

State of Mississippi
Department of Banking and Consumer Finance
Mortgage Division

MISSISSIPPI MORTGAGE CONSUMER PROTECTION LAW

REGULATIONS (Draft)

SECTION 1. Purpose

These regulations are promulgated pursuant Section 81-18-1, et seq., Mississippi Code of 1972, Annotated, also known as the Mississippi Mortgage Consumer Protection Law, and other applicable statutes to establish administrative procedures required by the Mississippi Department of Banking and Consumer Finance. These Regulations shall be applicable to licensees and registered companies under the Mississippi Mortgage Consumer Protection Law. These Regulations are not intended to create any private right, remedy, or cause of action in favor of any borrower or against any Licensee or company holding a registration certificate, nor are these Regulations intended to apply to any business transaction of a Licensee or company holding a registration certificate not covered by Mississippi Law. While these Regulations are intended to and do supersede all prior Rules, Regulations and Guidelines of the Department of Banking and Consumer Finance, these Regulations are intended only to clarify the existing law (both statutory and regulatory) governing the mortgage business. These Regulations do not create any new or substantive rights in favor of any borrower or against any licensee or registered company, regardless of whether the loan was made prior to or after the effective date of these Regulations.

SECTION 2. Exemptions

- (a) Persons authorized to engage in business as a bank holding company or as a financial holding company, or any wholly owned subsidiary thereof, is exempt from the provisions of the chapter, with the exception of having to file a notification statement on an annual basis. A financial holding company would include a thrift holding company.
- (b) Any person authorized to engage in business as a bank, credit card bank, savings bank, savings institution, savings and loan association, building and loan association, trust company or credit union under the laws of the United States, any state or territory of the United State, or the District of Columbia, the deposits of which are federally insured, or any wholly owned subsidiary thereof. A federally insured institution would include those insured by the Federal Deposit Insurance Corporation (FDIC) and the National Credit Union Association (NCUA).
- (c) The following persons are not subject to the provisions of this chapter, unless otherwise provided in this chapter: Any person who is a wholesale lender, as defined in Section 81-18-3, or who is registered by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association or the United States Department of Housing and Urban Development; provided, however, that persons who qualify for an registration under this paragraph shall be subject to Sections 81-18-11, 81-18-13, 81-18-17, 81-18-21, 81-18-23, 81-18-25, 81-18-27, 81-18-31, 81-18-33, 81-18-35, 81-18-39 and 81-

SECTION 2: Exemptions (continued)

18-43. The following is a clarification of the requirements and the documents required for an initial and renewal registration certificate:

1. Any person who is a wholesale lender, which is defined as any person or entity who makes a mortgage loan, or purchases or services mortgage loans, utilizing the services of a person exempted, licensed or registered under this chapter. This includes companies that only service mortgage loans made on Mississippi residential property. A letter, on company letterhead, from the principal of the company must accompany the initial and yearly renewal application stating the activities of the company are in compliance with the definition of a wholesale lender.
 2. Any person who is registered by the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Government National Mortgage Association (GNMA). The following documentation must be provided to the Department of Banking and Consumer Finance in connection with the initial application for a registration certificate: (a) a copy of the formal notice of approval from the applicable agency and (b) a copy of the most recent audited financial statement. With each subsequent yearly renewal application for a registration certificate, a copy of the most recent audited financial statements must accompany the renewal application.
 3. Any person who is registered by the United States Department of Housing and Urban Development (HUD) and is approved by such agency to make these loans in Mississippi. The following documentation must be provided to the Department of Banking and Consumer Finance in connection with the initial application for a registration certificate: (a) a copy of the formal notice of approval from the applicable agency and (b) a copy of the most recent audited financial statement. With each subsequent yearly renewal application for a registration certificate, a copy of the most recent audited financial statements must accompany the renewal application. A copy of the approval from the applicable agency to conduct business in Mississippi must accompany the initial application for a registration certificate and each yearly renewal application thereafter.
 4. A company holding or applying for a registration certificate must register the company's loan originators and branches. In order for the loan originator to be required to be registered, he/she must have direct contact with consumers on Mississippi residential property. In order for a branch to be required to be registered, the branch, wherever located, must conduct business on Mississippi residential property. In order for a branch to be registered, there must be a registered loan originator with the Department working from that branch location.
- (d) Any person who operates as a Mississippi manufactured housing operation, may contract for no more than twelve (12) Mississippi residential loan transactions, over the licensing period, without being required to obtain a mortgage company license. The licensing period is from October 1 to September 30. A residential loan transaction for a manufactured housing operation is considered a "land/home deal". The twelve (12) transactions are cumulative to any combination of operations owned or controlled by any one individual, sole proprietorship, corporation, limited liability company, partnership, trust or any other group of individuals, however organized. However, within thirty (30) days of loan closure, the person shall submit

SECTION 2: Exemptions (continued)

- to the commissioner a fee of ten dollars (\$10.00), which is not chargeable to the consumer, and written notification on documentation provided by the department, seeking approval to engage in a residential mortgage transaction without first complying with the licensing provisions of the Mississippi Mortgage Consumer Protection Law. The ten dollar (\$10.00) fee and the notification transaction do not effect operations that already possess an active Mississippi mortgage company license issued by the Department. The form will be prescribed by the Department and available on the Department's website.
- (e) Any person who engages in owner-financing or engages in the financing of a consumer loan secured by a mortgage on Mississippi residential immovable property may contact for no more than twelve (12) Mississippi residential loan transactions, over the licensing period, without being required to obtain a mortgage company license. The twelve (12) transactions are cumulative to any combination of operations owned or controlled by any one individual, sole proprietorship, corporation, limited liability company, partnership, trust or any other group of individuals, however organized. The licensing period is from October 1 thru September 30. These types of companies would include, but are not limited to: home improvement company, vinyl siding installer, pool installer, roof installer, etc. If a transaction occurs that meets the definition of a mortgage loan as defined in the Mississippi Mortgage Consumer Protection Law, then the company must, within thirty (30) days of loan closure, submit the proper documentation to the Department, along with the ten dollar (\$10.00) fee. This documentation is prescribed by the Department and details the transaction, seeking approval to engage in a residential mortgage transaction without first complying with the Mississippi Mortgage Consumer Protection Law.
- (f) Loan originators are required to register per Section 81-18-5(m), Mississippi Code of 1972, Annotated, and to follow specific requirements outlined in this section.
1. Loan originators who work for licensed as well as registered companies must register with the Department if they originate loans on Mississippi residential property or have direct contact with consumers concerning Mississippi residential property. These include W-2 employees as well as 1099 employees.
 2. A Loan Originator may only work for one mortgage company at one specified location and display their original loan originator registration at that location in a place visible to the public.
 3. If a loan originator leaves a licensed or registered mortgage company to register with another licensed or registered company, then the initial application must be completed to apply with the new company. This includes the initial application fee of \$100.00 and a new completed fingerprint card.
 4. A letter from the licensed / registered mortgage company stating the loan originator's last employed date must be mailed to the Department within thirty (30) days of his/her last day of employment stating that the loan originator is no longer employed by the mortgage company. This letter must be received before a new loan originator registration will be approved.
 5. A license or registration is non-transferable.
 6. The movement from one licensed company to another licensed company does not waive the requirement of approved continuing education for the loan originator.

SECTION 2: Exemptions (continued)

7. The loan originator must work from the registered office listed on the loan originator application.
8. The Department will deny the application if the residential address of the loan originator is greater than One-Hundred Twenty-five (125) miles from the licensed / registered location of the mortgage company that is listed on the Loan Originator's Application for Registration.

SECTION 3. Licensing criteria

- (a) In order to determine the applicant's suitability for a license, the commissioner shall forward the fingerprints submitted with the application to the Department of Public Safety; and if no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the FBI for a national criminal history record check. The commissioner may request a new set of fingerprints at any time from any person licensed or registered with the department.
- (b) Within fifteen (15) business days after receipt of a completed application, final verification from the Department of Public Safety and/or FBI, and payment of licensing fees prescribed by this act, the department shall either grant or deny the request for license. If the application is withdrawn or denied, the license fee is non-refundable.
- (c) **A person must be named the principal officer for a company applying for a mortgage company license.**
 - 1) **Principal Officer means an employee of the mortgage company who submits documentation of a minimum of two (2) years experience directly in mortgage lending. Proof of experience includes, but is not limited to: W-2 forms, letter(s) from previous or current employers stating job description, copies of other state licenses, etc. Resumes may be included, but are not sufficient proof of experience. If the person does not have the required experience, he/she may provide proof of the passage of an examination that has been approved by the Department for the experience waiver.**
 - 2) **The residency of the principal officer must be within 125 miles of the mortgage company's address listed on their main license with the Department.**
 - 3) **This person is not required to be owner or co-owner of the company.**
 - 4) **If this person meets the definition of a loan originator as defined in this chapter, then the principal officer must register as a loan originator and meet the requirements as outlined in this chapter.**
 - 5) **If the person does not meet the definition of a loan originator, then he/she will still have to complete twelve (12) hours of approved continuing education in order for the mortgage company to renew their mortgage company license.**
 - 6) **The principal officer may only work for one mortgage company at the address listed on the company's main license with the Department.**

SECTION 4. License Fees

- (a) With each initial application for a license, the applicant shall pay to the commissioner a license fee of Seven Hundred Fifty Dollars (\$750.00), and an annual renewal fee of Four Hundred Seventy-Five Dollars (\$475.00) on or before September 30. If the fee is not received on or before September 30, then the renewal fee will increase to the original amount of the license, seven hundred fifty dollars (\$750.00), plus twenty-five dollars (\$25.00) per day fine. This fee must be in the form of a money order or a bank cashier's check. If the application is denied or withdrawn by the company, the application fee is non-refundable.
- (b) Loan originators are required to register per Section 81-18-5(m), Mississippi Code of 1972, Annotated, and to follow specific requirements outlined in this section. The initial registration fee of a loan originator shall be accompanied by a fee of One Hundred Dollars (\$100.00). Annual renewals of this registration shall require a fee of Fifty Dollars (\$50.00). Both fees must be in the form of a money order or cashier's check made payable to the Mississippi Department of Banking and Consumer Finance. The renewal fee of fifty dollars (\$50.00) must be received, along with the renewal form prescribed by the Department, on or before September 30 of each year, the expiration date of the loan originator registration. If this fee is not received on or before September 30 of each licensing year, then the loan originator will be required to pay the full amount of the license fee, which is one-hundred dollars (\$100.00). If the application is denied or withdrawn by the company or individual, the application fee is non-refundable.

SECTION 5. Change in location, name, principal officer, loan originator

- (a) Each licensee shall notify the department, in writing, of any change in address of its principal place of business or of any additional location of business or any change of officer, director, or principal of the licensee within thirty (30) days of the change. Failure to notify the department, in writing, will cause the company to be issued a civil money penalty.
- (b) Each company shall notify the department, in writing, when a loan originator resigns or is released from the employment of a licensed mortgage company within thirty (30) days. Failure to notify the Department, in writing, within the thirty days will cause the company to be issued a civil money penalty.

SECTION 6. Branch Offices

- (a) No licensee or registered company shall open a branch office in this state or a branch office outside this state from which the licensee has direct contact with Mississippi consumers regarding origination or brokering Mississippi property, without prior approval of the department. An application for any branch office shall be made on an "Initial Application of Branch Location" form prescribed by the department and will be accompanied by a nonrefundable application fee of One-Hundred Dollars (\$100.00). This fee must be in the form of a money order or a cashier's check.

SECTION 6. Branch Offices (continued)

- (b) A branch office will be considered “open” if the signage is in place, a business license has been applied for and approved, advertising has been placed and/or there is an unlocked door or no signage on the door indicating that the branch office is closed or not yet open for business. If the branch is considered “open” without prior approval from the department, then a civil money penalty will be issued to the company and possible denial of the branch license.
- (c) Each branch location must renew their branch registration on or before September 30 of each year. The company will be mailed renewal forms for such. The fee for renewal is Twenty-Five Dollars (\$25.00).
- (d) **Each licensed branch location must have at least one registered loan originator working from that location.**
- (e) **The branch office must display the original issued branch license, not a copy, in a place visible to the public.**

SECTION 7. Requirements For In-State Offices

Each principal place of business and branch office in the state of Mississippi shall meet all of the following requirements:

- (a) The location shall be in compliance with local zoning ordinances. For initial application and/or renewal of principal office and branch office, documentation must be provided to the department of the zoning of the area where the office is to be located. This documentation may include, but are not limited to, the following items: Privilege Tax License and/or letter from City or County on their official letterhead stating the zoning of the property.
- (b) Consist of at least one room that is secure, enclosed and private in order that mortgage business may be conducted in a private location. The room must be in a building of secure construction. This does not include portable buildings. The mortgage office may be located inside of another type of business; however, signage must indicate the presence of this office and must follow the above guidelines, as well as any guidelines required by regulation of the other business.
- (c) A mortgage company must display a permanent sign outside of the mortgage company that is easily visible to the public. This sign must comply with local zoning ordinances. The words “Mississippi Licensed Mortgage Company” must be on the sign outside of a mortgage company that holds a current regular license with the Department. The words “Mississippi Registered Mortgage Company” must be on the signage outside of a mortgage company that holds a registration certificate with the Department.

SECTION 8. Advertisements

- (d) All advertisements for loans regulated under the Mississippi Mortgage Consumer Protection Law may not be false, misleading or deceptive.
- (e) Advertisements are considered to be in print or by electronic means. Business cards are considered by the Department to be a form of advertisement and must meet the requirements for such.
- (f) No person whose activities are regulated by this Law may advertise in a manner as to indicate or imply that its interest rates or charges for loans are “recommended”, “approved”, “set” or “established” by the State of Mississippi, which includes the Department of Banking and Consumer Finance.
- (g) All licensees and companies holding registration certificates shall maintain a copy of all advertisements citing interest rates or payment amounts primarily disseminated in this state and shall attach to the advertisement documentation that provides corroboration that this interest rate and/or terms were available. Also, a list of names of the specific media sources by which the advertisements were distributed is to be attached to a copy of the advertisement.
 - a) All published advertisements disseminated primarily in this state by a licensee or companies holding a registration certificate shall contain the name and the office address of the licensee or registered company which is the same as is on record with the department.
 - b) An advertisement that contains either a quoted interest rate or monthly payment amount must include:
 - 1) The interest rate of the mortgage, a statement as to whether the rate is fixed or variable (adjustable), and the adjustment index and frequency of adjustments
 - 2) The terms, in years or months, to fully repay the mortgage by making the regularly scheduled payments
 - 3) The APR as computer under federal guidelines
- (b) No licensee shall advertise their services in Mississippi in any media, whether print or electronic, without the words “Mississippi Licensed Mortgage Company”.
- (c) No companies holding a registration certificate shall advertise their services in Mississippi in any media, whether print or electronic, without the words “Mississippi Registered Mortgage Company”.

SECTION 9. Required Contents of Individual Borrower Files

The required mortgage company files will be kept at the main office location listed on the company's license or registration certificate. If the company wishes to keep the files at a different location, then the company must first submit a written request to the Department Commissioner and gain approval from the Commissioner before this can occur.

- (a) The individual borrower files of a mortgage company shall contain at least the following:
- (b) The original or copy (unless otherwise specified below) of All documentation dated and signed by the borrower and/or loan originator, including, but not limited to:

- *Application – copy of the original signed and dated by the mortgage company
- Credit File (Authorizations to order credit report, verifications, credit reports, etc)
- *Appraisal and invoice from appraiser – complete copy of appraisal
- Right of Recission
- Broker or Co-Broker Agreement
- *Good Faith Estimate – within 3 working days of taking application. If mailed, must have copy of cover letter stating date mailed and address where the GFE was mailed to
- Preliminary Truth in Lending (within 3 days of the application date)
- Servicing Disclosure (if funding the loan)
- Notice of Right to Receive Copy of Appraisal
- Controlled Business Agreement (when applicable)
- Equal Credit Opportunity Act disclosure (within 3 days of application)
- Fair Lending
- *Lock-in agreement from lender
- *Copy of Turndown (if applicable)
- Copy of Notice of Cancellation from Broker / Lender
- *Mortgage Origination Agreement (sample one on website) containing specific statements
- *Final HUD Settlement Statement – copy of signed original
- Final Truth In Lending – for all Lenders or Brokers who table fund – at settlement
- Promissory Note (copy)
- Deed of Trust (copy)

* Requirement of loan file by statute 81-18-33, MS Code of 1972, Annotated

These records are to be maintained for a minimum of 36 months from the date of the loan application. The Commissioner in his sole discretion, after giving written notice, may require records to be maintained for a longer period of time. The following federal regulations may also be used as guides to supplement the minimum recordkeeping requirements stated above. Regulation B, Regulation X, and Regulation Z. However, the requirements outlined above are separate and apart from any record keeping requirements stated in federal regulations. Compliance with the provisions of this policy cannot be relied upon for ensuring compliance with federal regulations.

SECTION 10. Penalties assessed by Department

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

SECTION 11. Journal of Mortgage Transactions

Each licensee or registered company shall maintain a journal of mortgage transactions at the principal place of business as stated on the license or registration certificate.

- (a) **The journal may be in electronic or handwritten format.**
- (b) **The journal is to include:**
 - 1) **Name of applicant(s) and co-applicant(s)**
 - 2) **Date of Application**
 - 3) **Disposition of loan application, indicating date of loan funding, loan denial, withdrawal and name of lender if applicable**

SECTION 12. Lock-in Fee and Lock-in Agreements

- (a) **Lock-in Fee:**
 - 1) **A fee to be paid to the lender to guarantee an interest rate and/or a certain number of points on a mortgage loan.**
 - 2) **The fee must adhere to the following schedule as provided in Section 2 of House Bill No. 681, 2006 Regular Session:**
 - I. **No fee may be collected to lock-in for sixty (60) days or less**
 - II. **One percent (1%) of the principal amount of the loan to lock-in for more than (60) days, but not to exceed one hundred eighty (180) days**
 - III. **One and one-half percent (1 1/2 %) of the principal amount of the loan to lock-in for more than one hundred eighty (180) days, but not to exceed two hundred seventy (270) days**
 - IV. **Two percent (2%) of the principal amount of the loan to lock-in for more than two hundred seventy (270) days**
 - 3) **May be collected by the broker only on behalf of the lender.**
 - 4) **If the broker collects the fee on the lender's behalf and the fee is made payable to the broker, then the fee must be placed in the broker's escrow account until it is transferred to the lender.**
 - 5) **The mortgage broker may not charge or collect a lock-in fee that is not on behalf of a named lender.**
 - 6) **The lock-in fee may not be collected until the applicant is provided a copy of the lock-in fee agreement.**

SECTION 13. Lock-in Fee Agreement

- (a) **A mortgage broker may only enter into a lock-in agreement on behalf of a named lender with an applicant.**
- (b) **The written lock-in agreement between the applicant and the mortgage company must contain at least the following information:**
- 1) **Identification of the property that is being purchased with the loan**
 - 2) **The principal amount and term of the loan**
 - 3) **The interest rate and/or points**
 - 4) **If locking-in the interest rate, whether the rate is fixed or variable**
 - 5) **If locking-in a variable interest rate, the index and margin, or the method by which an interest rate change for the loan will be calculated**
 - 6) **The amount of the lock-in fee**
 - 7) **If the lock-in fee is refundable or non-refundable**
 - 8) **If the lock-in fee is refundable, the terms and conditions necessary for the applicant to obtain the refund**
 - 9) **If the lock-in fee is refundable, then state if the consumer will receive payment back in the form of a check or in the form of a reduction of origination fees at closing from the mortgage company**
 - 10) **The length of the lock-in period that the agreement covers**