

South Carolina General Assembly

122nd Session, 2017-2018

R75, S366

(R75, S366)

AN ACT TO AMEND SECTION 37-22-110, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO MORTGAGE LENDING DEFINITIONS, SO AS TO MAKE CERTAIN CHANGES AND DEFINE THE TERM "LOAN CORRESPONDENT"; TO AMEND SECTION 37-22-140, RELATING TO MORTGAGE LENDING LICENSE APPLICATIONS, SO AS TO REMOVE THE STATE FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK REQUIREMENT, TO REQUIRE THREE HOURS OF PRELICENSING EDUCATION ON SOUTH CAROLINA LAWS AND REGULATIONS, TO ALLOW THE LICENSURE OF A PERSONAL RESIDENCE UNDER CERTAIN CIRCUMSTANCES, AND TO ALLOW FOR THE GRANT OF TRANSITIONAL LICENSES PURSUANT TO THE SAFE ACT; TO AMEND SECTION 37-22-150, RELATING TO EXPIRATION AND RENEWAL OF LICENSES, SO AS TO REMOVE REFERENCES TO A STATE FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK; TO AMEND SECTION 37-22-160, RELATING TO CONTINUING PROFESSIONAL EDUCATION, SO AS TO REQUIRE AT LEAST ONE HOUR OF ANNUAL CONTINUING PROFESSIONAL EDUCATION ON SOUTH CAROLINA LAWS AND REGULATIONS; TO AMEND SECTION 37-22-190, RELATING TO PROHIBITED ACTIVITIES, SO AS TO REMOVE A REFERENCE TO THE SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; TO AMEND SECTION 37-22-210, RELATING TO THE COMMISSIONER'S RECORDS, SO AS TO UPDATE A REFERENCE; TO AMEND SECTION 37-22-240, RELATING TO CRIMINAL BACKGROUND CHECKS, SO AS TO REMOVE CERTAIN REQUIREMENTS AND TO AUTHORIZE THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY TO RETAIN FINGERPRINTS FOR CERTAIN PURPOSES; TO AMEND SECTION 37-22-270, RELATING TO PARTICIPATION IN THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY, SO AS TO DELETE REFERENCES TO THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION; TO AMEND SECTION 37-23-75, RELATING TO LOAN DISCLOSURES, SO AS TO REQUIRE A LOAN ESTIMATE TO BE MADE UNDER THE TILA-RESPA INTEGRATED DISCLOSURE RULE, TO AMEND SECTION 40-58-20, RELATING TO DEFINITIONS CONCERNING THE LICENSING OF MORTGAGE BROKERS ACT, SO AS TO MAKE CERTAIN CHANGES AND DEFINE THE TERM "LOAN CORRESPONDENT"; TO AMEND SECTION 40-58-50, AS AMENDED, RELATING TO MORTGAGE BROKER LICENSE APPLICATIONS, SO AS TO REMOVE THE STATE CRIMINAL BACKGROUND CHECK REQUIREMENT, TO AUTHORIZE THE NATIONWIDE MORTGAGE LICENSING

SYSTEM AND REGISTRY TO RETAIN FINGERPRINTS FOR CERTAIN PURPOSES, AND TO REQUIRE AT LEAST THREE HOURS OF PRELICENSING EDUCATION ON SOUTH CAROLINA LAWS AND REGULATIONS; TO AMEND SECTION 40-58-60, RELATING TO THE ISSUING OF A MORTGAGE BROKERS LICENSE, SO AS TO AUTHORIZE THE GRANT OF TRANSITIONAL LICENSES; TO AMEND SECTION 40-58-65, RELATING TO THE MAINTENANCE OF RECORDS, SO AS TO REMOVE CERTAIN PHYSICAL PRESENCE REQUIREMENTS; TO AMEND SECTION 40-58-67, RELATING TO CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS, SO AS TO REQUIRE AT LEAST ONE HOUR OF ANNUAL CONTINUING PROFESSIONAL EDUCATION ON SOUTH CAROLINA LAWS AND REGULATIONS; TO AMEND SECTION 40-58-110, RELATING TO LICENSE APPLICATIONS AND RENEWAL FEES, SO AS TO ALLOW FOR THE DEPARTMENT TO LICENSE A PERSONAL RESIDENCE UNDER CERTAIN CIRCUMSTANCES, AND TO AMEND SECTION 48-58-130, RELATING TO PARTICIPATION IN THE NATIONWIDE MORTGAGE LICENSING SYSTEM REGISTRY, SO AS TO DELETE REFERENCES TO THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION.

Be it enacted by the General Assembly of the State of South Carolina:

#### Definitions

SECTION 1. Section 37-22-110(1), (18), (22), and (25) through (41) of the 1976 Code is amended to read:

"(1) 'Act as a mortgage broker' means to act, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, by:

- (i) soliciting, processing, placing, or negotiating a mortgage loan for a borrower from a mortgage lender or depository institution or offering to process, place, or negotiate a mortgage loan for a borrower from a mortgage lender or depository institution, (ii) engaging in tablefunding of a mortgage loan, or (iii) acting as a loan correspondent whether those acts are done by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers. 'Act as a mortgage broker' also includes bringing a borrower and lender together to obtain a mortgage loan or rendering a settlement service as described in 12 U.S.C. 2602(3) and 24 C.F.R. Part

3500.2(b).

(18) 'Exempt person' means:

- (a) an employee of a licensee whose responsibilities are limited to clerical or support duties for the employer and who does not solicit borrowers, accept applications, or negotiate the terms of loans on behalf of the employer;
- (b) a depository institution or a subsidiary that is wholly owned and controlled by the depository institution and regulated by a federal banking agency or an institution regulated by the Farm Credit Administration. This chapter does not apply to the exempt persons described in this subitem;
- (c) an officer, registered loan originator, or employee of an exempt person described in subitem (b) of this section when acting in the scope of employment for the exempt person;
- (d) a person who offers or negotiates terms of a mortgage loan with or on behalf of an immediate family member of the individual;
- (e) an individual who offers or negotiates terms of a mortgage loan secured by a dwelling that served as the person's residence;
- (f) an employee whose employment as a processor or underwriter is undertaken pursuant to the direction and supervision of a licensee or exempt person except when the processor or underwriter is working as an independent contractor;
- (g) an 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, a mortgage broker, or other mortgage loan originator or by an agent of the mortgage lender, mortgage broker, or other mortgage loan originator;

- (h) an attorney who works for a mortgage lender, pursuant to a contract, for loss mitigation efforts or third party independent contractor who is HUD-certified, Neighborworks-certified, or similarly certified, who works for a mortgage lender, pursuant to a contract, for loss mitigation efforts;
- (i) a manufactured home retailer and its employees if performing only clerical or support duties in connection with the sale or lease of a manufactured home and the manufactured home retailer and its employees receive no compensation or other gain from a mortgage lender or a mortgage broker for the performance of the clerical or support duties; or
- (j) any other person deemed exempt pursuant to the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act), Section 1508, Title V of The Housing and Economic Recovery Act of 2008, Public Law 110-289, and any regulations promulgated thereunder.

(22) 'Individual servicing a mortgage loan' means an employee of a mortgage lender licensed in this State, that:

- (a) collects or receives payments including payments of principal, interest, escrow amounts, and other amounts due on existing obligations due and owing to the licensed mortgage lender for a mortgage loan including, but not limited to, when:
  - (i) the borrower is in default; or
  - (ii) the borrower is in reasonably foreseeable likelihood of default;
- (b) works with the borrower and the licensed mortgage lender, collects data, and makes decisions necessary to modify, either temporarily or permanently, certain terms of those obligations; or
- (c) otherwise finalizes collection through the foreclosure process.

(25) 'Loan correspondent' means a person engaged in the business of making mortgage loans as a third party originator and who does not engage in all three of the following activities with respect to each mortgage loan:

(a) underwrite the mortgage loan written by their employees;

(b) approve the mortgage loan; and

(c) fund the mortgage loan utilizing an unrestricted warehouse or credit line.

A loan correspondent is not a mortgage lender.

(26) 'Loan originator' means a natural person who, in exchange for compensation or gain or in the expectation of compensation or gain as an employee of a licensed mortgage lender, solicits, negotiates, accepts, or offers to accept applications for mortgage loans, including electronic applications, or includes direct contact with, or informing mortgage loan applicants of, the rates, terms, disclosures, and other aspects of the mortgage loan. The definition of 'loan originator' does not include an exempt person described in item (18) or a person solely involved in extensions of credit relating to timeshare plans, as that term is defined in Section 101(53D) of Title 11, United States Code. The definition of loan originator does not apply to an individual servicing a mortgage loan as that term is defined in this chapter until July 31, 2011, unless the United States Department of Housing and Urban Development or a court of competent jurisdiction determines before that time that those individuals servicing mortgage loans are 'loan originators' as that term is defined in the SAFE Act pursuant to Section 1508 of Title V of The Housing and Economic Recovery Act of 2008, Public Law 110-289. Solely acquiring and reviewing a credit report does not constitute acting as a loan originator.

(27) 'Make a mortgage loan' means to close a mortgage loan, advance funds, offer to advance funds, or make a commitment to advance funds to a borrower under a mortgage loan.

(28) 'Managing principal' means a natural person who meets the requirements of Section 37-22-140(C) and who agrees to be primarily responsible for the operations of a licensed mortgage lender.

(29) 'Mortgage broker' means a person who acts as a mortgage broker, as that term is defined in item (1).

(30) 'Mortgage lender' means a person who acts as a mortgage lender as that term is defined in item (2) or engages in the business of servicing mortgage loans for others or collecting or otherwise receiving mortgage loan payments directly from borrowers for distribution to another person. This definition does not include engaging in a tablefunded transaction.

(31) 'Mortgage loan' means a loan made to a natural person primarily for personal, family, or household use, primarily secured by a mortgage, deed of trust, or other security interest on residential real property or security interest arising under an installment sales contract or equivalent security interest against the borrower's dwelling and: (i) located in South Carolina, (ii) negotiated, offered, or otherwise transacted within this State, in whole or in part, or (iii) made or extended within this State.

(32) 'Nationwide Mortgage Licensing System and Registry' means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators of licensees licensed pursuant to this chapter.

(33) 'Nontraditional mortgage product' means a mortgage product other than

a thirty-year fixed rate mortgage loan.

(34) 'Person' means a natural person, partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities, however organized.

(35) 'Processor or underwriter' means an employee of a mortgage broker, mortgage lender, or exempt person who performs clerical or support duties at the direction of and subject to the supervision and instruction of a licensee or exempt person and may include direct contact with applicants but does not include soliciting, negotiating, accepting, or offering to accept applications that include personal identifying information as defined in Section 16-13-510(D) for mortgage loans including electronic applications or informing applicants of the rates, terms, disclosures, and other aspects of the mortgage loan.

(a) For purposes of this item only, clerical or support duties may include after the receipt of an application: (i) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a mortgage loan, and (ii) communication with a consumer to obtain the information necessary for the processing or underwriting of a mortgage loan, to the extent that the communication does not include offering or negotiating loan rates or terms or counseling consumers about mortgage loans.

(b) A person engaging solely in loan processor or underwriter activities may not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items that the person may or will perform any of the activities of a loan originator.

(c) A processor or underwriter who is an independent contractor may not engage in the activities of a processor or underwriter unless the independent contractor processor or underwriter obtains and maintains a license as provided by rule or regulation pursuant to Section 37-22-270.

(36) 'Registered loan originator' means a natural person who meets the definition of loan originator and is an employee of a depository institution or a subsidiary that is wholly owned and controlled by the depository institution and regulated by a federal banking agency or an institution regulated by the Farm Credit Administration and is registered with and maintains a unique identifier through the Nationwide Mortgage Licensing System and Registry.

(37) 'Residential real property' means real property located in the State of South Carolina upon which there is located or is to be located one or more single-family dwellings or dwelling units that are to be occupied as the owner's dwelling, and includes real estate and residential manufactured home (land/home) transactions.

(38) 'RESPA' means the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601, et seq., and regulations adopted pursuant to it including, but not limited to, the TILA-RESPA Integrated Disclosure Rule.

(39) 'Soliciting, processing, placing, or negotiating a mortgage loan' means, for compensation or gain or in the expectation of compensation or gain, either directly or indirectly, accepting or offering to accept an application for a mortgage loan, assisting or offering to assist in the processing of an application for a mortgage loan, soliciting or offering to solicit a mortgage loan, or negotiating or offering to negotiate the terms or conditions of a mortgage loan.



(40) 'Tablefunding' means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

(41) 'TILA' means the Truth in Lending Act, 15 U.S.C. Section 1601, et seq., and regulations adopted pursuant to it including, but not limited to, the TILA-RESPA Integrated Disclosure Rule.

(42) 'Unique identifier' means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry."

Prelicensing education requirements, South Carolina law required,  
transitional licenses authorized

SECTION 2. Section 37-22-140 of the 1976 Code is amended to read:

"Section 37-22-140. (A) A person desiring to obtain a license pursuant to this chapter shall make application for licensure to the commissioner on forms prescribed by the commissioner. The application must contain the information the commissioner considers necessary including, but not limited to, the applicant's:

- (1) name, address, and social security number or, if applicable, Employer Identification Number (EIN);
- (2) form and place of organization, if applicable;
- (3) proposed method of and locations for doing business, if applicable;
- (4) qualifications and business history and, if applicable, the business history of any partner, officer, or director, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling the applicant, including:

(i) a description of any injunction or administrative order by a state or federal authority to which the person is or has been subject, including denial, suspension, or revocation of a financial services or financial services related license or registration;

(ii) a conviction, or plea of guilty or nolo contendere to a misdemeanor within the last ten years involving financial services or a financial services related business or any fraud, false statements or omissions, theft or wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, money laundering, breach of trust, or a conspiracy to commit any of these offenses; and

(iii) a conviction of, or plea of guilty or nolo contendere to, a felony;

(5) financial condition, credit history, and business history, with respect to an application for licensing as a mortgage lender; and credit history and business history, with respect to the application for licensing as a loan originator; and

(6) consent to a national fingerprint-based criminal history record check pursuant to Section 37-22-240 and submission of a set of the applicant's fingerprints in a form acceptable to the commissioner. In the case of an applicant that is a corporation, partnership, limited liability company, association, or trust, each natural person who has control of the applicant or who is the managing principal or a branch manager shall consent to a national fingerprint-based criminal history record check pursuant to Section 37-22-240 and submit a set of that natural person's fingerprints pursuant to this item. Refusal to consent to a criminal history record check constitutes grounds for the commissioner to deny licensure to the applicant as well as to any entity:

- (i) by whom or by which the applicant is employed;
- (ii) over which the applicant has control; or
- (iii) as to which the applicant is the current or proposed managing principal or a current or proposed branch manager.

(B) In addition to the requirements imposed by the commissioner in subsection (A), each applicant for licensure as a loan originator shall:

- (1) have attained the age of at least eighteen years;
- (2) work for a licensed mortgage lender;
- (3) have satisfactorily completed prelicensing education of at least twenty hours, which shall include at least three hours on South Carolina laws and regulations, and the National Test Component with Uniform State Content approved pursuant to 12 U.S.C. 5101, et seq. ;
- (4) have never had a loan originator license revoked in any governmental jurisdiction; and
- (5) have not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court: (i) during the ten-year period preceding the date of the application for licensing, or (ii) at any time, if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering.

(C) In addition to the requirements of subsection (A) of this section, each applicant for licensure as a mortgage lender at the time of application and at all times after that shall comply with the following requirements:

- (1) If the applicant is a sole proprietor, the applicant shall have at least three years of experience in financial services or financial services related business or other experience or competency requirements as the

commissioner may impose.

(2) If the applicant is a general or limited partnership, at least one of its general partners shall have the experience described in item (1).

(3) If the applicant is a corporation, at least one of its principal officers shall have the experience described in item (1).

(4) If the applicant is a limited liability company, at least one of its members or managers shall have the experience described in item (1).

(5) Instead of a showing of three years' experience, an applicant may show proof of three years' employment with a federally insured depository institution or a VA-, FHA-, or HUD-approved mortgagee.

(D) Each applicant shall identify one person meeting the requirements of subsections (B) and (C) to serve as the applicant's managing principal.

(E) Every applicant for initial licensure shall pay a filing fee of one thousand dollars for licensure as a mortgage lender or fifty dollars for licensure as a loan originator, in addition to the actual cost of obtaining credit reports and national fingerprint-based criminal history record checks.

If a licensed loan originator changes employment, a new license must be issued and a fee of twenty-five dollars must be paid.

(F) A mortgage lender shall post and maintain a surety bond in an amount determined by the commissioner, based on the total dollar amount of mortgage loans subject to regulation by the commissioner pursuant to this act in a calendar year in this State pursuant to the following: (i) dollar volume of mortgage loans from \$0 to \$49,999,999, surety bond of \$50,000, (ii) dollar volume of mortgage loans from \$50,000,000 to \$249,999,999, surety bond of \$100,000, (iii) dollar volume of mortgage loans greater than \$250,000,000

surety bond of \$150,000. In no case is the surety bond less than fifty thousand dollars. The surety bond must be executed by a surety company authorized by the laws of this State to transact business within this State. The surety bond must be in a form satisfactory to the commissioner, must be executed to the commissioner, and must be for the use of the State for the recovery of expenses, fines, and fees, or any of them, levied pursuant to this chapter and for consumers who have losses or damages as a result of noncompliance with this chapter by the mortgage lender. The full amount of the surety bond must be in effect at all times. The license of a licensee expires upon the termination of the bond by the surety company, unless a new bond is filed with the commissioner before the termination of the previous bond. If the license expires based on bond termination, all licensed activity must cease and the person must apply for a license pursuant to subsection (A).

(G) Any sole proprietor, general partner, member or manager of a limited liability company, or officer of a corporation who meets individually the requirements of subsection (B), upon payment of the applicable fee, meets the qualifications for licensure as a loan originator subject to the provisions of subsection (I).

(H) Each principal office and each branch office of a licensed mortgage lender at which business is conducted must be licensed pursuant to this chapter and must be issued a separate license. A licensed mortgage lender shall file with the commissioner an application on a form prescribed by the commissioner which identifies the address of the principal office and each branch office and branch manager. The commissioner may license a personal residence of a loan originator as a branch office if it is located more than seventy-five miles

from a commercial branch office location. A licensing fee of one hundred fifty dollars must be assessed by the commissioner for each branch office issued a license.

(I) If the commissioner determines that an applicant meets the qualifications for licensure and finds that the financial responsibility, character, and general fitness of the applicant are such as to command the confidence of the community and to warrant belief that the business is to be operated honestly, fairly, and efficiently according to the purposes of this chapter and in accordance with all applicable state and federal laws, the commissioner shall issue a license to the applicant. If the commissioner does not make that determination, the commissioner shall refuse to license the applicant and shall notify him of the denial.

(J) Issuance of a license does not indicate approval or acceptance of any contract, agreement, or other document submitted in support of the application. A licensee may not represent that its services or contracts are approved by the State or state agency.

(K) A person who obtains a license as a mortgage lender, upon notice to the commissioner on a form prescribed by the commissioner, may act as a mortgage broker as defined in Section 37-22-110(1). The commissioner shall provide to the administrator notification of which mortgage lenders also are acting as brokers. A mortgage lender who also acts as a mortgage broker is not required to obtain a license as a mortgage broker pursuant to Chapter 58, Title 40, unless the person acts as a mortgage broker with regard to the majority of mortgage loans reported on the person's Mortgage Call Report filed during the last two quarters of the previous calendar year and the first two quarters of

the current calendar year. A mortgage lender acting as a mortgage broker must comply with Sections 40-58-70, 40-58-75, and 40-58-78.

(L) Transitional licenses will be granted as authorized by and pursuant to the SAFE Act.

(M) If the information contained in a document filed with the commissioner is or becomes inaccurate or incomplete, the licensee promptly shall file a correcting amendment to the information contained in the document.

(N) All advertisements of mortgage loans must comply with the Truth in Lending Act, 15 U.S.C. 1601, et seq., and the South Carolina Consumer Protection Code, Title 37."

State fingerprint-based criminal history record check removed

SECTION 3. Section 37-22-150 of the 1976 Code is amended to read:

"Section 37-22-150. (A) All licenses issued by the commissioner pursuant to this chapter expire annually on the thirty-first day of December or on another date that the commissioner may determine. The license is invalid after that date unless renewed. The renewal period for all licensees is from November first through December thirty-first annually or on another date the commissioner may determine. A licensee desiring to renew its license must submit an application to the commissioner on forms and containing information the commissioner requires. Applications received after December thirty-first or another date the commissioner determines, are late and the late fees in subsection (B) apply. A license may be renewed by compliance with this section and by paying to the commissioner, in addition to the actual cost of obtaining credit reports and national fingerprint-based criminal history record checks as the commissioner may require, a renewal fee as prescribed by the board for each

of the following:

(1) for a licensed mortgage lender, an annual renewal fee of no more than eight hundred dollars and no more than one hundred fifty dollars for each branch office; and

(2) for a licensed loan originator, an annual fee of no more than fifty dollars.

(B) If a license of a licensed mortgage lender is not renewed during the renewal period, a late fee of not more than five hundred dollars as prescribed by the board, in addition to the renewal fee in subsection (A)(1), must be assessed. If a license of a licensed loan originator is not renewed during the renewal period, a late fee of not more than one hundred dollars as prescribed by the board, in addition to the renewal fee in subsection (A)(2), must be assessed as a late fee to a renewal. If a licensee fails to renew its license within thirty days after the date the license expires or otherwise fails to maintain a valid license, the commissioner shall require the licensee to comply with the requirements for the initial issuance of a license pursuant to this chapter, in addition to paying any fee that has accrued.

(C) At any time required by the commissioner, each person described in Section 37-22-140 shall furnish to the commissioner consent to a national fingerprint-based criminal history record check and a set of fingerprints in a form acceptable to the commissioner. Refusal to consent to a criminal history record check may constitute grounds for the commissioner to deny renewal of the license of the person as well as the license of another person by which he is employed, over which he has control, or as to which he is the current or proposed managing principal or a current or proposed branch manager.



(D) A license issued pursuant to this chapter is not assignable or transferable. Control of a licensee must not be acquired through a stock purchase or other device without the prior written consent of the commissioner. The commissioner may not give written consent if the commissioner finds that any of the grounds for denial, revocation, or suspension of a license pursuant to Section 37-22-200 are applicable to the acquiring person."

Mortgage lender license renewal requirements, South Carolina law required  
SECTION 4. Section 37-22-160(A) of the 1976 Code is amended to read:

"(A) As a condition of license renewal, a licensee must complete at least eight hours of continuing professional education annually, which shall include at least one hour on South Carolina laws and regulations, for the purpose of enhancing professional competence and responsibility. The continuing professional education completed must be reported to the commissioner annually. Documentation of courses completed must be maintained by all licensees. This documentation is subject to inspection by the commissioner for up to two years after the date of course completion."

Secretary of the Department of Housing and Urban Development, reference removed

SECTION 5. Section 37-22-190(A)(11) of the 1976 Code is amended to read:

"(11) fail to comply with the mortgage loan servicing transfer, escrow account administration, or borrower inquiry response requirements imposed by Sections 6 and 10 of the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Section 2605 and Section 2609, and regulations adopted pursuant to them and state law;"

Code of Federal Regulations, reference updated

SECTION 6. Section 37-22-210(C)(2) of the 1976 Code is amended to read:

"(2) Beginning on January 1, 2010, in addition to the records required to be maintained by licensees pursuant to item (1), each licensee shall maintain a mortgage log that contains these specific data elements:

- (i) credit score of the borrower;
- (ii) adjustable or fixed type of loan;
- (iii) term of the loan;
- (iv) annual percentage rate of the loan; and
- (v) appraised value of the collateral.

Each licensee shall submit to the commissioner by March thirty-first of each year its mortgage log data and the data identified in 12 C.F.R. Part 1003, et seq., in a form determined by the commissioner. The licensee shall pay a fine of one hundred dollars a day for late or incomplete data submissions. Data collected by the commissioner pursuant to this section is confidential and may be released to the public only in composite form. The commissioner annually shall submit to the department, in a form prescribed by the department and no later than April thirtieth, the data that it collected. The department shall prepare and make available to the public a report based on the data. The report must be available by June thirtieth each year."

Mortgage lender licensing, certain criminal background check requirements removed, retention of fingerprints for certification purposes

SECTION 7. Section 37-22-240 of the 1976 Code is amended to read:

"Section 37-22-240. Using the information supplied by the commissioner, the applicant must undergo a national criminal record check, supported by fingerprints, by the Federal Bureau of Investigation (FBI). The results of

these criminal record checks must be reported to the commissioner. The Nationwide Mortgage Licensing System and Registry is authorized to retain the fingerprints for certification purposes and for notification of the commissioner regarding subsequent criminal charges which may be reported to the FBI. The commissioner shall keep all information pursuant to this section privileged, in accordance with applicable state and federal guidelines."

State criminal history background records check, references removed

SECTION 8. Section 37-22-270(A)(4) of the 1976 Code is amended to read:

"(4) authorize the Nationwide Mortgage Licensing System and Registry to collect fingerprints on the commissioner's behalf in order to receive national criminal history background record checks from the FBI to retain for certification purposes and for notification of the commissioner regarding subsequent criminal charges which may be reported to the FBI in accordance with Sections 37-22-140 and 37-22-240;"

Loan disclosures, loan estimate under the TILA-RESPA integrated disclosure rule

SECTION 9. Section 37-23-75(A) of the 1976 Code is amended to read:

"(A) At the time the borrower receives the loan estimate under the Real Estate Settlement and Procedures Act (RESPA), the Truth In Lending Act (TILA), and regulations adopted pursuant to both acts including, but not limited to, the TILA-RESPA Integrated Disclosure Rule, and before the scheduled closing of a consumer home loan, the broker or mortgage broker of a loan must disclose in writing the amount being earned on the loan. The Department of Consumer Affairs shall provide a disclosure form to include the following:

(1) the dollar amount of the yield spread premium and the percentage of the

yield spread premium in relation to the loan amount. For purposes of this item, 'yield spread premium' is the amount paid to the broker by the lender based on the difference between the interest rate at which the broker originates the loan and the par, or market rate offered by a lender;

(2) an itemization of dollar amounts for points, fees, and commissions with a combined total given. A percentage of the combined total should be specified in relation to the loan amount;

(3) a dollar amount total of items 37-23-75(A)(1) and (2) and a percentage of the total specified in relation to the total amount of the loan; and

(4) for a loan that is an ARM as defined in Section 37-23-20(17), a listing of the schedule when the loan may be reset, for each and every reset, and a listing of the monthly payment that is owed for each change that is allowed by the terms of the contract. If the consumer escrows the insurance and taxes with each monthly payment, it must be reflected in the payment listed."

#### Definitions

SECTION 10. Section 40-58-20(1), (16), (20), and (23) through (40) of the 1976 Code is amended to read:

"(1) 'Act as a mortgage broker' means to act, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, by:

(i) soliciting, processing, placing, or negotiating a mortgage loan for a borrower from a mortgage lender or depository institution or offering to process, place, or negotiate a mortgage loan for a borrower from a mortgage lender or depository institution, (ii) engaging in tablefunding of a mortgage loan, or (iii) acting as a loan correspondent whether those acts are done by telephone, by electronic means, by mail, or in person with the borrowers or

potential borrowers. 'Act as a mortgage broker' also includes bringing a borrower and lender together to obtain a mortgage loan or rendering a settlement service as described in 12 U.S.C. 2602(3) and 24 C.F.R. Part 3500.2(b).

(16) 'Exempt person' means:

- (a) an employee of a licensee whose responsibilities are limited to clerical or support duties for the employer and who does not solicit borrowers, accept applications, or negotiate the terms of loans on behalf of the employer;
- (b) a depository institution or a subsidiary that is wholly owned and controlled by the depository institution and regulated by a federal banking agency or an institution regulated by the Farm Credit Administration. This chapter does not apply to the exempt persons described in this subitem;
- (c) an officer, registered loan originator, or employee of an exempt person described in subitem (b) of this section when acting in the scope of employment for the exempt person;
- (d) a person who offers or negotiates terms of a mortgage loan with or on behalf of an immediate family member of the individual;
- (e) an individual who offers or negotiates terms of a mortgage loan secured by a dwelling that served as the person's residence;
- (f) an employee whose employment as a processor or underwriter is undertaken pursuant to the direction and supervision of a licensee or exempt person except when the processor or underwriter is working as an independent contractor;
- (g) an 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, a mortgage broker, or other mortgage loan originator or by an agent of the mortgage lender, mortgage broker, or other mortgage loan originator;

(h) an attorney who works for a mortgage lender, pursuant to a contract, for loss mitigation efforts or third party independent contractor who is HUD-certified, Neighborworks-certified, or similarly certified, who works for a mortgage lender, pursuant to a contract, for loss mitigation efforts;

(i) a manufactured home retailer and its employees if performing only clerical or support duties in connection with the sale or lease of a manufactured home and the manufactured home retailer and its employees receive no compensation or other gain from a mortgage lender or a mortgage broker for the performance of the clerical or support duties; or

(j) any other person deemed exempt pursuant to the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act), Section 1508, Title V of The Housing and Economic Recovery Act of 2008, Public Law 110-289, and any regulations promulgated thereunder.

(20) 'Individual servicing a mortgage loan' means an employee of a mortgage lender licensed in this State, that:

(a) collects or receives payments including payments of principal, interest, escrow amounts, and other amounts due on existing obligations due and owing to the licensed mortgage lender for a mortgage loan including, but not limited to, when:

(i) the borrower is in default; or

(ii) the borrower is in reasonably foreseeable likelihood of default;

(b) works with the borrower and the licensed mortgage lender, collects

data, and makes decisions necessary to modify, either temporarily or permanently, certain terms of those obligations; or

(c) otherwise finalizes collection through the foreclosure process.

(23) 'Loan correspondent' means a person engaged in the business of making mortgage loans as a third party originator and who does not engage in all three of the following activities with respect to each mortgage loan:

(a) underwrite the mortgage loan written by their employees;

(b) approve the mortgage loan; and

(c) fund the mortgage loan utilizing an unrestricted warehouse or credit line.

A loan correspondent is not a mortgage lender.

(24) 'Loan originator' means a natural person who, in exchange for compensation or gain or in the expectation of compensation or gain as an employee of a licensed mortgage lender, solicits, negotiates, accepts, or offers to accept applications for mortgage loans, including electronic applications, or includes direct contact with, or informing mortgage loan applicants of, the rates, terms, disclosures, and other aspects of the mortgage loan. The definition of 'loan originator' does not include an exempt person described in item (16) or a person solely involved in extensions of credit relating to timeshare plans, as that term is defined in Section 101(53D) of Title 11, United States Code. The definition of loan originator does not apply to an individual servicing a mortgage loan as that term is defined in this chapter until July 31, 2011, unless the United States Department of Housing and Urban Development or a court of competent jurisdiction determines before that time that those individuals servicing mortgage loans are 'loan originators' as

that term is defined in the SAFE Act pursuant to Section 1508 of Title V of The Housing and Economic Recovery Act of 2008, Public Law 110-289. Solely acquiring and reviewing a credit report does not constitute acting as a loan originator.

(25) 'Make a mortgage loan' means to close a mortgage loan, advance funds, offer to advance funds, or make a commitment to advance funds to a borrower under a mortgage loan.

(26) 'Managing principal' means a natural person who meets the requirements of Section 37-22-140(C) and who agrees to be primarily responsible for the operations of a licensed mortgage lender.

(27) 'Mortgage broker' means a person who acts as a mortgage broker, as that term is defined in item (1).

(28) 'Mortgage lender' means a person who acts as a mortgage lender as that term is defined in item (2) or engages in the business of servicing mortgage loans for others or collecting or otherwise receiving mortgage loan payments directly from borrowers for distribution to another person. This definition does not include engaging in a tablefunded transaction.

(29) 'Mortgage loan' means a loan made to a natural person primarily for personal, family, or household use, primarily secured by a mortgage, deed of trust, or other security interest on residential real property or security interest arising under an installment sales contract or equivalent security interest against the borrower's dwelling and: (i) located in South Carolina, (ii) negotiated, offered, or otherwise transacted within this State, in whole or in part, or (iii) made or extended within this State.

(30) 'Nationwide Mortgage Licensing System and Registry' means a mortgage licensing system developed and maintained by the Conference of State Bank



Supervisors and the American Association of Residential Mortgage Regulators of licensees licensed pursuant to this chapter.

(31) 'Nontraditional mortgage product' means a mortgage product other than a thirty-year fixed rate mortgage loan.

(32) 'Person' means a natural person, partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities, however organized.

(33) 'Processor or underwriter' means an employee of a mortgage broker, mortgage lender, or exempt person who performs clerical or support duties at the direction of and subject to the supervision and instruction of a licensee or exempt person and may include direct contact with applicants but does not include soliciting, negotiating, accepting, or offering to accept applications that include personal identifying information as defined in Section 16-13-510(D) for mortgage loans including electronic applications or informing applicants of the rates, terms, disclosures, and other aspects of the mortgage loan.

(a) For purposes of this item only, clerical or support duties may include after the receipt of an application: (i) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a mortgage loan, and (ii) communication with a consumer to obtain the information necessary for the processing or underwriting of a mortgage loan, to the extent that the communication does not include offering or negotiating loan rates or terms or counseling consumers about mortgage loans.

(b) A person engaging solely in loan processor or underwriter activities may not represent to the public, through advertising or other means of

communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items that the person may or will perform any of the activities of a loan originator.

(c) A processor or underwriter who is an independent contractor may not engage in the activities of a processor or underwriter unless the independent contractor processor or underwriter obtains and maintains a license as provided by rule or regulation pursuant to Section 37-22-270.

(34) 'Registered loan originator' means a natural person who meets the definition of loan originator and is an employee of a depository institution or a subsidiary that is wholly owned and controlled by the depository institution and regulated by a federal banking agency or an institution regulated by the Farm Credit Administration and is registered with and maintains a unique identifier through the Nationwide Mortgage Licensing System and Registry.

(35) 'Residential real property' means real property located in the State of South Carolina upon which there is located or is to be located one or more single-family dwellings or dwelling units that are to be occupied as the owner's dwelling, and includes real estate and residential manufactured home (land/home) transactions.

(36) 'RESPA' means the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601, et seq. and regulations adopted pursuant to it including, but not limited to, the TILA-RESPA Integrated Disclosure Rule.

(37) 'Soliciting, processing, placing, or negotiating a mortgage loan' means, for compensation or gain or in the expectation of compensation or gain, either directly or indirectly, accepting or offering to accept an application for a mortgage loan, assisting or offering to assist in the processing of an

application for a mortgage loan, soliciting or offering to solicit a mortgage loan, or negotiating or offering to negotiate the terms or conditions of a mortgage loan.

(38) 'Tablefunding' means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

(39) 'TILA' means the Truth in Lending Act, 15 U.S.C. Section 1601, et seq. and regulations adopted pursuant to it including, but not limited to, the TILA-RESPA Integrated Disclosure Rule.

(40) 'Unique identifier' means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

(41) 'Qualified loan originator' means a natural person who acts as a loan originator exclusively for a mortgage broker licensee and who is not an employee of the mortgage broker. Unless otherwise indicated, a qualified loan originator is subject to the requirements of a loan originator under this chapter."

Mortgage broker licensing, state criminal background check requirement removed, South Carolina law required, written exam replaced

SECTION 11. Sections 40-58-50(B)(1) and (C) of the 1976 Code is amended to read:

"(1) The application for a mortgage broker license must include an affirmation of financial solvency noting bonding requirements required by the administrator and the descriptions of the business activities, credit history, financial responsibility, educational background, and general character and fitness of the applicant and any partner, officer, or director, a person

occupying a similar status or performing similar functions, or a person directly or indirectly controlling the applicant as required by this chapter, including consent to a national criminal history record checks and a set of the applicant's fingerprints in a form acceptable to the administrator. The application must be accompanied by a nonrefundable fee, payable to the department, of five hundred fifty dollars, in addition to the actual cost of obtaining credit reports and national criminal history record checks by the Federal Bureau of Investigation (FBI). Using the information supplied by the administrator, the applicant must undergo national criminal record checks, supported by fingerprints, by the FBI. The results of these criminal record checks must be reported to the administrator. The Nationwide Mortgage Licensing System and Registry is authorized to retain the fingerprints for certification purposes and for notification of the administrator regarding criminal charges. The administrator shall keep all information pursuant to this section privileged, in accordance with applicable state and federal guidelines.

(C) The application for a loan originator license must designate the employing mortgage broker and must include descriptions of the business activities, credit history, financial responsibility, educational background, and general character and fitness of the applicant as required by this chapter, including consent to a national criminal history record checks and a set of the applicant's fingerprints in a form acceptable to the administrator. The application must be accompanied by a nonrefundable fee, payable to the department, of fifty dollars, in addition to the actual cost of obtaining credit reports and national criminal history record checks by the FBI. Using the information supplied by the administrator, the applicant must undergo

national criminal record checks, supported by fingerprints, by the FBI. The results of these criminal record checks must be reported to the administrator. The Nationwide Mortgage Licensing System and Registry is authorized to retain the fingerprints for certification purposes and for notification of the administrator regarding criminal charges. The administrator shall keep all information pursuant to this section privileged, in accordance with applicable state and federal guidelines. Additionally, the applicant must:

- (1) complete satisfactorily a prelicensing educational course of at least twenty hours, which shall include at least three hours on South Carolina laws and regulations, and the National Test Component with Uniform State Content approved pursuant to 12 U.S.C. 5101, et seq.;
- (2) have never had a loan originator license revoked in any governmental jurisdiction;
- (3) have not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court: (i) during the ten-year period preceding the date of application for licensing, or (ii) at any time if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering; and
- (4) be at least eighteen years of age and otherwise comply with this chapter."

Mortgage broker licensing, transitional licenses authorized

SECTION 12. Section 40-58-60 of the 1976 Code is amended to read:

"Section 40-58-60. (A) Upon the filing of an application for a license, if the administrator finds that the financial responsibility, experience, character, and general fitness of the applicant, and of the members if the

applicant is a partnership, association, or limited liability company, and of the officers and directors if the applicant is a corporation, are such as to command the confidence of the community and to warrant belief that the business may be operated honestly, fairly, and efficiently according to the purposes of this chapter and in accordance with all applicable state and federal laws, it shall license the applicant and issue a license. If the administrator does not so find, it shall refuse to license the applicant and shall notify him of the denial.

(B) Upon the receipt of the license, the licensee is authorized to engage in the business for which the license was issued.

(C) Each license issued to a licensee must state the address at which the business is to be conducted and must state fully the name of the licensee and the date of the license. A license must be posted prominently in each place of business of the licensee. The license is not transferable or assignable.

(D) Issuance of a license does not indicate approval or acceptance of any contract, agreement, or other document submitted in support of the application. A licensee may not represent that its services or contracts are approved by the State or a state agency.

(E) If the information contained in any document filed with the administrator is or becomes inaccurate or incomplete in a material respect, the licensee promptly shall file a correcting amendment to the information contained in the document.

(F) All advertisements of mortgage loans must comply with the Truth in Lending Act, 15 U.S.C. 1601, et seq. and the South Carolina Consumer Protection Code, Title 37.

(G) Transitional licenses will be granted as authorized by and pursuant to the SAFE Act."

Mortgage broker records, Code of Federal Regulations, reference updated, physical presence requirement removed

SECTION 13. Section 40-58-65 of the 1976 Code is amended to read:

"Section 40-58-65. (A) A mortgage broker licensed pursuant to this chapter must maintain at his usual place of business books, records, and documents pertaining to the business conducted, to enable the administrator to determine compliance with this chapter, and shall include a mortgage loan log that contains these specific data elements: (i) credit score of the borrower, (ii) adjustable or fixed type of loan, (iii) term of the loan, (iv) annual percentage rate of the loan, and (v) appraised value of the collateral. Each licensee shall submit its mortgage loan log data and the data identified in 12 C.F.R. Part 1003, et seq., in a form determined by the administrator by March thirty-first of each year. The licensee shall pay a fine of one hundred dollars a day for late or incomplete data submissions. Data collected by the administrator pursuant to this section is confidential and may be released only in composite form. The administrator shall prepare and make available to the public a report based on the above data. The report must be available by June thirtieth of each year. The mortgage loan log must be completed with information known at the time of review by the administrator and must include loans in process, closed loans, turndowns, denials, and withdrawals. A mortgage broker with two or more licensed offices may consolidate the records at any one of the licensed offices so long as the administrator is notified of the location of the records. The records must be available for examination to the

administrator or his designee upon request. Books and records must be maintained for at least three years. A licensee's records may be maintained electronically, if approved by the administrator, so long as they are readily accessible for examination by the administrator.

(B) A licensed mortgage broker with an official place of business also may maintain one or more branch offices if the:

(1) mortgage broker notifies the administrator in writing seven days before the opening of a branch office of the location of the branch office, the branch manager for each branch location, the location of all records pertaining to business transacted from the branch office, and the branch location's business hours;

(2) mortgage broker notifies the administrator in writing within seven business days of closing a branch office; and

(3) mortgage broker licensee is responsible and accountable for the activities of all licensed locations, branch managers, and loan originators.

Compliance reviews must include examination of all facts and circumstances of branch operations to ensure this responsibility and accountability.

(C) The administrator may examine the books and records of a mortgage broker and other documents and records to determine whether there has been substantial compliance with this chapter. Unless there is reason to believe a violation of this chapter has occurred, examinations must be limited to one each year. Records and information obtained by the administrator during an examination are confidential and the administrator must certify that it is in compliance with the Right to Financial Privacy Act (RFPA).

(D) The administrator may cooperate and share information with an agency of



this State, other states, or the federal government. The administrator may accept or participate in examinations conducted by one of these agencies.

(E) If the mortgage broker fails to notify the administrator of the existence or closing of a branch office, the actual operating hours of the main or branch offices where records are kept, or the whereabouts of its records, the broker is subject to penalties as set forth in Section 40-58-80.

(F) A mortgage broker licensee who ceases doing business in this State must notify the administrator at least seven days in advance. The notification must include a withdrawal plan that includes a timetable for disposition of the business, the location of the books, records, and accounts until the end of the retention period, and certification of the proper disposal of those records.

(G) A mortgage broker licensee may develop, maintain, and test disaster recovery plans for all records that are maintained."

Mortgage broker continuing education, South Carolina law required

SECTION 14. Section 40-58-67(A)(1) of the 1976 Code is amended to read:

"(1) Licensees must complete at least eight hours of continuing professional education annually, which must include at least one hour on South Carolina laws and regulations. Continuing education credit may be granted only for the year in which the class is taken and may not be granted for the same course in successive years. The continuing professional education completed must be reported to the administrator annually. Course providers must maintain records of attendees for two years after the course."

Authorization to license a loan originator's personal residence

SECTION 15. Section 40-58-110(A) of the 1976 Code is amended to read:

"(A)(1) In addition to the initial nonrefundable license application fee of

five hundred fifty dollars required by Section 40-58-50, first time mortgage broker licensees also shall pay a one-time, nonrefundable processing fee of two hundred dollars. Thereafter, a mortgage broker licensee shall pay an annual nonrefundable renewal fee of five hundred fifty dollars. A mortgage broker licensee shall pay an initial nonrefundable fee of one hundred fifty dollars and, thereafter, a nonrefundable renewal fee of one hundred fifty dollars for each branch location. The Department may license a personal residence of a loan originator as a branch office if it is located more than seventy-five miles from a commercial branch office location.

(2) The initial nonrefundable license fee is fifty dollars for a loan originator license, and fifty dollars, nonrefundable, for a renewal license. In addition, all licensees must pay the cost of obtaining credit reports and national criminal history record checks as the administrator may require. The broker shall notify the administrator in writing ten days before opening a new location or changing the address of a licensed location. A fee of twenty-five dollars is required when the licensee notifies the administrator of a change in address for a licensed location."

State criminal history background records check, references removed

SECTION 16. Section 40-58-130(A)(4) of the 1976 Code is amended to read:

"(4) authorizing the Nationwide Mortgage Licensing System and Registry to collect fingerprints on the administrator's behalf in order to receive national criminal history background record checks from the FBI to retain for certification purposes and for notification of the administrator regarding subsequent criminal charges which may be reported to the FBI in accordance with Section 40-58-50;"

Time effective

SECTION 17. This act takes effect one hundred and twenty days after approval by the Governor.