July 1 of each odd numbered year and ending on June 30 of the next odd numbered year.]

“Registered mortgage loan originator” means any individual who:

- 1. Is a mortgage loan originator and an employee of:**
 - i. A depository institution;**
 - ii. A subsidiary that is:**
 - (1) Owned and controlled by a depository institution; and**
 - (2) Regulated by a Federal banking agency; or**
 - iii. An institution regulated by the Farm Credit Administration established by section 5.7 of the “Farm Credit Act of 1971,” Pub. L. 92-181 (12 U.S.C. §2241), or its successor; and**

2. Is registered with, and maintains a unique identifier through the NMLS&R.

“Residential mortgage broker” or “mortgage broker” or “broker” means any person, not exempt under section 5 of the Act and licensed pursuant to the provisions of the Act, and any person who should be licensed pursuant to the provisions of the Act, who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly takes a residential mortgage loan application for others, or negotiates, places or sells for others, or offers to take an application for, negotiate, place or sell residential mortgage loans in the primary market for others. The term “residential mortgage broker” also means an individual who is a qualified individual licensee for a residential mortgage broker.

“Residential mortgage lender” or “mortgage lender” means any person, not exempt under this chapter and licensed pursuant to the Act and the provisions of this chapter, and any person who should be so licensed who, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly takes a residential mortgage loan application or offers, negotiates, originates, or acquires residential mortgage loans in the primary market. The term “residential mortgage lender” also means:

1. With respect to a business licensee, a correspondent mortgage lender, unless the provisions of this chapter clearly indicate otherwise; and

2. With respect to an individual licensee, an individual who is a qualified individual licensee for a residential mortgage lender.

“Residential mortgage loan” or “mortgage loan” means any loan primarily for personal, family, or household purposes that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a one-to-four family dwelling, as defined in section 103(v) of the Truth in Lending Act, Pub. L. 90-321 (15 U.S.C. §1602(v)), or residential real estate upon which is constructed or intended to be constructed a dwelling.

“Residential real estate” means any real property located in this State, upon which is constructed or intended to be constructed a one to four family dwelling as defined in section 103(v) of the Truth in Lending Act (15 U.S.C. §1602(v)).

...

["Sales finance company" shall have the meaning ascribed to that term in N.J.S.A. 17:16C-1.

“Secondary lender” means a person licensed, or a person who should be licensed, under the Act to engage in the secondary mortgage loan business.]

“Secondary mortgage loan” means a **residential mortgage** loan [made to an individual, association, joint venture, partnership, limited partnership association, limited liability company, trust, or any other group of individuals, however organized, except a corporation, which is] secured in whole or in part by a lien upon any interest in **residential** real [property] **estate**, [including, but not limited to, shares of stock in a cooperative corporation, created by a security agreement, including a mortgage, indenture, or any other similar instrument or document,] which [real property] is subject to one or more prior mortgage liens [and on which there is erected a structure containing one, two, three, four, five or six dwelling units, a portion of which structure

may be used for nonresidential purposes, except that the following loans shall not be subject to the provisions of this chapter:

1. A loan that is to be repaid in 90 days or less;
2. A loan that is taken as security for a home repair contract executed in accordance with the provisions of the Home Repair Financing Act, N.J.S.A. 17:16C-62 et seq.;
or
3. A loan that is the result of the private sale of a dwelling, if title to the dwelling is in the name of the seller and the seller has resided in the dwelling for at least one year, if the buyer is purchasing that dwelling for his or her own residence and, if the buyer, as a part of the purchase price, executes a secondary mortgage in favor of the seller].

["Secondary mortgage loan business" means advertising, causing to be advertised, soliciting, negotiating, offering to negotiate, offering to make or making a secondary mortgage loan in this State, whether directly or by any person acting for his or her benefit.]

...

["Time price differential" shall have the meaning of that term in N.J.S.A. 17:16C-1(*l*) and shall be computed as provided in N.J.S.A. 17:16C-41.]

"Third party [charges] fees" shall have the meaning of that term in N.J.A.C. 3:1-16.2.

...

"Unique identifier" means a number or other identifier assigned by the NMLS&R.

...

3:15-1.3 Office requirement

(a) A licensee[, except a licensee engaging solely in the sales finance company business,] shall maintain a [place of business in this State] **principal office**. [A licensee shall maintain a place of business in] **The maintenance of a principal office at which there will be no direct contact with New Jersey consumers shall not relieve the licensee of the obligation to maintain the confidentiality of any financial information in accordance with all applicable Federal and State laws and rules. A principal office where the licensee has direct contact with New Jersey consumers regarding residential mortgage loan origination or brokering shall be in** a suitable location as determined by the Commissioner.

1. The Commissioner shall consider the following factors in determining whether a location **in New Jersey at which there is direct contact with New Jersey consumers as referenced in (a) above** is suitable:

i. **The location shall have a space that may only be utilized for the purposes of the licensee's business and by the licensee and its employees, structured in such a way as to ensure the maintenance of a consumer's right to privacy with respect to conversations and documents involving personal and financial information;**

Recodify existing 1. – 4. as ii. – v. (No change in text.)

[5.] **vi.** [A] **In addition, a location in a** residence shall not be considered [a] suitable [location] unless [the applicant submits acceptable proof that] the office [would be] is separate from the residential area and conveniently accessible to all consumers through a separate business entrance. [Acceptable proof shall include at a minimum, a floor plan and related photographs depicting the necessary criteria set forth in (a)1 through 4 above.]

2. The Commissioner shall consider the following factors in determining whether an out-of-State location at which there is direct contact with New Jersey consumers as referenced in (a) above is suitable:

i. The location shall ensure the maintenance of a consumer's right to privacy with respect to conversations and documents involving personal and financial information; and

ii. The location of the out-of-State office shall comply with all applicable Federal, State and local laws in the state where the office is located.

3. Applicants for a business license shall certify, on a form as prescribed by the Commissioner, that the location of their principal office is in compliance with the requirements set forth in this subsection.

(b) A licensee may maintain more than one [place of business] **office** and shall secure a license for each [such] branch office as required by N.J.A.C. 3:15-[2.3] **2.4**.

(c) Each licensee that maintains more than one licensed office shall [designate] **identify** one licensed office as [the] **its** principal office. The designation of the principal office shall be [filed with the Commissioner] **made as part of the application for licensure as set forth in N.J.A.C. 3:15-2.2**. [Any] **Notice of a** change in the [designation] **location of the business licensee's principal office** shall be [filed] **entered into the NMLS&R** within 10 days of the effective date of the change. [If the filing is complete] **After the processing of the change has been completed**, the Commissioner shall issue a new license reflecting the new designation.

(d) A **business** licensee changing its name or changing the address of the principal office or any branch office shall comply with N.J.A.C. 3:1-7.1 and 7.4, as applicable.

[(e) A person licensed as a mortgage banker, correspondent mortgage banker, mortgage broker, or secondary lender shall notify the Department of every location, other than a principal or branch office, where the licensee distributes to the public advertising materials regarding available mortgage loan products in person to consumers on a regular basis.]

3:15-1.4 License name

(a) A **business** licensee may use alternate or trade names, and may change such name or names, in connection with business under the Act, following approval by the Commissioner and subject to the provisions of N.J.A.C. **3:1-7.1**, 3:15-1.5 and 1.6, and N.J.S.A. 17:11C-[22(a)] **75**.

(b) - (c) (No change.)

(d) In **residential mortgage** closing documents, a licensee shall use its true name plus the alternate or trade name that it used in its contacts with the consumer involved in the transaction.

3:15-1.5 License names permitted

(a) The number of alternate or trade names that may be used by a licensee in this State shall not exceed three, unless:

[1. The licensee is exercising four authorities under the Licensed Lenders Act and applies for a fourth alternate or trade name so that it may use one for each of the authorities;]

[2.] **1.** (No change in text.)

[3.] **2.** The licensee has, prior to November 4, 2002, been approved to use four or more alternate or trade names, in which case, the licensee may continue to use those names, but shall not be approved to use an additional alternate or trade name until the total number of alternate or trade names being used by that licensee is two or fewer, unless a larger number is permitted pursuant to (a)1 [or 2] above.

3:15-1.7 Display **and availability** of license

[Each sole proprietor, supervisory individual licensee, partnership, corporation or limited liability company shall conspicuously display its license at the principal New Jersey place of business] **Each business licensee shall post its license conspicuously at its principal office location. Each business licensee shall make the licenses of its qualified individual licensee(s) and mortgage loan originators available for inspection at the licensed office from which they operate.** Each branch office license shall be displayed at the branch office designated thereon. [All other individual licensees shall so display their licenses at the licensed office open to the public with which they are affiliated.]

3:15-1.8 Authority of the Commissioner to oversee implementation of the Act

(a) The Commissioner shall coordinate the processing of an applicant through the NMLS&R with the State licensing of the applicant on any matters deemed necessary for participation in the nationwide system and registry, including, but not limited to, electronic filings, information sharing and other activities that facilitate the operation of the nationwide system and registry.

(b) The Commissioner may investigate or examine any mortgage lender, mortgage broker, mortgage loan originator, qualified individual licensee or other person as necessary to determine eligibility for licensure and compliance with the Act and orders, rules and regulations issued thereunder and take such action as he or she deems appropriate based upon the results of any such investigation or examination consistent with the provisions of the Act and this chapter .

(c) The Commissioner may require any mortgage lender, mortgage broker, mortgage loan originator, qualified individual licensee or other person as necessary to make or compile reports or prepare other information as directed by the Commissioner for the purposes of implementing the RMLA.

SUBCHAPTER 2. LICENSING

3:15-2.1 [Requirement to be licensed] **Who must be licensed; exemptions**

[(a) No person shall act as a mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender, consumer lender, or sales finance company without holding, in good standing, a license under the Act, unless that person is exempt from licensure pursuant to N.J.S.A. 17:11C-4, 5 or 6. No corporation, partnership, limited liability company, association or any other entity shall be issued or hold a license as a mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender unless one officer, partner, member or principal has an individual license of that same type sought or held.]

(a) The following provisions apply to mortgage lender and mortgage broker business licensees and to persons engaged in activity for which licensure as such is required:

1. Except as set forth in (e) below, no business entity shall act as a mortgage lender or mortgage broker without first obtaining a license;

2. A mortgage lender may act as a broker if proper disclosure is made;
and

3. No person shall be licensed as a mortgage lender or mortgage broker unless one officer, director, partner, owner or principal is a qualified individual licensee of that same type.

(b) A qualified individual licensee licensed as a mortgage lender or mortgage broker may act as a mortgage loan originator without obtaining a separate license.

(c) A mortgage loan originator shall be employed as an originator by only one business licensee at a time and shall be subject to direct supervision and control by that business licensee.

(d) A loan processor or individual who is an independent contractor shall not act as a processor or underwriter unless licensed as a mortgage loan originator.

(e) The following persons shall be exempt from the licensure requirements:

1. Depository institutions, but subsidiaries and service corporations of these institutions shall not be exempt;

2. A registered mortgage loan originator who is registered under the Federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," Title V of Pub. L. 110-289 (12 U.S.C. §§ 5101 et seq.);

3. 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 mortgage lender, mortgage broker or mortgage loan originator; and

4. A person licensed as a real estate broker or salesperson pursuant to N.J.S.A. 45:15-1 et seq. and not engaged in the business of a residential mortgage lender or residential mortgage broker. Any person holding a license under the Act as a mortgage lender or mortgage broker shall be exempt from the licensing and other requirements of N.J.S.A. 45:15-1 et seq. in the performance of those functions authorized by the Act, however:

[(b)] **i.** With regard to the exemption set forth at N.J.S.A. 17:11C-[4d] **55**, a real estate broker or salesperson shall not be deemed to be engaged in the business of a mortgage [banker, correspondent mortgage banker] **lender** or mortgage broker if:

Recodify existing 1. – 3. as **(1) – (3)** (No change in text.)

[(c)] **ii.** For the purposes of [(b)] **(e)4i** above, expenses are deemed to be incurred in providing the specific mortgage related services only if the expenses are exclusively attributed to, and allocated to, those services and are not used to defer the general overhead expenses of the real estate broker, salesperson or office or to defer any cost attributable to the real estate business or any non-mortgage related business conducted by the real estate broker, salesperson or other office personnel. Expenses that are general overhead, and therefore not reimbursable, shall include, but not be limited to: mortgage or lease expenses, rent, utilities, insurance, depreciation and advertising; office equipment and supplies used for any purpose other than mortgage related services, and telephone expenses attributed to any purpose other than mortgage related services. Expenses for office equipment, supplies and telephone usage that are

exclusively attributed to mortgage related services are not general overhead and are reimbursable within the \$250.00 limit.

[(d)] **iii.** For purposes of [(b)] **(e)4i** above, the time spent by a real estate broker, real estate salesperson or a salaried employee of a real estate broker providing specific mortgage-related services is reimbursable provided that:

Recodify existing 1. – 6. as (1) – (6) (No change in text.)

[(e)] **iv.** The mortgage lender shall give a copy of the itemized list of reimbursable services, that was received from the real estate broker pursuant to [(b)2] **(e)4i(2)** above, to the borrower prior to closing and shall retain a copy on file for at least three years following the closing of the loan[.];

5. Any employer, other than a mortgage lender, providing mortgage loans to employees as a benefit of employment which are at an interest rate which is not in excess of the usury rate in existence at the time the loan is made, as established in accordance with the law of this State, and on which the borrower has not agreed to pay, directly or indirectly, any charge, cost, expense or any fee whatsoever, other than that interest;

6. The State of New Jersey or a municipality, or agency or instrumentality thereof, which, in accordance with a housing element that has received substantive certification from the Council on Affordable Housing pursuant to the Fair Housing Act, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.), or in fulfillment of a regional contribution agreement with a municipality that has received a certification, employs or proposes to employ municipally generated funds, funds obtained through any State or Federal subsidy, or funds acquired by the municipality under a regional contribution

agreement, to finance the provision of affordable housing by extending loans or advances, the repayment of which is secured by a lien, subordinate to any prior lien, upon the property that is to be rehabilitated; and

7. Any individual who offers or negotiates terms of a mortgage loan:

i. With or on behalf of an immediate family member of that individual; or

ii. Secured by a dwelling that serves as that individual's residence.

[(f) If a licensee files a complete application for renewal of his or her license on or before the expiration date of any licensing period, the licensee may continue to transact business without interruption until such time as he or she is notified that his or her application for renewal has been denied or that his or her license has been suspended or revoked. An application is complete if it is in proper form and includes all required documentation.]

3:15-2.2 Application for a **business** license

(a) A person applying for a **business** license pursuant to the Act shall submit the following:

1. A completed application [form] as prescribed by the Commissioner **or the NMLS&R** which shall include the following:

i. The true name of the applicant conforming to N.J.S.A. 17:11C- [22(a)] **75** and no more than three trade names or alternate names conforming to N.J.A.C. 3:15- 1.4 and 1.5 to be utilized;

ii. The location of the principal [New Jersey place of business] **office** [, except for a sales finance company that shall notify the Department of its principal New Jersey place of business if it has an office in this State, or shall notify the Department of its principal place of business in another state if it does not have an office in this State];

iii. Information regarding **partners, members and managers of a limited liability company, corporate officers, directors, and stockholders owning 10 percent or more of the shares of a corporation as required by the NMLS&R and the RMLA;**

iv. –vi. (No change in text.)

2. Completion of criminal history record background check of all owners, principals, officers, directors, partners, members and managers of a limited liability company, shareholders owning 10 percent or more of the applicant and qualified individual licensees, which shall include:

i. An FBI criminal history record background check through the NMLS&R; and

ii. A New Jersey Division of State Police criminal history record background check;

3. The identification of at least one officer, director, partner, member, owner or principal to be a qualified individual licensee and who shall apply through the NMLS&R for a qualified individual license of the same type as that sought by the business entity;

[2. Certified consent certificates permitting the Department to make inquiries to the New Jersey State Police as to any information it may have on file with respect to the

applicant, that is, the person, sole proprietor, partners, members and managers of a limited liability company, corporate officers, directors and shareholders owning 10 percent or more of the shares of the corporation. The Department may make such inquiries on the basis of answers to questions in the application or on the basis of any other information which the Department receives that would make such an inquiry relevant to the decision on the application;]

[3.] **4.** All applications for a mortgage [banker license, correspondent mortgage banker license, mortgage broker license or a secondary] lender **or mortgage broker** license shall [be accompanied by:] **include submission to the Department of**

[i. An] **an** original executed bond, on bond forms issued by the Department, from a surety company authorized to do business in this State, which bond meets the requirements of N.J.A.C. 3:15-3.1.]; or

ii. A letter from a surety company authorized to do business in this State stating that the applicant has satisfied all the requirements for the issuance of a surety bond, which meets the requirements of N.J.A.C. 3:15-3.1.]

[4.] **5.** All applications for a corporate, partnership, limited liability company or sole proprietorship license as a mortgage [banker, correspondent mortgage banker, mortgage broker, secondary lender or consumer] lender **or mortgage broker** shall include an unqualified audited financial statement prepared by a certified public accountant or a public accountant, in good standing, demonstrating proof of **tangible** net worth as specified in [N.J.S.A. 17:11C-14 (mortgage bankers, correspondent mortgage bankers and mortgage brokers), N.J.S.A. 17:11C-15 (secondary lenders), and N.J.S.A. 17:11C-16 (consumer lenders)] **N.J.A.C. 3:15-5.3;**

Recodify existing 5. – 6. as 6. – 7. (No change in text.)

[7. In the case of a person seeking an initial license as a secondary lender or consumer lender, an unqualified audited financial statement prepared by a certified public accountant or a public accountant, in good standing, demonstrating proof of liquid assets as specified by N.J.S.A. 17:11C-15 and 17:11C-16, as applicable;

8. A copy of the deed, lease or rental agreement for the principal place of business, or a letter of intent for such a document. If a letter of intent is submitted, an executed copy of the document shall be provided within 60 days of approval of the application;]

[9.] **8.** The **non-refundable** application fee as specified in N.J.A.C. 3:15-4.2]**4.1**; and

[10. A completed branch office application as specified in N.J.A.C. 3:15-2.3, if applicable.]

9. The certification referenced in N.J.A.C. 3:15-1.3(a) that the principal office is in compliance with the provisions of that rule.

[(b) Prior to being licensed, each applicant for an individual or sole proprietor license as a mortgage banker, correspondent mortgage banker, mortgage broker or a secondary lender shall pass an examination administered in accordance with N.J.A.C. 3:15-2.9]

(b) The applicant shall bear all costs including those associated with completion of the criminal history record background checks through the New Jersey Division of State Police and the FBI, the securing of a credit report and all fees and charges imposed by the NMLS&R and the Department, including non-refundable application fees and costs.

[(c) Prior to being licensed, each applicant for a mortgage banker, correspondent mortgage banker, mortgage broker, or secondary lender license shall provide the Department

with an original executed bond, on bond forms issued by the Department, from a surety company authorized to do business in this State, which meets the requirements of N.J.A.C. 3:15-3.1.

(d) Application fees are nonrefundable.

(e) A license shall run from the date of issuance to the end of the current licensing period.]

3:15-2.3 Application for licensure as a qualified individual licensee or mortgage loan originator

(a) An individual applying for a qualified individual license pursuant to the Act shall comply with the following conditions and provide the following submissions, as applicable:

1. A criminal history record background check in connection with an application, based upon information provided to and received from the Division of State Police, and provided to and received from or through the NMLS&R, which does not contain any disqualifying information. The background check shall include a State criminal history record background check based upon an exchange of fingerprint data with the State Bureau of Identification in the Division of State Police, for which the Division shall promptly notify the Commissioner if the subject of the original criminal history record background check is arrested for a crime or offense in this State after the date the background check was performed, and a check of both criminal and non-criminal information as requested from and distributed to the Federal Bureau of Investigation and any other governmental agency through the NMLS&R as follows:

i. Fingerprints, for submission to the FBI and any other governmental agency authorized to receive this information for a state, Federal, and international criminal history record background check, to determine whether the individual has been convicted of, or plead guilty or nolo contendere to, a felony in a domestic court, which in this State includes any crime of the fourth degree or higher punishable by a term of imprisonment of more than one year, or in a foreign or military court:

(1). During the seven-year period preceding the filing of the application, except that a conviction under this sub-subparagraph which is pardoned shall not be considered disqualifying information; or

(2) At any time preceding the filing of the application, if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering, except that a conviction under this sub-subparagraph which is pardoned shall not be considered disqualifying information; and.

ii. Personal history and experience, collected in a form prescribed by the NMLS&R, and with the permission of the applicant, in order for that nationwide system and registry and the Commissioner to obtain:

(1). An independent credit report from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, Pub. L. 91-508 (15 U.S.C. §1681a(p)), for use in making a determination of character and fitness pursuant to (a)2 below; and

(2). Information related to any administrative, civil or criminal findings by any governmental jurisdiction, to determine whether the individual

had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent, formal vacation of a revocation shall not be considered disqualifying information;

2. Evidence of good character and fitness whereby the applicant has demonstrated financial responsibility, character and general fitness to command the confidence of the community that the applicant will operate honestly, fairly and efficiently. Evidence that the applicant is not financially responsible includes disregard in the management of his or her own financial condition, which may include but not be limited to:

i. Current outstanding judgments, except judgments solely as a result of medical expenses;

ii. Current outstanding tax liens or other government liens and filings;

iii. Foreclosures during the three-year period preceding the filing of the application; or

iv. A pattern of seriously delinquent accounts during the three-year period preceding the filing of the application.

3. Evidence of completion of pre-licensing education, passage of the written Federal and State law tests, and continuing education requirements, as applicable; and

4. Payment of required fees to the Commissioner and/or NMLS&R, as set forth in this chapter or by the NMLS&R, including non-refundable application fees.

3:15-[2.3]2.4 Branch offices; branch licensing requirement; initial branch licensing application

(a) **Applicants for branch office licenses shall certify on a form prescribed by the Commissioner that the location of the branch office is in compliance with the requirements of this section. A branch office location at which activity as a mortgage lender or broker is conducted but at which there is no direct contact with New Jersey consumers shall be licensed and shall comply with the requirement regarding the maintenance of the confidentiality of financial information set forth in N.J.A.C. 3:15-1.3(a) and this section, with the exception of the standards prescribed in (d) below regarding the suitability of office locations at which a licensee has direct contact with New Jersey consumers.** Prior to conducting activities as a mortgage [banker, correspondent mortgage banker, mortgage broker, secondary lender, consumer lender or sales finance company] **lender or mortgage broker** from a branch office in this State[,] or from a branch office outside this State [from which the licensee has] **that include** direct contact with New Jersey consumers regarding origination or brokering, the licensee shall obtain a license for the branch office from the Department.

(b) The application for a branch office license shall include the following:

1. (No change.)
2. The address of the principal [New Jersey place of business] **office**; and
- [3. The addresses of all branches to be licensed and a copy of the deed, lease or rental agreement for each, or a letter of intent for such a document. If a letter of intent is submitted, an executed copy of the document shall be provided within 60 days of approval of the application]
3. **The address of the branch to be licensed.**

(c) (No change.)

(d) [The Commissioner shall determine whether the] A proposed branch [is] **at which the licensee will have direct contact with New Jersey consumers shall** be in a suitable location [in determining whether to approve a branch application] **in accordance with the suitability criteria set forth in N.J.A.C. 3:15-1.3(a)**. [The Commissioner shall consider the following factors in determining whether a location is suitable:

1. The location shall conform to all local ordinances and zoning requirements;
2. The location shall be reasonably accessible to the public;
3. Any signage proposed for the location shall clearly identify the licensee;
4. The location shall be reasonably free of noise and other distractions so as to permit customers to give appropriate consideration to the loan transaction; and
5. A residence shall not be considered a suitable location unless the applicant submits acceptable proof (which shall include at a minimum, a floor plan and related photographs) that the office would be separate from the residential area and conveniently accessible to all consumers through a separate business entrance.]

(e) [If an applicant for a branch license meets the requirements of this section and N.J.S.A. 17:11C-9, the Commissioner shall issue the branch license within 30 days of the receipt of the application.] Licenses shall run from the date of issuance to the end of the current licensing period.

(f) Branch office arrangements shall be restricted as follows:

1. A branch office shall not be a separate business entity. If an office of another entity is purchased by or merged into a licensed **mortgage** lender **or mortgage broker**,

the [licensed lender] **licensee** shall file for a branch office license. The filing shall include documentation evidencing the acquisition and/or merger of that entity into the surviving licensed entity;

2. – 4. (No change.)

5. A branch office shall not maintain lines of credit, warehouse agreements, or other investor agreements that are separate from those of the **business** licensee; and

6. A branch office shall not indemnify the [licensed] **mortgage** lender **or mortgage broker** against damages incurred from any apparent, express, or implied agency representation by or through the branch office's actions.

(g) (No change.)

3:15-[2.4]**2.5** Application for renewal of a **business** license

(a) A person who holds in good standing a license as a [licensed] **mortgage** lender **or mortgage broker** [with authority to act as a mortgage banker, correspondent mortgage banker, mortgage broker, secondary mortgage lender, consumer lender or sales finance company] who seeks to renew a license pursuant to this section shall submit the following in connection with the renewal application:

1. A completed renewal application [form] as prescribed by the Commissioner **or the NMLS&R** which shall include the following:

i. – ii. (No change.)

iii. A certification **or other submissions as required by the NMLS&R** that the applicant has bond coverage as specified in N.J.A.C. 3:15-3.1, and **tangible**

net worth as specified by [N.J.S.A. 17:11C-14 of the Act, in the case of a mortgage banker, correspondent mortgage banker, mortgage broker; or a certification that the applicant has bond coverage as specified in N.J.A.C. 3:15-3.1, and net worth and liquid assets as specified in N.J.S.A. 17:11C-15, in the case of a secondary mortgage lender; or a certification that the applicant has net worth and liquid assets as specified in N.J.S.A. 17:11C-16, in the case of a consumer lender] **N.J.A.C. 3:15-5.3.**

(b) (No change.)

3:15-[2.5]**2.6** Branch offices; renewal of branch licenses

(a) A **business** licensee in good standing [who holds a license for a branch or branches with authority for the conduct of the business of a mortgage banker, correspondent mortgage banker, mortgage broker, secondary mortgage lender, consumer lender or sales finance company who wishes to renew a branch license pursuant to this section] shall submit [the following] in connection with the **branch** renewal [application:

1. A] **a** completed renewal application [form] as prescribed by the Commissioner **or the NMLS&R** which shall include the following for each branch to be renewed:

Recodify existing i. – iii. as **1. – 3.** (No change in text.)

3:15-[2.6]**2.7** Late renewal of **business and/or branch** licenses; late filing fees; reinstatement fees

(a) A person who submits a renewal application **for a business license** after the expiration of the license, but no later than [45 calendar days after such expiration,] **the last day**

of February immediately thereafter may renew by paying a penalty for late filing of \$500.00] **\$600.00 per license.**

(b) A person who submits a renewal application **for a branch** [later than 45 but no more than 90 calendar days following the expiration of the license shall be required to submit an application for reinstatement of the license. Such application for reinstatement shall be on a form as prescribed by the Commissioner and shall be accompanied by a penalty for late filing of \$700.00 per license] **after the expiration of the branch license but no later than the last day of February immediately thereafter may renew by paying a penalty for late filing of \$500.00 per branch license.**

(c) A person who submits a renewal application [later than 90 days] **after the last day of February immediately** following the expiration of the license shall be treated as a new licensee and be required to submit an application with a fee as specified in N.J.A.C. 3:15-4.

(d) Payment of [the fees or penalties under (a), (b) and (c) above] **penalties for late renewal filing** shall be [submitted in the form of a check made payable to "Treasurer--State of New Jersey."] **collected on behalf of the Commissioner through the NMLS&R.**

(e) The date of submission for this section shall be the date [the application is stamped received by the Department. If the licensee has proof of mailing issued by the post office or a pick-up receipt from a delivery service, that date shall be considered the date of submission] **on which the electronically submitted complete renewal application was accepted for processing by the NMLS&R.**

(f) The fact that a person submits an application for renewal of a license following the expiration of the licensing period does not authorize that person to engage in any activity

subject to licensure without having a properly renewed license. The Department may take administrative action, **imposing fines and penalties against** anyone who engages in a licensed activity without being properly licensed.

(g) (No change.)

3:15-[2.7]**2.8** Inactive license status; application fee

[(a) A person holding an individual license in good standing with authority as a mortgage banker or correspondent mortgage banker or mortgage broker and/or as a secondary lender may apply to the Department, either at the time of license renewal or at any time during a licensing period during which the individual license is active, to place that license in inactive status by completing an inactive license status request form as prescribed by the Commissioner.

(b) A person holding a sole proprietorship license with authority as a mortgage banker or correspondent mortgage banker or mortgage broker and/or secondary lender in good standing may apply to the Department, either at the time of license renewal or at any time during a licensing period during which the sole proprietorship license is active, to place his individual right to licensure, but not the right of the sole proprietorship entity, in inactive status by completing an inactive status request form as prescribed by the Commissioner.

(c) A person may keep his or her individual license and a person licensed as a sole proprietorship may keep his or her personal right to licensure but not the sole proprietorship licensure in inactive status for a period not to exceed three license periods without becoming subject to re-examination, provided that:

1. A new application fee as set forth in (d) below is paid on reactivation; and

2. The person is employed without significant break by another licensee in the mortgage banking business; correspondent mortgage banking business, mortgage brokering business or secondary lending business, or by a depository institution in this state provided that he or she works primarily in residential mortgage lending. For the purposes of this subsection, a significant break shall not exceed 120 days in any licensing period.]

[(d)] **(a)** A [person who holds an inactive] **formerly licensed** individual **whose New Jersey license is not under suspension or revoked and who has not had a mortgage loan originator license or a qualified individual licensee license or its equivalent revoked in any other governmental jurisdiction** may, **for up to five years from the date on which the license was placed in inactive status, apply to** reactivate the individual license **pursuant to this chapter and in accordance with the format and standards of the NMLS&R** [by submitting an individual license reactivation form as prescribed by the Commissioner to the Department, including the payment of the appropriate license application fee as set forth in N.J.A.C. 3:15-4.3 and proof of continuous employment as defined in (c) above]. **The inactive individual licensee shall complete the continuing education requirements in effect for the last calendar year in which the individual was licensed as a requirement for reactivation.**

[(e)] **(b)** (No change in text.)

3:15-[2.8]**2.9** Conversion of mortgage [banking, correspondent mortgage banking, and mortgage brokering licenses] **lender and mortgage broker licenses**

(a) A person licensed, in good standing, as a mortgage [banker] **lender** shall submit the following to convert from a mortgage [banker] **lender** to a correspondent mortgage [banker] **lender**, and a person licensed, in good standing, as a correspondent mortgage [banker] **lender**

shall submit the following to convert from a correspondent mortgage [banker] **lender** to a mortgage [banker] **lender**:

1. The original license, the licenses of all branch offices, **and** the licenses of all **qualified** licensed individuals [and the certificates of all registered mortgage solicitors];

2. A completed conversion form, which shall include the name and address of the licensee, the requested date of conversion and a copy of the licensee's most recent annual report of tangible net worth filed pursuant to N.J.A.C. 3:15-[6.16]**6.12**; [and]

3. For a conversion **from a mortgage lender** to a correspondent mortgage [banker] **lender**, a signed affidavit from the president or other principal who owns, controls or votes 25 percent or more of the stock of the licensee, a general partner, a managing member or the sole proprietor stating that the licensee will not hold or service mortgage loans for more than 90 days in the regular course of business[.] ; **and**

4. For a conversion from a correspondent mortgage lender to a mortgage lender, an audited financial statement demonstrating the required tangible net worth.(b)

A licensee shall submit the following to convert from a mortgage [banker or a correspondent mortgage banker] **lender or a correspondent mortgage lender** to a mortgage broker, or from a mortgage broker to a mortgage [banker or a correspondent mortgage banker] **lender or a correspondent mortgage lender** ;

1. The original license, the licenses of all branch offices, **and** the licenses of all **qualified** licensed individuals [and the certificates of all registered mortgage solicitors].

2. A completed conversion form, which shall include the name and address of the licensee, the requested date of conversion and a copy of the licensee's most recent annual report of tangible net worth filed pursuant to N.J.A.C. 3:15-[6.16]**6.12**; [and]

3. For a conversion **from a mortgage lender or a correspondent mortgage lender** to a mortgage broker, a signed affidavit from the president or other principal who owns, controls or votes 25 percent or more of the stock of the licensee, a general partner, a managing member or the sole proprietor stating that the licensee will not issue commitments or lock-ins in its name, will not close mortgage loans in its name, and will only charge borrowers application fees and discount points[.]; **and**

4. For a conversion from a mortgage broker to a mortgage lender or to a correspondent mortgage lender, an audited financial statement demonstrating the required tangible net worth.

(c) (No change.)

3:15-[2.9]**2.10** [Examination for licensure as a mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender] **Pre-licensing education requirements for mortgage loan originators and qualified individual licensees**

(a) An applicant for [an individual license with authority as a mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender in affiliation with an entity similarly licensed or applying for such licensure and an applicant for a sole proprietorship license with any of these authorities must take and pass a written examination as a condition for licensure] **a new license as a mortgage loan originator or a qualified individual licensee shall**

complete, as a pre-licensing requirement, at least 20 hours of education from a provider approved by the NMLS&R.

[(b) The examination shall be prepared by the Department and/or an entity designated by the Department and shall cover the following topics:

1. The contents of Federal and State legislation and regulations on mortgage banking, correspondent mortgage banking, mortgage brokering and secondary mortgage lending, as applicable;

2. New Jersey real estate laws;

3. Basic knowledge of mortgage documents; and

4. Related State and Federal legislation such as the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, and Regulation Z.]

(b) The approved education courses shall include at a minimum, but not be limited to:

1. Three hours of instruction on Federal statutes and regulations;

2. Three hours of instruction on ethics, including instruction on fraud, consumer protection and fair lending issues;

3. Two hours of training related to lending standards for the nontraditional mortgage product marketplace; and

4. Four hours of instruction on State-specific statutes and rules..

(c) Pre-licensing education requirements of another state that were approved by the NMLS&R and completed by an applicant for licensure as a New Jersey qualified

individual licensee or mortgage loan originator shall be accepted as credit towards completion of the pre-licensing education requirements of this section.

3:15-2.11 Licensing examination requirements for mortgage loan originators and qualified individual licensees

(a) An applicant for a new license as a mortgage loan originator or qualified individual licensee shall pass, as a pre-licensing requirement:

1. A national written test developed by the NMLS&R and administered by a test provider approved by the NMLS&R; and

2. A State-specific written test, developed by the NMLS&R in consultation with the State, and administered by a test provider approved by the NMLS&R.

(b) The national written test and State-specific test which shall examine, at a minimum, the applicant's knowledge of the topics listed below:

1. Federal and State statutes and regulations pertaining to mortgage loan origination;

2. Other Federal and State statutes and rules including those pertaining to fraud, consumer protection, fair lending issues, and the non-traditional marketplace;

3. Ethics; and

4. The test for licensure as a qualified individual shall also include questions relating to employee supervision, office management, licensing and regulatory compliance issues.

(c) An applicant shall achieve a test score on each test of not less than 75 percent correct answers to obtain a passing score.

1. An applicant who fails to pass the written test shall not take a subsequent, consecutive test until at least 30 calendar days after the applicant's preceding test date.

2. An applicant may take the written test up to three consecutive times.

3. An applicant who fails to pass the written test after three consecutive attempts shall not be permitted to retake the test for a period of at least six months from his or her last preceding test date.

(d) A mortgage loan originator or a qualified individual licensee who fails to maintain a valid license for a period of five years or longer shall be required to pass again a written national and state law test as a precondition to license reinstatement.

3:15-2.12 Continuing education requirements for renewal as an mortgage loan originator or qualified individual licensee

(a) An applicant for renewal as a mortgage loan originator or qualified individual licensee shall, during the license term preceding renewal, complete at least 12 hours of continuing education from a provider approved by the NMLS&R.

(b) The approved continuing education course(s) shall include at a minimum, but not be limited to:

1. Three hours of instruction on Federal statutes and regulations;

2. Two hours of instruction on ethics, including instruction on fraud, consumer protection and fair lending issues;

3. Two hours of training related to lending standards for the non-traditional mortgage product marketplace; and

4. 2 hours of instruction on State-specific statutes and rules.

(c) Credit for an approved continuing education course shall be applied:

1. Only in the calendar year in which the course is taken; and

2. Provided that it is not the same approved course already taken in that calendar year or the immediately preceding calendar year.

(d) A licensee who is an approved instructor of an approved continuing education course may receive credit towards the individual's own continuing education requirements for the content of the course taught at the rate of two hours of credit for every hour of an approved continuing education course taught.

(e) Any continuing education requirements of another state reviewed and approved by NMLS&R and completed in another state by the applicant for renewal shall be accepted as credit towards completion of the continuing education requirements in this State.

3:15-[2.12]**2.13** Responsibilities and replacement of [the entity's licensed natural person] **a**

business licensee's qualified individual licensee

(a) If a [natural person] **qualified individual licensee** upon whom a corporation, partnership, association, limited liability company or other entity relies for its license [pursuant to N.J.S.A. 17:11C-3 discontinues his or her affiliation or employment with such entity for any reason whatsoever, the entity may continue to operate under its license for a period of 90 calendar days or for such other extended period as the Commissioner determines necessary for

the entity to replace that natural person with another licensed natural person provided that the entity notifies the Department within 10 days following the date that the natural person discontinues his or her affiliation or employment with the entity] **has his or her qualified individual license revoked or suspended by any state, or allows the license to lapse, or for some other reason is no longer affiliated with the business licensee, the business licensee shall notify the Commissioner within 10 days of the event. In addition, the business licensee shall appoint another qualified individual licensee within 60 days of the effective date of the termination of the former qualified individual licensee's affiliation with the business licensee for any reason. The Department may extend the 60-day period for good cause upon written request of the business licensee.**

(b) [The] **A qualified** individual licensee [upon whom a licensed lender entity license is dependent shall be fully qualified by passing the written examination required by N.J.A.C. 3:15-2.9] **shall satisfy all applicable requirements** and shall be responsible to perform the following:

1. – 4. (No change.)

5. Ensure that license renewals and other licensing matters such as new branch office applications, changes of address, changes of name, change of control, [change of business style,] and requests for additional [license authorities] **licenses** are submitted to the Department **or NMLS&R as applicable** [on the appropriate forms] and accompanied by the required documentation;

6. (No change.)

7. Ensure that all employees [required to be registered as mortgage solicitors are properly registered with the Department and that copies of the certificates issued for each solicitor are maintained at the licensed office(s)] **operating as mortgage loan originators are duly licensed and that copies of the licenses issued for all mortgage loan originators are available for inspection at the licensed office from which the mortgage loan originator operates.**

3:15-[2.13]**2.14** [Registration of mortgage solicitors] **Requirements regarding licenses and renewal of the licenses of mortgage loan originators and qualified individual licensees**

[(a) Before an individual may act as a mortgage solicitor for a person licensed as a mortgage banker, correspondent mortgage banker or mortgage broker, that individual shall be registered with the Department in affiliation with that licensee. A mortgage solicitor shall not be registered in affiliation with more than one licensee at the same time.]

(a) When applying to renew a license pursuant to this section, a qualified individual licensee or mortgage loan originator in good standing shall submit a completed renewal application as may be required by the Commissioner or NMLS&R and which shall include at a minimum the following:

- 1. Payment of any required fees to the NMLS&R; and**
- 2. Evidence of completion of continuing education requirements.**

[(b) To register a mortgage solicitor, the prospective employing mortgage banker, correspondent mortgage banker or mortgage broker shall submit the following to the Department:

1. A completed registration form, which shall include the mortgage solicitor's name, birth date, social security number, residence address, the name of the employing licensee; and

2. A \$100.00 registration fee. A mortgage solicitor who changes his or her employing mortgage banker, correspondent mortgage banker or mortgage broker within the registration period shall be re-registered by the new employing licensee by filing a new registration form with an additional \$100.00 fee.

3. Any additional information requested of a specific applicant by the Department.

(c) The Department shall provide all employing licensees with a mortgage solicitor registration certificate for each solicitor that shall be renewable every two years. The registration shall run from July 1, 2007 to June 30, 2009 and, upon renewal, for two-year intervals thereafter in accordance with the registration period. Registrations shall run from the date of issuance to the end of the registration period in which the registration was issued.]

[(d)] **(b)** The [registration certificate] **license** shall contain the name of the mortgage [solicitor] **loan originator**, the name of the employing licensee, and the address of the [principal] office **location** of the employing licensee **from which the mortgage loan originator operates**. The employing licensee shall [either:

1. Display the registration certificate at the office or work station of the mortgage solicitor; or

2. Maintain] **make available for inspection** the [registration certificates in a binder or similar device provided that the licensee posts a sign at the office or work station of the mortgage solicitor indicating that the registration certificates are available for public inspection

upon request] **licenses at the licensed office from which the mortgage loan originator operates.**

[(e)] (c) Within [30] **five** calendar days after a mortgage [solicitor] **loan originator** ceases his or her affiliation with a **business** licensee, the **employing** licensee shall return the [registration certificate] **license** to the Department. It is not necessary for [a] **an employing** licensee to return the [registration certificate] **license** of a mortgage [solicitor] **loan originator** who changes from one branch location of the **employing** licensee to another branch office of that licensee.

(d) Within 10 calendar days after a qualified individual licensee ceases to be affiliated with a business licensee in that capacity, the qualified individual licensee shall return the license to the Department.

[(f)] The Commissioner shall refuse to register a person who changes affiliation if the Commissioner determines that the change is for the purpose of evading the licensing requirements of the Act.

(g) Registration fees are nonrefundable.]

3:15-2.15 Late renewal of an individual license; late filing fees

(a) An individual who submits a renewal application after the expiration of the license, but no later than the last day of February immediately thereafter, may renew by paying a penalty for late filing as follows:

- 1. Qualified individual license - \$250.00; and**
- 2. Mortgage loan originator - \$75.00.**

(b) An individual who submits a renewal application after the last day of February following the expiration of the license shall be treated as a new licensee and be required to submit an application with a fee as specified in N.J.A.C. 3:15-4.

(c) Payment of penalties for late renewal filing shall be collected on behalf of the Commissioner through the NMLS&R.

(d) The date of submission shall be the date on which the electronically submitted complete renewal application was accepted by the NMLS&R.

3:15-[2.14]**2.16** [Change] **Sale or transfer or change** of control **of business licensee**

(a) A **business** licensee shall file a [request] **completed application** for approval whenever a change of control of [direct] ownership of 25 percent or more of the licensee is planned. The change of control request shall be submitted at least [60] **90** days prior to the anticipated sale date and shall include:

1. – 3. (No change.)

[4. Certified consent certificates as set forth in N.J.A.C. 3:15-2.2(a)2 for each new officer, director, partner, member or stockholder resulting from the change of control.]

4. Each new officer, partner, member or manager of an LLC, director and any other individual who, as a result of the sale, transfer, or change of control owns at least 10 percent of the business shall satisfy the requirements of N.J.A.C. 3:15-2.2.

(b) The Commissioner shall approve the sale or transfer or change of control unless, after an opportunity for a hearing, it is determined that there are sufficient grounds to deny the application. Unless the Commissioner issues a preliminary denial of the application and affords the applicant an opportunity for a hearing within 90 days of the

Commissioner's receipt of the completed application, the application shall be deemed approved.

3:15-[2.15]**2.17** Discontinuation of [licensed] lender **or broker** business activity

(a) When a [licensed] **mortgage** lender **or mortgage broker** [with authority to act as a mortgage banker, correspondent mortgage banker, mortgage broker or secondary mortgage lender] discontinues its licensed business operations in New Jersey, the [licensed lender] **business licensee** shall:

1. Surrender the entity's current [principal office] license(s) as well as the license of each [affiliated supervisory] **qualified** individual **licensee**, branch office, [and the certificates of all registered mortgage solicitors, if any] **and mortgage loan originator**;

2. – 9. (No change.)

10. Pay all assessments due and owing and prepay the base assessment for the year of the discontinuance by paying the amount of the most recently billed base assessment within 15 days after ceasing business or upon being acquired. **In the event that the said amounts are not paid, the Department shall proceed against the bond.** Adjustments to the base assessment, if any, and the final volume assessment for the year of discontinuance will be billed in the year following the discontinuance. In the event of an acquisition, the amount carried forward shall be paid by the acquiring entity; and

11. (No change.)

[(b) When a licensed lender with authority to act as a consumer lender or sales finance company discontinues its licensed business operations in New Jersey, the licensed lender shall:

1. Surrender the entity's current principal office license as well as the license of each branch office;
2. Identify, in writing, if there are any New Jersey consumer loan installment sales contracts or charge account agreements being processed and provide the total number of any such transaction together with the consumers' names and addresses for each transaction;
3. Identify, in writing, the location of loan or agreement files required to be maintained under New Jersey law and regulations;
4. Identify, in writing, any arrangements that have been made to have other entities take over loan or agreement files together with complete information on the name, address, telephone number, and contact person of entities involved in such arrangements;
5. Identify, in writing, the name and telephone number of person(s) within the licensee's operation designated to handle any consumer problems that may arise;
6. Satisfy all outstanding obligations owed to the Department including all assessments due and owing and prepay the base assessment for the year of the discontinuance by paying the amount of the most recently billed base assessment within 15 days after ceasing business or upon being acquired. Adjustments to the base assessment, if any, and the final volume assessment for the year of discontinuance will be billed in the year following the discontinuance;
7. Satisfy all filing requirements including the final annual report which report shall be for the year in which the licensed lender discontinues its licensed business operations in New Jersey; and

8. Identify, in writing, the name, address, and phone number of the person within the licensee's operation responsible for the payment of assessments.]

3:15-[2.16]**2.18** Licensee notification requirements

(a) A licensee shall notify the Department in writing within 15 days of the occurrence of any of the following:

1. – 3. (No change.)

4. Upon the fining, penalizing or disciplining of the licensee, or any affiliates, by this State, by another state, by the Federal government, or by any agency or instrumentality thereof; [and]

5. Upon the involvement of the licensee, or any officer, director, partner, member, owner or substantial stockholder of the licensee, or any affiliate thereof, in any activity that may have a substantial impact on the ability of a licensee to engage in the licensed activity in a prudent or worthy manner[.] ;

6. The entry of any final judgment in a civil or administrative action against the licensee upon the grounds of fraud, misrepresentation or deceit; and

7. Failure to demonstrate financial responsibility through disregard in the management of the licensee's own financial condition. Occurrences which indicate a disregard in the management of the licensee's financial condition shall include, but not be limited to:

i. The entry of any civil judgment against the licensee which is not appealed and remains unsatisfied except judgments solely as a result of medical expenses;

- ii. The issuance to the licensee of a tax lien or other government lien;**
- iii. The entry against the licensee of a judgment of foreclosure; or**
- iv. The receipt of notifications within a six-month period that two or more of the licensee's accounts with creditors are 90 or more days in arrears.**

SUBCHAPTER 3. BONDING

3:15-3.1 Bond requirements

(a) A person who seeks an initial [licensed lender] license **as a mortgage lender or mortgage broker** [with authority as a mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender] shall obtain a surety bond in the [following initial] amount **of \$150,000, which shall be applicable to the first \$50,000,000 of closed loan volume.** [:

1. One authority - \$100,000;
2. Two authorities - \$150,000.]

(b) Following the submission of each annual report, [licensed lenders with authority as a mortgage banker, correspondent mortgage banker or secondary lender] **a mortgage lender or mortgage broker** shall, **if necessary,** increase the amount of the surety bond based on the following closed loan volumes and provide proof thereof to the Department within 30 days of the submission of the report.

[1. One authority:

- | | |
|--|------------|
| i. Closed loan volume: \$0 to \$50,000,000 | \$100,000; |
| ii. Closed loan volume: \$50,000,001 to \$75,000,000 | \$150,000; |
| iii. Closed loan volume: \$75,000,001 to \$100,000,000 | \$200,000; |

iv. Closed loan volume: \$100,000,001 and over \$250,000.

2. Two authorities:]

[i.] **1.** Closed loan volume: \$0 to \$50,000,000 \$150,000;

[ii.] **2.** Closed loan volume: \$50,000,001 to \$75,000,000 \$200,000;

[iii.] **3.** Closed loan volume: \$75,000,001 to \$100,000,000 \$250,000;

[iv.] **4.** Closed loan volume: \$100,000,001 and over \$300,000.

[(c) Following the submission of each annual report, licensed lenders with authority only as a mortgage broker shall be required to increase the amount of the surety bond based on the following schedule relating to the number of mortgage loan applications taken and provide proof thereof to the Department within 30 days of the submission of the report.

1. Applications taken: 0 to 100 \$100,000;

2. Applications taken: 101 to 300 \$150,000;

3. Applications taken: 301 to 500 \$200,000;

4. Applications taken: 501 and over \$250,000.]

3:15-3.2 Beneficiaries of bond coverage

The bond shall run to the State, pro rata, for the benefit of consumers injured by the wrongful act, omission, default, fraud or misrepresentation of the mortgage [banker, correspondent mortgage banker, mortgage broker, mortgage solicitor or secondary] lender, **mortgage broker, qualified individual licensee or mortgage loan originator** in the course of activity authorized by the license, and for the benefit of the Department for unpaid examination bills, unpaid penalties, **unpaid assessments** and any other unpaid obligations] of the mortgage [banker, correspondent mortgage banker, mortgage broker or secondary] lender **or mortgage**

broker to the Department, including, but not limited to, returned items submitted to the Department in payment of bills, penalties, charges, **assessments** or fees.

3:15-3.3 Coverage of the bond; compensable claims

(a) The surety company shall pay consumers claims based on the damages directly incurred by the wrongful act, default, fraud or misrepresentation of the [mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender] **business licensee or any employee of such licensee.**

[(b) If a mortgage banker, correspondent mortgage banker, or mortgage broker is authorized to act as a secondary lender, or vice versa, the bond shall provide that the entire amount of the bond is available to the Department for claims related to either authorized activity.]

[(c)] **(b)** Attorney's fees, pre- or post-judgment interest, court costs and similar charges are not recoverable through the bond, unless such charges are included in a final judgment against the [mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender] **licensee** and the surety company was given prior notice of the court action and an opportunity to respond.

Recodify existing (d) – (f) as **(c) - (e)** (No change in text.)

3:15-3.4 Original bond or rider required; changes in surety companies or bonds

A mortgage [banker, correspondent mortgage banker, mortgage broker or secondary] lender **or broker** shall submit to the Department the original executed surety bond or the original rider to the original executed surety bond. If the [mortgage banker, correspondent mortgage

banker, mortgage broker or secondary lender] **business licensee** changes its surety company or the bond is otherwise amended, the [mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender] **business licensee** shall immediately provide the Department with the amended original executed surety bond or the amended original rider to the original executed surety bond.

3:15-3.6 Surety companies to notify Department of claims; claims payable only at the direction of the Department

When a person submits a claim with a surety company against the bond of a [mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender] **business licensee**, the surety company shall immediately notify the Department and shall not pay any claim unless and until it receives direction to do so from the Department.

3:15-3.7 Publication of notices of bond claims by the Department

When the Department receives notice from a surety company of a claim against a [mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender] **business licensee** that appears valid, a consumer is unable to obtain payment of a court judgement that was obtained against the [mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender for activities undertaken as a] licensee, or the Department in its sole discretion otherwise determines it is necessary and proper to do so, the Department shall cause a notice to be published once a week for three successive weeks in a newspaper having general circulation in the area where the [mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender] **business licensee** conducts or conducted business

advising consumers of their right to file claims against the bond. The Department is not required to publish notice when it has a claim against the bond for an examination charge, **assessment** or any other fee, charge or penalty if there are no consumer claims or complaints that appear valid and that may require payment from the bond. If the Department determines a notice is necessary, the notice shall be in the following form:

NOTICE TO CONSUMERS
TO ANY CONSUMER HAVING CLAIMS AGAINST

(Name of Licensee), (Type of licensed activity, i.e., [mortgage banker, correspondent mortgage banker, mortgage broker, or secondary lender] **residential mortgage lender, residential mortgage broker, qualified individual licensee, mortgage loan originator**)

TAKE NOTICE that in order to provide a procedure for the orderly resolution of claims against the bond obtained by (Name of **Business** Licensee) for the benefit of any consumer injured by the wrongful act, default, fraud or misrepresentation of (Name of Licensee), you are hereby required to present your claims against (Name of Licensee) at the following address:

N.J. Department of Banking and Insurance
Division of Banking
Office of Consumer Finance
20 West State Street, PO Box 040
Trenton, NJ 08625-0040

Each claim shall be presented in writing, specifying the amount claimed and the particulars of the claim, and shall be duly verified under oath or affirmation.

TAKE FURTHER NOTICE that each person having claims against (Name of Licensee) should file a claim no later than (one month after last notice) or risk losing the opportunity to file a claim.

Commissioner of Banking and Insurance

The Department shall review all timely claims made against the bond of a [mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender] **business licensee** and shall decide which claims are valid. All consumers with timely valid claims shall share pro rata in their claims against the bond. The Department shall then submit claims it has against the [mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender] **licensee** for unpaid examination charges or for other **unpaid** penalties, charges, **assessments** or fees to the surety company for payment. Consumers submitting claims after the filing date set forth in the published notice but before the expiration of the applicable statute of limitations period shall recover next against the bond in the order that the claims are submitted.

SUBCHAPTER 4. FEES

3:15-4.1 Fees [- general] **associated with licensing**

(a) All fees **associated with licensing** shall be paid [by a check made payable to "Treasurer--State of New Jersey."] **electronically to the NMLS&R for administration of the nationwide database and collection of fees payable to the Department and the NMLS&R according to the manner prescribed by the NMLS&R.**

(b) **A person who is applying for an initial individual or business license under the Act shall pay a non-refundable application fee as follows:**

- 1. Business license - \$1,200;**
- 2. Each branch office - \$1,000;**
- 3. Qualified individual licensee - \$500.00;**
- 4. Mortgage loan originator - \$150.00;**
- 5. Change of affiliation by mortgage loan originator - \$50.00; and**

6. Change of affiliation by qualified individual licensees - \$250.00.

(c) Business licensees licensed under the Licensed Lenders Act who apply to transition by July 31, 2010 to business licensees under the Act shall pay a fee of \$600.00 plus \$100.00 for each existing branch.

SUBCHAPTER 5. TANGIBLE NET WORTH, [NET WORTH, LIQUID ASSETS,]
INSOLVENCY

3:15-5.1 Applicability of provisions

The requirements of this subchapter shall apply to each [corporation, partnership, limited liability company, or sole proprietorship that is licensed,] **business licensee** or [that is an] applicant for a **business** license, [as a mortgage banker, correspondent mortgage banker, or mortgage broker] and shall not apply to [supervisory individuals] **qualified individual licensees** or [individuals other than sole proprietors] **mortgage loan originators**. [The subchapter shall also apply to a person who is licensed, or who is an applicant for a license, as a secondary lender or a consumer lender.]

3:15-5.2 Accounting method for determining tangible net worth

Tangible net worth [and net worth] shall be computed on the accrual basis of accounting.

3:15-5.3 Requirement to [achieve] **demonstrate** and maintain tangible net worth[, net worth and liquid assets]

(a) Each applicant for a **business** license [with authority as a mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender or consumer] **as a mortgage**

lender **or mortgage broker** shall [achieve and maintain the] **demonstrate** tangible net worth[, net worth, and liquid assets as required by N.J.S.A. 17:11C-14, 15 and 16.] **of at least the following amounts:**

- 1. Residential mortgage lender - \$250,000;**
- 2. Correspondent mortgage lender - \$150,000; and**
- 3. Residential mortgage broker - \$50,000.**

(b) As appropriate for the type of license they hold, business licensees shall maintain tangible net worth of at least the amounts set forth in (a) above.

(c) Applicants for business licenses and business licensees may be required by the Department to demonstrate adequate means to fund loans through lines of credit or otherwise.

3:15-5.4 Failure to maintain tangible net worth[, net worth or liquid assets]; action by the Department

(a) If the tangible net worth of a [mortgage banker, correspondent mortgage banker, or mortgage broker, or if the net worth or liquid assets of a secondary lender or consumer lender] **business licensee** falls below the amounts required by [N.J.S.A. 17:11C-14, 15 and 16,] **N.J.A.C. 3:15-5.3** or if the [mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender or consumer lender] **business licensee** is insolvent, the Department may take such action as it deems appropriate and necessary to protect the public. The action may include requiring the [mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender or consumer lender] **business licensee** to operate pursuant to a Memorandum of Understanding, or directing the [mortgage banker, correspondent mortgage banker, mortgage

broker, secondary lender or consumer lender] **business licensee** to submit and comply with a capital plan within a time frame established by the Department to attain the tangible net worth[, net worth or liquid assets] required by [the Act] **N.J.A.C. 3:15-5.3**.

(b) When considering whether to suspend, revoke or refuse to renew the license of a [mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender or consumer lender] **business licensee** who does not have the **required** tangible net worth[, net worth or liquid assets required by the Act], the Commissioner shall consider the following factors:

1. How far the [mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender or consumer lender] **business licensee** is below the **required** level of tangible net worth[, net worth or liquid assets required by the Act];

2. The size of any warehouse line or table funding agreement, the institution(s) providing this credit, and any correspondent relationship that a [mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender or consumer lender] **business licensee** may have with another financial institution;

3. The number and amount of loans typically made or brokered by the [mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender or consumer lender] **business licensee**;

4. The history of consumer complaints received by the Department concerning the [mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender or consumer lender] **business licensee**;

5. Whether the mortgage [banker, correspondent mortgage banker, secondary lender or consumer lender] **lender** has committed to make loans that it has been unable to fund; and

6. Any other factors reflecting on the ability and fitness of the [mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender or consumer lender] **business licensee** to transact business in its licensed capacity.

SUBCHAPTER 6. BOOKS AND RECORDS; EXAMINATIONS; ANNUAL REPORTS

3:15-6.1 Methods and accounting **for business licensees**

(a) (No change.)

(b) If a person licensed to act as a mortgage [banker, correspondent mortgage banker, mortgage broker, secondary lender or consumer lender] **lender or mortgage broker** maintains books and records on a basis other than the accrual method of accounting, that licensee shall also maintain books and records on the accrual basis of accounting which states the tangible net worth [or net worth] of the licensee[, as applicable].

3:15-6.3 Location of books, [and] records, **accounts and other documents pertaining to a business; records retention**

(a) Each **business** licensee shall notify the Department of the [office] **place of business** in which the books, [and] records, **accounts and other business documents of its activity as a mortgage lender or mortgage broker** are kept. If the licensee moves the books, [and] records, **accounts or other business documents**, the licensee shall notify the Department prior to the move.

(b) A **business** licensee may keep its records at:

1. A licensed [principal or branch] office in this State;
2. An unlicensed site in or out of this State, provided that the licensee secures the prior approval of the Department pursuant to (c) below; **or**
3. A licensed [branch] office outside of this State, provided that the licensee secures the prior approval of the Department pursuant to (c) below.; or
4. In the case of a sales finance company, a licensed principal office outside of this State.]

(c) (No change.)

(d) [Licensees] **Business licensees** operating more than one licensed office may maintain the general ledger at their principal [New Jersey] office[, except that a sales finance company that has no office in this State may keep the general ledger at its principal office out of state]. The trial balance or balance sheet and profit and loss statement of the licensed office shall be made available upon request to the examiner or investigator at the office where the general ledger is kept.

(e) (No change.)

(f) Business licensees shall preserve all books, records, accounts and documents related to the business for at least three years after making the final entry on any application or loan.

(g) The denial or withdrawal of an application shall constitute the final entry for an application which is denied or withdrawn.

(h) The assignment or sale of a loan shall constitute the final entry for a loan which is sold or assigned.

(i) In the case of an open-end loan, the licensee shall preserve the books, accounts and records for at least three years after each entry.

(j) All books, records, accounts and documents may be stored electronically so long as the electronically stored information can be produced in electronic format upon request by the Department or reproduced on paper and delivered to the Department within five days of the business licensee's receipt of a request from the Department to produce the records.

(k) In the case of a business licensee that ceases to do business, the Commissioner may move and store abandoned books, accounts and records in whatever form and make a claim against the bond for costs of moving and storage.

3:15-6.4 Loan application recordkeeping requirements for [mortgage bankers, correspondent mortgage bankers and mortgage brokers] **business licensees**

(a) Each person licensed as a [mortgage banker, correspondent mortgage banker or mortgage broker] **business licensee** shall maintain a loan application system containing the following information for each application for a first mortgage loan:

1. – 7. (No change.)

3:15-6.5 Loan documentation file requirements for [mortgage bankers, correspondent mortgage bankers and mortgage brokers] **business licensees**

(a) Each person licensed as a [mortgage banker, correspondent mortgage banker or mortgage broker] **business licensee** shall maintain for each first mortgage loan application the following data, if utilized by the licensee in connection with the first mortgage loan application:

1. – 10. (No change.)

3:15-6.6 Documentation requirement related to the charging of certain fees by [mortgage bankers, correspondent mortgage bankers and mortgage brokers] **business licensees**

(a) Each person licensed as a [mortgage banker, correspondent mortgage banker, or mortgage broker] **business licensee** shall maintain a recordkeeping system that shall document each of the following fees if charged to first mortgage loan applicants by the licensee:

1. – 6. (No change.)

3:15-6.7 Ledger card and document retention requirement for [secondary] **mortgage lenders making secondary mortgage loans**

(a) Each [person licensed as a secondary] **mortgage** lender shall maintain an individual record or ledger card for each secondary mortgage loan, which shall include the following information:

1. – 18. (No change.)

(b) Each person licensed as a [secondary] **mortgage** lender shall maintain [at his place of business in this State] an original or true copy of the following instruments, documents, accounts, books and records **for each secondary mortgage loan**:

1. – 7. (No change.)

8. General ledger cash receipts and disbursements register, checkbook canceled checks and such other accounts, books or records as shall be required by the Commissioner in order to ascertain whether the licensee has been conducting [his] secondary mortgage loan business in full compliance with the provisions of N.J.S.A. 17:11C-[1 et seq.] 51 et seq.

3:15-[6.9]**6.8** Documentation

(a) – (c) (No change.)

(d) Each person licensed as a mortgage [banker, correspondent mortgage banker, or secondary] lender shall maintain a trustee account and ledger detailing receipts and disbursement of all funds deposited by the borrower or seller with the licensee in connection with the origination or closing of any loan. The funds shall be held in accordance with the terms of a written agreement between the mortgage [banker, correspondent mortgage banker or secondary] lender and such borrower or seller, which provides that upon the occurrence of a specific condition or event, the funds or a portion thereof shall be disbursed to the borrower or seller. All such trust accounts shall be reconciled at least quarterly. This subsection shall not apply to escrows collected or held by the mortgage [banker, correspondent mortgage banker or secondary] lender for taxes or insurance.

3:15-[6.12]**6.9** Retention of advertisements

One copy of each advertisement, including radio and television scripts, and any materials disseminated over the [internet[**Internet** or by any other electronic means, shall be kept on file

in the **business** licensee's office for at least two years after the last date on which any such advertisement was utilized, said date to be noted on each such advertisement.

3:15-[6.14]**6.10** Copy of examination reports to licensee

The official report of examination shall be submitted to the **business** licensee or to a representative of the licensee which has been designated by the licensee for such purpose.

3:15-[6.15]**6.11** Charges for investigations

For any person not licensed [or registered] by the Department, the Department may charge for investigations at the [same] rate [as provided for examinations in N.J.A.C. 3:1-6.6] **of \$50.00 per hour**. For the purposes of this section, investigations [shall include investigations by the enforcement or examinations units of the Department and special investigations by the consumer services unit but] **for which the Department may charge** shall not include routine efforts by the consumer services unit to research or resolve consumer complaints.

3:15-[6.16]**6.12** Reports to the Department

Each [mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender, consumer lender and sales finance company] **business licensee under the Act** shall file a report with the Department annually on or before [April] **May** 1 of each year. The report shall be submitted on forms provided by the Department and shall indicate the tangible net worth[, net worth and liquid assets] of the [mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender and consumer lender, as required] **licensee**. [For mortgage banker, correspondent mortgage banker, mortgage broker and secondary lenders, the] **The** report shall

indicate the warehousing lines available and outstanding. In accordance with N.J.A.C. 3:1-7.6, the Department shall assess a penalty against any [mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender, consumer lender or sales finance company] **business licensee** for each annual report filed late.

SUBCHAPTER 7. INSURANCE

3:15-7.1 Insurance matters for mortgage [bankers, correspondent mortgage bankers, secondary lenders and consumer] lenders

(a) Mortgage [bankers, correspondent mortgage bankers, secondary lenders and consumer] lenders are subject to the provisions concerning insurance set forth in N.J.S.A. 17:11C-[21] **73**.

(b) (No change.)

(c) It shall be the responsibility of the mortgage [banker, correspondent mortgage banker, secondary lender or consumer] lender to explain clearly to each borrower the benefits and limitations of any credit life insurance, credit health or disability insurance, or credit involuntary unemployment insurance which the borrower contemplates getting in connection with a loan.

(d) Each mortgage [banker, correspondent mortgage banker, secondary lender or consumer] lender shall keep a record of all policies for credit life insurance, credit health or disability insurance, or credit involuntary unemployment insurance sold to a borrower in connection with a loan, all premiums collected in connections with such loans, all refunds of unearned premiums caused by payment in full of an amount or by renewal, and a detailed record of all claims paid by the insurer.

(e) If a mortgage [banker, correspondent mortgage banker, secondary lender or consumer] lender collects a premium from a borrower for credit life insurance, credit health or disability insurance, or credit involuntary unemployment insurance, and such insurance does not become effective, the mortgage [banker, correspondent mortgage banker, secondary lender or consumer] lender shall immediately give written notice to the borrower and shall promptly refund to or credit to the account of the borrower the amount collected from him or charged to him for such insurance.

(f) (No change.)

3:15-7.2 Insurance provisions applicable to [secondary] **mortgage** lenders [and consumer lenders] **on secondary mortgage loans**

(a) When a secondary mortgage loan [or a consumer loan] is repaid in full or renewed, or if the insurance is terminated prior to the scheduled maturity date of a secondary mortgage loan [or a consumer loan], the [secondary lender or consumer] **mortgage** lender shall refund to the borrower any unearned insurance premiums.

(b) If a borrower has repaid a secondary mortgage loan [or a consumer loan] in full, or if a beneficiary named in a policy under a claim is due a refund of unearned premiums and the [secondary] **mortgage** lender [or consumer lender] is unable to locate the borrower or beneficiary after due diligence, but in no event longer than 180 days, the licensee shall return all unearned premiums to the insurer, stating the reason therefor. The [secondary] lender [or consumer lender] shall file evidence in the borrower's file of his or her efforts to locate the borrower.

(c) All refunds and credits made by [secondary] **mortgage** lenders [and consumer lenders] pursuant to this section shall be computed by the "Sum of Digits Method" commonly known as the "Rule of 78ths." These are rules for computing refunds of unearned finance charges on early payment of a loan so that the refund is proportional to the monthly unpaid balance. Tables for calculating refunds and credits according to this methodology can be obtained from Financial Publishing Company, 82 Brookline Drive, Brookline, MA 02212, (617) 262-4040, www.financial-publishing.com. When the refund or credit of the unearned insurance premium is less than \$1.00, no refund is required.

(d) (No change.)

(e) If a secondary mortgage loan contract [or consumer loan contract] contains credit life insurance, the [secondary] **mortgage** lender [or consumer lender, as the case may be], shall file a death claim with the insurer upon receipt of notice of the death of the insured. The death claim filed by a [secondary] **mortgage** lender [or consumer lender] with an insurer shall be made for the full amount of the coverage held at death by the insured.

(f) A policy for credit life insurance, credit health or disability insurance, or credit involuntary unemployment insurance may provide for the insurance of more than one person. If the policy is silent regarding whether the insurance covers more than one person, the person whose signature appears on the first line of the lines provided for the signatures on the loan contract shall be considered as the only borrower insured by the policy and the [secondary lender or consumer] **mortgage** lender shall disclose to the borrower in writing the effect of the order of signing the loan contract.

3:15-8.1 Advertising and insurance costs

If a mortgage [banker, correspondent mortgage banker, secondary lender or consumer] lender requires a borrower to insure the collateral assigned as security for a loan, the licensee shall not advertise that there are "no other costs," or use words of similar meaning, unless the terms represented in the advertisement include the cost of the insurance or unless the advertisement states that an additional charge for insurance is required.

3:15-8.2 [Verbal] **Information required to be included in all** advertisements

(a) All solicitations and advertisements by licensees, whether in print, broadcast or electronically transmitted, shall include, in a conspicuous manner, the unique identifier assigned to the licensee by the NMLS&R. Business cards shall be considered advertisements.

(b) Each verbal advertisement for a loan, which a licensee makes or authorizes to be broadcast or disseminated by radio, television, [internet] **Internet** or other electronic means, shall include a statement indicating whether the advertisement is for a first mortgage [loan,] **or** second mortgage loan[, consumer loan, retail installment contract, or retail charge account]. The statement may be made by either verbal or visual means, provided that, if visual means are used, the statement shall appear for the entire time the advertisement is broadcast or disseminated.

3:15-8.3 Prohibited types of advertising; **exceptions**

(a) No advertisement shall contain false, misleading or deceptive claims or misrepresentations. In all advertisements which make express or implied claims that are likely to be misleading in the absence of certain qualifying information, such qualifying

information shall be disclosed in the advertisement in a clear and conspicuous manner.

The use of any of the following types of advertising shall be deemed to be misleading or deceptive:

1. A form which has the appearance of a check, money order, draft or other instrument that is normally used for the transfer of funds; [, except that a consumer lender may use such an instrument if:

i. The consumer lender sends this type of solicitation only to current or prior customers of the consumer lender, including customers of consumer credit affiliates of the consumer lender;

ii. Each such solicitation allows the customer an option not to receive future solicitations of this type;

iii. The instrument is negotiable for not more than six months, and the consumer is advised to destroy the instrument if it is not going to be negotiated; and

iv. The solicitation contains the following statement in a prominent place in a 10-point print: "THIS IS A SOLICITATION FOR A LOAN. READ THE ENCLOSED DISCLOSURES BEFORE SIGNING THIS CHECK!"

2. Reference to loans by terms such as savings, thrift, share passbook, account, deposit, certificate or any other word or phrase of similar meaning, used individually or collectively[.] **;** or

3. [No mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender, or consumer lender shall permit] **The placing by a business licensee of a**

supply of blank notes, chattel mortgages, security agreements, applications or other similar forms [to be placed] in any place other than a licensed office.

(b) Nothing in this section shall preclude the use of the term “mortgage banker” or “correspondent mortgage banker” by duly licensed mortgage lenders or correspondent mortgage lenders.

(c) A person who is not licensed or exempt under the Act or this chapter shall not offer residential mortgage loans in this State through direct or indirect solicitation or advertisement in print, electronic or any other medium.

SUBCHAPTER 9. PERMISSIBLE FEES

3:15-9.1 Fees permitted to be charged by mortgage [bankers] **lenders**, correspondent mortgage [bankers] **lenders**, and mortgage brokers

(a) Mortgage [bankers] **lenders**, correspondent mortgage [bankers] **lenders** and mortgage brokers may charge the following fees:

1. The fees specified in N.J.S.A. 17:11C-[23] **74** and in N.J.A.C. 3:1-16.2 and 16.10, as applicable. Correspondent mortgage [bankers] **lenders** may charge any fee that may be charged by mortgage [bankers] **lenders**; and

2. Pursuant to N.J.S.A. 17:11C-[30] **82** and 46:18-11.2, the fee charged by the county recording officer to cancel the mortgage, plus an additional service fee not to exceed \$25.00, providing that the borrower has received prior notice of the fees required by the mortgage [banker] **lender** or correspondent mortgage [banker] **lender**, and providing further that if the mortgage [banker] **lender** or correspondent mortgage [banker] **lender** collects the service

fee at the time of the mortgage transaction and transfers the servicing rights prior to cancellation, the mortgage [banker] **lender** shall refund the service fee to the borrower.

(b) No mortgage [banker] **lender**, correspondent mortgage [banker] **lender** or mortgage broker shall give, authorize the giving of, or accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a mortgage loan shall be referred to any person, except as otherwise permitted by State or Federal law.

3:15-9.2 Fees permitted to be charged [by secondary lenders] **for secondary mortgage loans**

(a) A [secondary] **mortgage** lender may charge a borrower, incident to a secondary mortgage loan, only the following:

1. The fees specified in N.J.S.A. 17:11C-[28] **80**; and
2. Pursuant to N.J.S.A. 17:11C-[30] **82** and 46:18-11.2, the fee charged by the county recording officer to cancel the mortgage, plus an additional service fee not to exceed \$25.00, providing that the borrower has received prior notice of the fees required by the [secondary] lender, and providing further that if the [secondary] lender collects the service fee at the time of the mortgage transaction and transfers the servicing rights prior to cancellation, the [secondary] lender shall refund the service fee to the borrower.

(b) Nothing contained in this section shall limit a [secondary] **mortgage** lender's ability to impose reasonable charges upon foreclosure.

(c) The following provisions shall govern the charging of attorney fees [by] **on** secondary [lenders] **mortgage loans**:

1. A [secondary] **mortgage** lender **on a secondary mortgage loan** shall not charge a borrower attorney fees if the attorney to whom the fee is to be paid is an employee, partner, officer, director or stockholder of the licensee. For purposes of this subsection, "stockholder" means and includes a person who directly, indirectly or acting through one or more other persons owns, controls or has power to vote 10 percent or more of any class of voting securities of a corporate licensee.

2. An attorney, who is providing legal service in accordance with N.J.S.A. 17:11C-[28] **80**, shall not compensate any of the following persons for the preparation of documents or for any other services performed for on or behalf of the attorney:

- i. A [secondary] **mortgage** lender;
- ii. An employee, partner, officer, director or stockholder of a [secondary] **mortgage** lender; or
- iii. Any other person in which a [secondary] **mortgage** lender is an employee, partner, officer, **member**, director or stockholder.

3. No person listed in (c)2 above shall receive compensation for the preparation of documents or for any other services performed for or on behalf of an attorney who is providing legal service in accordance with N.J.S.A. 17:11C-[28] **80**.

4. Any [secondary] **mortgage** lender who requires a borrower to pay an attorney fee shall, at least four days prior to the closing of the loan, inform the borrower in writing of such requirement.

5. In order to receive reimbursement from the borrower at closing for attorney fees charged to the [secondary] **mortgage** lender in connection with a secondary mortgage loan, the [secondary] **mortgage** lender shall issue to the borrower at or before the closing of a secondary mortgage loan an itemized listing, prepared by the attorney, of the specific legal services performed by the attorney for and on behalf of the [secondary] lender and the charge to the [secondary] lender for each such service. All services charged by the attorney shall be listed irrespective of whether they are less than \$100.00.

6. A [secondary] **mortgage** lender shall provide the following to the borrower at or before closing:

i. (No change)

ii. A closing statement [by the secondary lender] of all legal and other expenses to be paid by the borrower setting forth the net proceeds of the loan, itemized fees incurred or disbursed, interest charges, full amount of the loan and the terms by which the loan is to be repaid. Each expense item shall be separately listed with the corresponding dollar amount if the amount charged for that item exceeds \$100.00.

7. (No change.)

SUBCHAPTER 10. CHARACTERISTICS OF LOANS

3:15-10.1 Provisions applicable to all licensees

(a) (No change.)

(b) A borrower may repay a [first] mortgage loan[, second mortgage loan or consumer loan] at any time without penalty.

(c) A licensee may only compute interest accrued between monthly payments using the 365/365 method (actual number of days between payments) or the 360/360 method (each month assumed to be 30 days). [Sales finance companies charge a time price differential on retail charge accounts rather than interest.]

(d) – (g) (No change.)

3:15-10.2 Secondary mortgage loans

(a) A [secondary] **mortgage** lender shall not require or accept from a borrower any collateral or security for a secondary mortgage loan other than a mortgage, indenture or any other similar instrument or document that creates a lien upon any real property or an interest in real property including, but not limited to, shares of stock in a cooperative corporation.

(b) (No change.)

(c) A person not having an interest in the real property used as security for the loan shall be considered a joint borrower if:

1. (No change.)

2. The [secondary] **mortgage** lender issues the proceeds check or checks in all borrowers' names. If borrowers may access a line of credit by writing checks or otherwise, this requirement will be satisfied if all borrowers have the authority to draw against the account.

(d) A [secondary] **mortgage** lender shall not be made a beneficiary of an insurance policy purchased by the borrower from the [secondary] **mortgage** lender except as otherwise permitted by law.

[(e) A secondary lender is prohibited from engaging in the secondary mortgage loan business at a location that is utilized by a banking institution or savings and loan association as a main branch or any other office, except that no secondary lender shall be prohibited from engaging in the secondary mortgage loan business at a location utilized by a banking institution or savings and loan association, if the office and operations of the secondary lender are separate and apart and distinct from the offices and operations of the banking institution or the savings and loan association, and when employees of the banking institution or the savings and loan association are not employed by or soliciting for the secondary lender.]

3:15-[10.4.]**10.3** First mortgage loans

A [first] mortgage lender shall not require or accept from a borrower as collateral or security for a first mortgage loan household or personal goods, such as furniture, electronic equipment, motor vehicles, appliances, and jewelry.

SUBCHAPTER 11. (RESERVED)

CHAPTER 23

FEES, LICENSE TERMS AND ANNUAL REPORTS FOR LICENSEES

SUBCHAPTER 2. APPLICATION FEES AND LICENSE TERMS

3:23-2.1 Application fees

(a) **All licensees governed by the Consumer Finance Licensing Act, N.J.S.A.**

17:11C-1 to 50, shall be subject to the application fees specified in N.J.A.C. 3:17-4.2. All

licensees governed by **the Residential Mortgage Lenders Act**, N.J.S.A. 17:11C-[1 et seq.] 51 et seq., shall be subject to the application fees specified in N.J.A.C. 3:15-[4.2] **4.1**.

(b) The following table indicates the application fees established by the Commissioner of Banking and Insurance for application fees other than those specified in N.J.A.C. 3:15-[4.2] **4.1 and 3:17-4.2**.

(No change to table.)

SUBCHAPTER 4. ANNUAL REPORTS

3:23-4.1 Filing of annual reports

Unless otherwise prescribed by a statute **or rule** applicable to a particular license type, each licensee listed in N.J.A.C. 3:23-2.1[(b)] [including licensed lenders,] shall file an annual report on or before April 1 on a form supplied by the Commissioner. **Mortgage lenders and mortgage brokers shall file an annual report on or before May 1 on a form supplied by the Commissioner.** The form shall include the licensee's name, address, official e-mail address, volume of business(es), bonding information, if any, and may include any other information that the licensee is required by rule or statute to maintain or report. [The filing of annual reports by check cashers, insurance premium finance companies and pawnbrokers shall be governed by the provisions of N.J.S.A. 17:15A-45, 17:16D-7 and 45:22-12, respectively.]